



**REPUBLIC OF KENYA**

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

**MIS. CAUSE NO. 131 OF 2014**

**IN THE OF R.M.M. (PERSON SUFFERING FROM MENTAL DISORDER)**

**IN THE MATTER OF SELECTION OF GUARDIAN OF R.M.M. AND MANAGER OF HIS ESTATE**

**IN THE MATTER OF AN APPLICATION BY J.W.M. (APPLICANT)**

**JUDGMENT**

1. J W M (hereinafter referred to as the petitioner) filed a petition on 18<sup>th</sup> July 2014 seeking three orders - that R M M (hereinafter referred as the subject) be adjudged to be a person suffering from a mental disorder under Section 26 of the Mental Health Act Cap 248, Laws of Kenya; that she be appointed manager of his estate and that she be appointed guardian of the subject.
2. The petitioner is the wife of the subject. There is a certificate of marriage on record, showing that the two contracted a statutory marriage on 17<sup>th</sup> September 1993 at the office of the Registrar of Marriages at Nairobi. The pair are the parents of two children, A M M and D K M, both in their early twenties.
3. The subject has been diagnosed with neurofibromatosis type II, meningiomas in the brain and nerves, and convulsive disorder. There is on record a medical report by his neurologist, Dr. S.M.G. Mwinzi, dated 21<sup>st</sup> February 2013, indicating that the subject has inoperable tumours in his brain which have made him unable to execute any documents now and in the future.
4. Dr. Mwinzi also executed a statutory declaration on 9<sup>th</sup> July 2014 where he explains that the subject suffer from a debilitating disease of the brain which has now reached the stage of mental impairment. He describes his condition as irreversible and he has been placed under twenty four – hour nursing care due to his special needs and frequent seizures.
5. The petitioner testified on 18<sup>th</sup> September 2014. She summarised the material in the reports that are before court and stated that the subject is wheelchair – bound, cannot talk or move on his own hence the decision not to avail him in court. He is not able to run his affairs and his condition is deteriorating by the day. She explained that given his condition it was imperative that he be declared to be a person suffering from mental disorder so that a person can be appointed to act as his guardian and the manager of his estate. The family depended on him and there is therefore need for access to his businesses to enable the person appointed to run them and to access his bank account to enable the manager meet family expenses and to pay employers both at the home and business front.
6. The children of the petitioner and the subject, that is to say A and D, also testified. They confirmed that their father had mental difficulties as a result of which he was not able to care for himself.
7. Having perused the documents filed in this matter and having heard the testimony of the petitioner and her children, I am persuaded that the subject is a person who is suffering from mental disorder. He is not able to take care of himself and to conduct his own affairs, making him dependent wholly on his wife, the petitioner.
8. As there is merit in the petition dated 16<sup>th</sup> July 2014, I do hereby allow the same in the terms proposed by the petitioner.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>th</sup> DAY OF September, 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Atonga advocate for the applicant..**