



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC PETITION NO. E025 OF 2021

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS NEXT OF FRIEND, GUARDIAN (A PERSON OF UNSOUND MIND)

AND

IN THE MATTER OF SECTION 26 (1) (3), 27(2) OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA AND ORDER 32 RULES 1 TO 15 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF FRANCIS KOOME MBURUGU next friend of MMPETITIONER

RULING

1. Before the court is a petition dated 2.11.2021 where the petitioner seeks to be appointed the next friend and guardian of MM, aged 79 years and who is suffering from chronic schizophrenia. The petition is supported by the petitioner's affidavit sworn on the even date. Annexed to the affidavit is a medical report by Dr. Timothy K. Riungu and another report dated 6.6.1977 by Dr. C.K. Munene from the Mathari hospital.
2. Following directions by the court, the subject, was presented before court. He told the court he could identify where he was as well as the person accompanying him including his wife & children.
3. He admitted he lacked any strength to follow up the land case due to his hospitalization and mental lapses. He could not remember the name of his doctor.
4. Dr. Timothy Riungu told the court the subject had disruptive and bizarre behavior. He would speak to himself and sometimes could be violent to his family. As a result he was forced to take an early retirement. He sometimes was withdrawn and kept to himself hence could not sustain any meaningful conversation. He produced the medical report filed on 13.10.2021 as P exh 1.
5. The next to testify was the subject's wife Benedetor Mukiri M'Nchebere. She told the court she had no objection for the petitioner being appointed a guardian and next friend of her husband. Her children namely John, Lucy and Caroline had also given their consent which was filed before court to have the petitioner appointed as a guardian by the court.
6. The petitioner's lawyers on record filed written submissions dated 17.12.2021 and urged the court to allow the application so that he could protect the interests of the subject on account of the testimony before court and the medical reports produced. Under **Order 32 Rule 3 (2) (3) and 4 and the Civil Procedure Rules** the court has powers to appoint a competent person with his consent as a guardian of a person adjudged to be of unsound mind.
7. The court is mandated to adjudge such a person as of unsound mind upon inquiry by reason of unsoundness of mind or mental infirmity to be incapable of protecting their interests when suing or being sued.
8. The court has made inquiry through the evidence of PW1, PW2 and PW3 in this matter. PW2 produced a medical report which indicated the medical history of the subject since 1977 to present time. The petitioner has through his supporting affidavit consented to taking up the responsibilities of a guardian ad litem so as to safeguard the interests of the subject.
9. Similarly, PW3, the wife of the subject together with her children have executed and filed before court a consent authorizing Francis Koome Mburugu to be appointed as a guardian ad litem.

10. Based on the foregoing, I am satisfied that the subject lacks mental capacity to make decisions for his well-being. I find the petition merited and proceed to allow it in line with **Section 26 and 29 of the Mental Health Act Cap 248** as read together with **Order 32 Rule 3 & 15 Civil Procedure Rules**.

11. There could be no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16TH DAY OF FEBRUARY, 2022

In presence of:

No appearance for parties

Court Assistant – Kananu

HON. C.K. NZILI

ELC JUDGE