



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**MISCELLANEOUS APPLICATION 49 OF 2017**  
**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF**  
**THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF H.W.N.(A PERSON SUFFERING FROM MENTAL DISORDER)**  
**IN THE MATTER OF GUARDIANSHIP OF SUBJECT- H.W.N**  
**C W K.....1ST PETITIONER**  
**R N N.....2ND PETITIONER**

**RULING**

The Applicants C W K daughter of the subject H W K who resides in United States of America (hereinafter called the subject) and R N N nephew to the subject filed petition under Section 26(1) and 29 of the Mental Health Act Cap 248 and she sought that she be appointed legal guardian of H W K and manager of her estate.

The subject H W K suffers from mental incapacity that hinders decision making and conduct of her affairs and ensuring her wellbeing.

The 1st Applicant C W K presented the current medical report from Dr J.M. Wafula Consultant Physician of Nairobi Women's Hospital who confirmed the subject was admitted in hospital on 16th October 2016 and upon examination was diagnosed with tuberculosis meningitis and pneumonia. She was in Intensive Care Unit and later to the General Ward. Her level of consciousness has remained low and is unable to communicate.

The 1st Applicant deposed that due to the subject's current medical status she lacks capacity to sufficiently understand information and make decisions on her affairs and well being. The subject incurred a huge medical bill and cannot be discharged from the hospital due to arrears of the escalating medical bills as confirmed by the bundle of medical services bill by Nairobi Women Hospital attached to the 2nd Applicant's affidavit.

The 1st Applicant attached birth certificates of family members and she obtained written consents from members of the family ; namely;

a) G N elder sister and daughter to subject

b) E K nephew and grandson of the subject

The 2nd Applicant R N was appointed to represent the subject's interests and make decisions on her behalf vide Power of Attorney dated 11th October 2016 P/A 66602. He has listed in his affidavit the assets that comprise of the subject's estate and liabilities.

### **DETERMINATION**

From the foregoing, the issue(s) that are to be determined by the Court are:-

1. Whether the Subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.
2. Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.

The Mental Health Act provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. **Section 26 of the Act** grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.

**Section 28 of the same Act** provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep. The Petitioners / Applicants will require to access funds from the subject's bank account Faulu Bank Limited Bank Account Number [particulars withheld] and Family Bank Kiambu Branch Account Number [particulars withheld] for the purpose of maintaining the subject to the best possible medical condition.

Under Section 26(3) of the Act it provides,

***“Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the Court may make such orders as it may think fit for the management of the estate of such persons, including proper provision for his maintenance...”***

From the evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under Section 26 of the Mental Health Act.

Relying on the Medical Report from Nairobi Women Hospital dated 9th April 2017 the Court is satisfied that the Petitioners have made out their case in support of the Petition that the subject suffers mental incapacity and requires care and attention for her well being.

### **DISPOSITION:**

In light of the above, the Court holds that:-

1. **H W K (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the Mental Health Act, Cap 248 Laws of Kenya.**
2. **C W K and R N N are hereby appointed the legal guardians to H W K.**
3. **C W K and R N N are hereby appointed managers of the estate of H W K under Section 28 of Mental Health Act to manage her estate including any such description of moveable or**

**immoveable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.**

**4. C W K and R N N to access funds from the subject's bank accounts Faulu Bank Limited Bank Account Number [particulars withheld] and Family Bank Kiambu Branch Account Number [particulars withheld] to settle her medical bill and arrears with Nairobi Women Hospital.**

**5. C W K and R N N to manage the subject's immovable properties and/or settle liabilities with regard to suit properties;**

**Ngong/Ngong 59683,59684,59685,59686,59687,59688,59689.**

**DELIVERED DATED SIGNED IN OPEN COURT IN NAIROBI ON 4TH AUGUST 2017**

**M.W. MUIGAI**

**JUDGE**