



REPUBLIC OF KENYA



**In re EGT (Miscellaneous Application E254 of 2022)
[2023] KEHC 2600 (KLR) (Family) (10 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS APPLICATION E254 OF 2022

PM NYAUNDI, J

MARCH 10, 2023

**IN THE MATTER OF: THE MENTAL HEALTH
(AMENDMENT) ACT (CHAPTER 248 LAWS OF KENYA)**

IN THE MATTER OF: EGT PETITION FOR GUARDIANSHIP BY DR. SOPIATO LIKIMANI

JUDGMENT

1. The Applicant herein SL petitions the Court *Vide* Petition dated November 23, 2022, for orders that:
 - a. A declaration do issue that EGT is a person suffering from mental disorder pursuant to the *Mental Health Act*, Cap248 Laws of Kenya.
 - b. Dr SOPriato Likimani be appointed as the legal guardian of the said EGT with powers to take custody of her and manage her estate.
2. The Petition is supported by the Affidavit of SL sworn on November 23, 2022; The Statement by Dr Pius Kigamwa, the treating Physician sworn on November 23, 2022; The Statutory Declaration of the father to the subject Dr GT declared on November 23, 2022 and the Statutory Declaration by the brother of the Subject MT declared on the November 23, 2022.
3. The matter proceeded virtually by *Viva Voce* Evidence on March 2, 2023. PW1- Dr Pius Kigamwa. He asked the Court to adopt his statement cited above. He examined the subject on November 17, 2019 and presented before court, his report dated August 15, 2022 attached to his statement. He formed the view that in view of the challenges she is facing she is not capable of living independently and a close family member would be required to manage her affairs.
4. PW2 SL- she is an aunt to the Subject. The deceased mother of the Subject, SST , is her sister. The subject was born on November 8, 1978 with mild cerebral palsy. In 1995 she developed pituitary adenoma. Following an operation to address this she lost her intellectual and mental abilities. Her mother obtained a Guardianship order on April 21, 2006 in Canada where they had relocated to.



5. In 2010-2011 on account of the ill health of the mother they relocated back home. The mother passed away in 2011 and the subject has been in the custody of the applicant since then. The responsibility for taking care of the subject has rested on the Applicant her other sister and her mother. The Applicant is the primary care giver.
6. The applicant has made this application to formalise the current arrangement that the family has to manage the welfare of the Subject. The subject has a medical condition that requires that decisions be made, and she is not in a position to make those decisions. The Applicant would also like to make an application to resolve the status of the subject as a Kenyan citizen.
The guardianship will also formalise the subject as a dependant to the estate of the Applicant.
7. PW3- MT is a brother to the Subject, he supports the Application and confirms that the Applicant has to date taken good care of his sister. He asks that the Court adopt his statement filed in Court.
8. Part XII of the Mental Health (Amendment) Act provides for the Care and Administration of property of persons with mental illness.
9. The Applicant seeks for a declaration that the subject is a person suffering from mental disorder (illness) and further that she be appointed the legal guardian of the subject with powers to take custody of her and manage her estate.
10. I have carefully considered this Application, the Affidavits and reports filed in court. I am satisfied that the ward is a person suffering from a mental illness and is incapable of managing her own affairs. I am also persuaded that the grant of orders will safeguard the rights of the subject as enumerated in Section 3 of the Act and in particular 3 (e) that provides for;
The right of a personal with mental illness to receive reasonable care, assistance and protection from their family and state.
11. I have also considered the fact that her brother and father are supportive of the orders being made. I am further guided by the medical evidence that confirms that the subject is incapable and requires the support of close family members to manage her affairs.
12. Accordingly, the Application is allowed and
 - a. The Applicant SL is appointed as Guardian/ Representative to EGT
 - b. The Applicant SL is appointed Manager of the Estate of EGT
 - c. As Manager of the Estate of EGT the Applicant may dispose of the property only with the sanction of the court.
13. No order as to costs

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF MARCH, 2023.

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P M NYAUNDI

JUDGE

In the presence of:



Ms Ouma Advocates for the Petitioner/ Applicant
Karani Court Assistant

