



**In re KS (Petition 2 of 2024) [2024] KEHC 1222 (KLR) (13 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1222 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT VIHIGA**  
**PETITION 2 OF 2024**  
**JN KAMAU, J**  
**FEBRUARY 13, 2024**  
**IN THE MATTER OF THE GUARDIANSHIP OF KS**  
**IN THE MATTER OF**  
**EM ..... PETITIONER**

**JUDGMENT**

1. The Petitioner filed a Petition dated 6<sup>th</sup> July 2022 on 21<sup>st</sup> July 2022. She sought that she be appointed as Guardian of the subject, KS in accordance with the *Mental Health Act* Cap 248 (Laws of Kenya) to represent him in all his affairs and also to manage his estate. She had also sought that he be declared to be suffering from mental illness as defined in the *Mental Health Act*.
2. She also filed a Further Affidavit on 27<sup>th</sup> July 2022. The same was sworn on 26<sup>th</sup> July 2022 in which she attached copies of the Medical Report dated 8<sup>th</sup> April 2022, Grant of Letter of Administration Intestate dated 12<sup>th</sup> April 2021, Kenya Gazette of 12<sup>th</sup> March 2021 and the Petition for Letters of Administration Intestate dated 30<sup>th</sup> December 2020 in respect of Vihiga SPM Succession Cause No XX of 2021 *in the matter of the Estate of EY arap V alias YB (Deceased)*.
3. The court heard the Petitioner, her counsel and the subject's siblings all who confirmed that the Petitioner could be appointed as the Guardian of the subject and also saw the original Certificate of Death of his other sibling, FBY. This court was satisfied that the Petition had merit save for Prayer No (1) of the said Petition dated 6<sup>th</sup> July 2022 and filed on 21<sup>st</sup> July 2022. Indeed, it was only a Medical Practitioner who could declare a person as one suffering from a mental condition as defined on the *Mental Health Act*.

**Disposition**

4. The court therefore declines to grant prayer No (1) of the said Petition but grants Prayer No (2) and (3) therein.



5. That for the completion of records, the Petitioner be and is hereby directed to file a Supplementary Affidavit to annex to a copy of the Certificate of Death of Francis Boiyo Yeye by 22<sup>nd</sup> February 2024 and in any event before the extraction of the order herein.
6. This court has opted to proceed with the hearing in the absence of the Supplementary Affidavit purely in the interest of justice as this matter, which was filed under Certificate of Urgency, has been pending in court since 21<sup>st</sup> July 2022.
7. Orders accordingly.

**DATED AND DELIVERED AT VIHIGA THIS 13TH DAY OF FEBRUARY 2024**

**J. KAMAU**

**JUDGE**

