



REPUBLIC OF KENYA



In re RNN (A person suffering from Mental Disorder) (Miscellaneous Application E008 of 2023) [2023] KEHC 17453 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17453 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

MISCELLANEOUS APPLICATION E008 OF 2023

MW MUIGAI, J

MAY 11, 2023

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF
MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**

AND

IN THE MATTER OF RNN (A PERSON SUFFERING FROM MENTAL DISORDER)

IN THE MATTER OF GUARDIANSHIP OF SUBJECT

IN THE MATTER OF

PNN PETITIONER

RULING

1. The Applicant, PNN under certificate of urgency filed petition under Section 26(1) and 29 of the *Mental Health Act* Cap 248 and she sought to be appointed legal guardian of RNN (her sister) and to manage her estate.
2. The subject, RNN, suffers from mental incapacity that hinders decision making and conduct of her affairs and ensuring her wellbeing.
3. The Applicant, PNN presented the subject's medical report dated 18th April, from Dr. Bernard Samia a Consultant Physician – Cardiologist of M.P. Shah Hospital.
4. The letter confirms that the subject a 73 year old female has been under treatment at the facility for the last 8 years. She was diagnosed to suffer from chronic medical condition of Parkinson's diseases, Dementia, Hypertension and Asthma and has been on medical management. The subject herein cognitive functions has been deteriorating progressively over this period of time. She is currently not able to lead an independent life because of extreme dementia and physical disability that prevents her from performing any basic chores.



5. The Applicant's Supporting Affidavit deposed that the subject's is her sister. The subject has suffered mental illness since 2017 as per the attached medical report from M.P. Shah Hospital.
6. The subject's do not have any children and has been living under the care of the Petitioner since the year 2015. She had authorized the Petitioner to run her personal legal affairs as well as taking care of her. The subject has Alzheimer's dementia which has been progressing to the point that she needs to be nursed. The other siblings do not have any objection to the Petitioner being the guardian of the subject herein and have filed their consent letters in support of the Petitioner's petition.
7. The subject at the moment is not of sound mind to take care of herself as well as legal matters which requires her personal execution and participation. She owns houses where there are tenants who pays rent and has Bank Account and with her current mental state she needs somebody to manage those affairs.
8. The Applicant PNN and RNN Subject's family consist of the following members who have consented to the Applicant's appointment as Legal Guardian to the subject and Legal Manager of her estate;
 - a. GMM – ID No. xxxx
 - b. JMNe - ID No. xxxx
 - c. MWM - ID No. xxxx

Determination

9. From the foregoing, the issue(s) that are to be determined by the Court are:-
 1. Whether the Subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 2. Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.
10. 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. Section 26 of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by close relatives or any other suitable persons.
11. Section 28 of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep.

Under Section 26(3) of the Act it provides,

“Whereupon 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 persons, including proper provision for his maintenance...”

12. From the evidence produced by the Applicant, the Medical Reports on record and written consents of siblings, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under Section 26 of the *Mental Health Act*.



13. Relying on the Medical Report, this Court is satisfied from medical report dated 18th April, 2023 Dr. Bernard Samia a Consultant Physician – Cardiologist of M.P. Shah Hospital, confirms the subject diagnosed to suffer from chronic medical condition of Parkinson’s diseases, Dementia, Hypertension and Asthma and has been on medical management.
14. Therefore, in the interest of justice, the Applicant ought to be her legal guardian to ensure care, support and conduct of her affairs, assist in decision making on the subject’s behalf and manage her estate for the subject’s wellbeing.

Disposition:

15. In light of the above, the Court holds that: -
 1. RNN (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the *Mental Health Act*, Cap 248 Laws of Kenya.
 2. PNN is hereby appointed the Legal Guardian to RNN
 3. PNN is hereby appointed Legal Manager of the estate of RNN under Section 28 of *Mental Health Act* to manage her estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 4. PNN to manage the subject's immovable properties and/or settle liabilities with regard to suit properties;
 5. PNN to manage and utilize the Subject’s estate to ensure She is well taken care of, provision of necessities; fixed abode, food and clothing and medical care and assistance.

**DELIVERED DATED SIGNED IN OPEN COURT IN MACHAKOS ON 11TH MAY, 2023.
(VIRTUAL/PHYSICAL CONFERENCE)**

M.W. MUIGAI

JUDGE

In The Presence:

Miss Ndambiri H/b Mr. Masika -for The Petitioner

Geoffrey/patrick- Court Assistant

