



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION NO.14 OF 2016

IN THE MATTER OF SECTIONS 26, 27 AND 28 OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA

AND

IN THE MATTER OF THE ESTATE OF J M K

AND

IN THE MATTER OF PETITION FOR APPOINTMENT OF A GUARDIAN AND MANAGER

BY:

M W M.....PETITIONER

VERSUS

J M K.....SUBJECT

RULING

The petition before me is dated 16th March, 2016. The order sought is that the petitioner be appointed as the guardian and manager of the estate of J M K (hereinafter the subject) with powers to assemble, collect, safeguard and protect from any destruction, wastage, disposal, alienation or interference of whatsoever nature all properties (movable and immovable) of J M K.

The petition is premised on the sworn affidavit of the petitioner.

The gist of the petition and the supporting affidavit is that the subject is married to the petitioner. They have six (6) children. The subject is the registered owner of:

- a) GILGIL KARUNGA BLOCK 2/[particulars withheld] (CHOKERERIA) MEASURING 5.327HA
- b) GILGIL KARUNGA BLOCK 2/[particulars withheld] (CHOKERERIA) MEASURING 4.503HA
- c) GILGIL KARUNGA BLOCK 2/[particulars withheld] (CHOKERERIA) MEASURING 4.156HA

d) NDUNDORI/LANET BLOCK 2/[particulars withheld] (TABUGA) MEASURING 1.42HA

He also owns six (6) high grade dairy cattle and orchards full of oranges and he also runs a quarry on the land aforementioned.

The subject has been ailing for a long time and is currently suffering a degenerative neurological disorder of the mind to the extent that he cannot know the nature of his properties or even manage his own personal affairs. A psychiatrist report is exhibited.

It is thus urged that in the prevailing circumstances, it is only fair that a guardian and a manager be appointed for the subject.

I have had occasion to consider the petition and the supporting affidavit as well as the brief submissions by counsel in court.

Of vital importance in the determination of this petition is the medical report by Dr. Njau J.W., Consultant Psychiatrist, who examined the subject.

He opines in his conclusion after examination of the subject that the subject is an elderly man who suffers from a progressive degenerative neurological disorder which has caused significant decline from his previous level of functioning and currently he doesn't know the nature and extent of his property. He also doesn't know the identity of his natural beneficiaries. He therefore recommends the appointment of a guardian because the subject has no ability to make sound judgment, to weigh, reason or to make reasonable decisions.

In the totality of the material before me, I am persuaded that the order sought is necessary both for the benefit of the subject and for his immediate natural beneficiaries.

I consequently allow the petition in terms of prayer (a) thereof. The guardian appointed to strictly adhere to the powers to assemble, collect, safeguard and protect from any destruction, wastage, disposal, alienation or interference of whatsoever nature on all properties movable and immovable of the said J M K.

Dated, Signed and Delivered at Nakuru this 26th day of July, 2016.

A. K. NDUNG'U

JUDGE