



REPUBLIC OF KENYA



KENYA LAW
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In re BM (Subject) (Petition E023 of 2023) [2024] KEHC 7310 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7310 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E023 OF 2023
TW CHERERE, J
JUNE 13, 2024
IN THE MATTER OF APPLICATION FOR
APPOINTMENT OF GUARDIAN FOR BM (SUBJECT)

IN THE MATTER OF

TK APPLICANT

JUDGMENT

1. This Petition filed on 01st November, 2023 is brought under the provisions of Sections 26 and 28 of the [Mental Health Act](#) Cap 248 Laws of Kenya and seeks the following orders: -
 - a. A declaration that BM is a person suffering from mental disorder within the definition of the [Mental Health Act](#)
 - b. That Petitioner be appointed as the guardian for BM
 - c. A declaration that Petitioner as the duly appointed manager of the estate of BM with the powers necessary for the management of his assets and to plead and prosecute and or defend any action brought by or against the subject in respect of any assets forming the estate
2. The petition is supported by the affidavits sworn on 17th October, 2023 by Tabitha Karimi, the mother of the subject. She avers that the subject was involved in a road traffic accident on 19th June, 2021 and having been diagnosed as suffering from mental disorder is incapable of prosecuting an intended civil suit for damages arising out of the said accident. Annexed to the affidavit is a draft plaint and a medical report dated 28th April, 2022. Petitioner additionally filed the subjects second medical report dated 17th May, 2024.
3. I have considered the Petition and the issues for determination are as follows:
 - a) Whether the subject should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248.
 - b) Whether the applicant should be appointed as guardian to the subject.



(a) Whether the subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.

4. The Mental Health Act provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.
5. Section 2 of the Act defines “person suffering from mental disorder” as follows: -

“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”
6. Section 26 provides for custody, management and guardianship and states as follows:
 - 1) The Court may make orders-
 - a) For the management of the estate of any person suffering from mental disorder; and
 - b) For the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.
 - 2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate of the guardian of any such person.
 - 3) Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.
7. Medical Reports by Dr. Mwititi demonstrate that the subject is completely deformed and non-verbal and is therefore a person incapable of making independent decisions and conducting his own affairs as envisaged under the provisions of the Mental Health Act.

(b) Whether the applicant should be appointed as guardian to the subject.

8. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable though preference will be given to a relative.
9. Petitioner is the subject’s mother and is thus a close relative of the subject and a suitable guardian of the subject.
10. From the foregoing, I find that the Petition is merited and it is hereby ordered:
 1. TK is hereby appointed as guardian and manager of the estate of BM with the powers necessary for the management of his assets and to plead and prosecute and or defend any action brought by or against the subject in respect of any assets forming the estate
 2. That shall be no order as to costs.



DELIVERED AT MERU THIS 13TH DAY OF JUNE 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Ms. Asuma for Mutembei & Kimathi & Co. Advocates

