



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**PETITION NO. 102 OF 2016**  
**IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248**  
**AND**  
**IN THE MATTER OF R N C (A PERSON SUFFERING FROM A MENTAL DISORDER)**  
**AND**  
**IN THE MATTER OF AN APPLICATION BY M N C TO BE APPOINTED**  
**AS A GUARDIAN OVER THE AFFAIRS AND MANAGER OVER THE ESTATE OF THE SAID**  
**R N C UNDER SECTIONS 26, 28(1) AND (2) OF THE MENTAL HEALTH ACT (CAP. 248)**

**JUDGEMENT**

1. The petition dated 31<sup>st</sup> August 2016 seeks two principal orders:-
  - a. That the petitioner, M N C, be appointed as the legal guardian of the patient; and
  - b. That the petitioner be appointed as the manager of the estate of the patient, with the powers enumerated in the said petition.
2. The petition is supported by an affidavit with supporting facts and evidence, or verifying it. The affidavit of the petitioner was sworn on 31<sup>st</sup> August 2016. The patient is her husband, and they have between them four (4) children. She avers that the petitioner suffers from diabetes, which has affected his mental faculties, to the extent that he is now demented, and unable to control himself and his affairs. .
3. The petition was prosecuted orally on 15<sup>th</sup> September 2016. The petitioner testified, and gave vent to the averments made in the papers she had lodged in court in support of her case. None of her children attended court, contrary to the direction that all of them attend court at the hearing, but she explained that two of them were abroad while the other two were in jail.
4. She called Prof Erastus O. Amayo, a neurophysician, who has been attending to the patient. He testified that the patient was diabetic and dementing, with evidence that he was suffering from the Alzheimer's disease. He stated that the patient was unable to manage his affairs and could not make executive decisions. His report is attached to the application and is dated 1<sup>st</sup> August 2016.
5. The patient was also in court. He appeared to be disorientated and at one point rose from his seat and sought to find his way to the witness box when the petitioner was giving evidence. He had to be led out as

he seemed to be getting a little agitated.

6. The law which governs the handling of persons suffering mental illness is the Mental Health Act. It provides, among other things, for custody of such persons and the management of their estates. Part XII of the Act deals with the judicial power over persons and estates of persons suffering from mental disorder. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates.

7. I am satisfied from the material before me that the patient is no longer able to manage himself and his affairs on account of mental disorder arising from the conditions that are documented in the medical report by Prof. Amayo, which I have referred to above.

8. I am satisfied that a case has been made out for the appointment of the petitioner, as manager of the estate of the patient, who I have found to be suffering from mental disorder, and to act too as her guardian.

9. The position of the manager of the property and affairs the patient places the property of the patient in the hands of others. This puts the petitioner in a fiduciary position so far as the patient and the estate is concerned. This makes her a trustee. She is bound to account to both the court and to her children of her management of the said estate.

10. The orders that I feel bound to make in the circumstances are:-

- a. **That the patient, R N C, is hereby adjudged to be a person suffering from mental disorder;**
- b. **That the petitioner herein, M N C, is hereby appointed guardian of the said patient;**
- c. **That the said petitioner is also hereby appointed manager of the estate of the patient; and**
- d. **That the petitioner shall place before court at the expiry of three (3) months from date hereof a full and accurate account of her handling of the estate of the patient.**

11. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 23<sup>RD</sup> DAY OF SEPTEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**