



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY AND PROBATE DIVISION**

**MISC. APPLICATION NO. 3 OF 2018**

**IN THE MATTER OF AN APPLICATION BY DMM AND OF THE MENTAL HEALTH ACT. CAP 248**

**AND**

**IN THE MATTER OF APPLICATION FOR ORDERS OF CUSTODY MANAGEMENT AND GUARDIANSHIP OF EENG (A PERSON OF UNSOUND MIND)**

**DMW.....APPLICANT**

**JUDGMENT**

1. This Petition began before Musyoka J who did not determine the same due to missing documents. He had however heard the evidence of the two witnesses herein. The matter qualifies as a part heard matter heard by a judge currently working in another station. I took over the proceedings by virtue of **Order 18 rule 8** of the **Civil Procedure Rules**.

2. The Petitioner DMM is the husband to **EENG**, the Subject herein who is said to have health incapacity that has affected both her mental and physical ability such that she is unable to communicate effectively or take charge of her property, and businesses to manage the same. All the above arose out of a motor vehicle accident. The Petitioner and the subject were married on the 4<sup>th</sup> of October, 1997 and have one issue of the said marriage DWM a student at University.

3. At the hearing of the petition the Petitioner buttressed the points in his affidavit in support of his petition to the effect that the Subject is his wife having undergone a Christian marriage in 1997, which had been preceded by a customary marriage in 1994. He testified further that on the 14<sup>th</sup> of July 2017 his wife had an accident where she sustained a bad leg injury and when taken to theatre on 16<sup>th</sup> July, 2017, she lapsed into a coma. That the Subject is under home care since and does not respond at all, he has employed two nurses to take care of her. Against the above background the Petitioner wishes to be appointed the Manager of his wife's estate.

4. The Petitioner's and the Subject's only child DWM corroborated the Petitioner's evidence confirming that her mother is in a vegetative state. Further she has no objection in her father being appointed as the legal guardian to her mother.

5. The Petitioner produced several documents in support of his application including:

- i) A copy of a marriage certificate No. [xxxx].
- ii) A copy of birth certificate of DWM
- iii) A copy of MRI certificate dated 11<sup>th</sup> October, 2017 and
- iv) Medico-legal report dated 28<sup>th</sup> June, 2018.

6. In his petition dated 19<sup>th</sup> December, 2017, the Petitioner had sought for orders that:

- 1) He be appointed as manager/guardian to **EENG**
- 2) That the said Manager/Guardian as appointed do file reports to court from time to time and for costs.

**7. Section 26** of the **Mental Health Act (Cap 248)** of the Laws of Kenya empowers the court to appoint a guardian for a person with mental disorder and such guardian may manage the property of such a person.

**8.** Upon hearing the evidence of the Petitioner and his witness I am convinced that the Subject herein is in such a mental and physical state that she is incapable of running her affairs and I hereby appoint the Petitioner DMM to be the legal guardian of **EENG** and for the said legal guardian to manage and control the properties of the subject named herein.

Costs be in the cause.

**SIGNED DATED and DELIVERED in open court this 26<sup>th</sup> day of September, 2018.**

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**ALI-ARONI**

**JUDGE**