



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

PETITION NO. 6 OF 2019

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA

AND

IN THE MATTER OF JMK (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

IN THE MATTER OF AN APPLICATION BY FRANCIS GATHUMBI KAMAU

TO BE APPOINTED A GUARDIAN OVER THE AFFAIRS OF JMK

R U L I N G

1. The Petitioner herein is the brother of the subject **JMK** who was diagnosed with schizophrenia and has been under treatment by Mathari National Teaching and Referral Hospital since 1989. Previously, she lived with her mother **EWK** but when she passed on six years ago, the subject was taken into the care of the Petitioner who provides for her upkeep.
2. The family filed a **Succession Cause No. 163 of 2013** before the SPM'S court at Limuru in respect of the estate of their deceased mother, and have proposed in annexure **FGKA – 3** that certain shares of the estate be reserved for the benefit of the subject. The Petitioner states that the succession court directed that a guardian be appointed in respect of the subject to facilitate confirmation of the grant. That appears to be the motive for the present application.
3. Section 26 of the Mental Health Act provides that:

“1) The court may make orders –

a)

b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.”

According to the report by Dr. Wamukhoma of Mathare National Teaching and Referral Hospital dated 11th September 2019 (annexure **FGK 1** to Further affidavit), the subject though compliant with medication **“has residual symptoms of schizophrenia despite several years of management.”** Her opinion is that in view of the illness, the subject **“cannot reason, think and make decisions about her life or property.”**

4. The court did interview the subject on the date of the hearing of the Petition and noted that she had poor cognition and was unable to understand or answer simple questions. The court is satisfied, in the circumstances that the subject is suffering from a debilitating mental disorder in terms of the definition of a person suffering from mental disorder under Section 2 of the Mental Health Act.
5. Consequently, pursuant to Section 26(1) a) of the Mental Health Act the court hereby appoints the Petitioner as a guardian to the subject. For the avoidance of doubt, once the subject's share in the estate of her deceased mother has been confirmed, the Petitioner ought to move the court to be appointed, with consent of other siblings, as a manager of the estate and thereby be clothed with relevant authority to manage the estate in terms of Section 28 of the Act. There is therefore liberty to apply.

DELIVERED AND SIGNED AT KIAMBU THIS 20TH DAY OF DECEMBER 2019

C. MEOLI

JUDGE

In the presence of:

Petitioner – present.

Court Assistant Nancy