



In re BS (A Person Suffering from Mental Disorder) (Miscellaneous Application E072 of 2023) [2023] KEHC 21765 (KLR) (Family) (21 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E072 OF 2023
PM NYAUNDI, J
JULY 21, 2023**

IN THE MATTER OF

SKM APPLICANT

JUDGMENT

1. The Applicant SKM is the daughter of the subject Mr. BS who has filed an application and supporting affidavit on March 31, 2023 under section 26 and 28 (1) (2) of the *Mental Health Act*, cap 248 laws of Kenya and seeks the following orders;
 - a. That Mr. BS be and is hereby declared to be a person suffering from a mental disorder under section 26 of the *Mental Health Act* (cap. 248), Laws of Kenya.
 - b. That this honourable court be pleased to appoint MS. SKM as Guardian over all the affairs of Mr. BS in accordance with the *Mental Health Act*, with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs of the subject.
 - c. That this honourable court be pleased to appoint Ms. SKM as a Manager of the estate of the subject, Mr. BS, with special permission pursuant to section 271(a) of the *Mental Health Act* to charge, sale, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the Subject's Estate.
 - d. That the Petitioner be granted access to funds in the Estate of Mr. BS to help offset the high costs incurred in the continued treatment and management of his estate.
 - e. That the costs of this Petition be provided for.
 - f. any other relief and order that the Court may deem fit and just to grant in circumstances.



2. The matter was canvassed by way of vive voce evidence on the virtual platform where the applicant stated she is an Accountant. She lives in Nairobi and she is seeking orders to be appointed as a legal guardianship over her father's affairs so that she can manage his estate and give her father the best care.
3. The applicant states that her father is a Kenyan Citizen and currently 79 years old, married to Ms. GD and have three children namely; SKM, HSD and USD.
4. The subject Mr. BS is suffering from mental illness and has forgotten most of his assets and affairs and requires round the clock care. His rights are protected under the [Mental Health Act](#) Chapter 248 laws of Kenya.
5. The petitioner avers that her father has been undergoing medical treatment in various medical facilities including Trinity Wellness Clinic for the stated ailments since 2016.
6. She also avers that prior to this illness the subject was actively involved in the running of his own affairs where he protected his interests.
7. It is her further averment that the subject had filed an ELC Case No. 197 of 2010 Balwant Singh versus Libey Njoki Munene & 4 Others seeking the following orders;
 - a. A Declaration that the sale of Land Reference No. xxxx/x was conducted and conveyed fraudulently;
 - b. A Declaration that the sale and transfer of Land Reference No. xxxx/x is a nullity and that the transfer be annulled.
 - c. In the alternative and without prejudice to the foregoing General Damages for the loss occasioned to the Plaintiff by the illegal and fraudulent sale of Land Reference No. xxxx/x.
 - d. Costs of the suit and
 - e. Any other or further relief that the Honourable Court may deem fit to grant.
8. That on May 8, 2018 the Judgment was delivered in an ELC. Court by Hon. Justice Mwangi Njoroge and the subject's claim was found to be meritorious. The court found that the plaintiff was entitled to share in the proceeds of the sale Land Reference No. xxxx/x.
9. It was also held that the Judgment in ELC Case No. 197 of 2010 shall abide the orders made in the Judgment in Nairobi ELC No. 664 of 2009 Eunice Nyambura Irungu versus Libey Njoki Munene & 4 others which are two suits that were very closely interconnected due to the fact that the suit property is the same in both matters i.e. Land Reference No. xxxx/x was the same.
10. The applicant alleged that being dissatisfied with the Judgment that was delivered on May 8, 2018, an Appeal was lodged in Court of Appeal in Nairobi being Civil Appeal No. 122 of 2019 vide the Memorandum of Appeal dated March 29, 2019.
11. She further stated that she came to discover that the subject herein (BS) has been sued as the 5th respondent in Civil Appeal No. 122 of 2019 but due to the subject's condition, he has not instructed any Counsel to represent and protect his interests in the said Appeal to date.
12. It is the applicant's statement that the Subject is incapable of taking care of himself or dealing with the Estate and continues to receive medical treatment and attention and is under constant medical supervision.



13. The applicant further stated that they spend approximately Kshs.80,000/= per month to facilitate and cater for the subject's monthly expenses including medical care, special food, electricity, water bills, payment of Land Rates & Rent and general maintenance.
14. She also avers that she undertakes to lawfully manage, take proper care of the affairs of the Subject and to act in the best interest of the Subject in discharging her duty as Guardian of the Estate of the Subject.
15. The applicant states that it is only fair and just in the circumstances that she is granted Guardianship of the Subject to enable her look after the Subject and further manage the Subject's affairs and estate.
16. The applicant under supplementary affidavit dated June 2, 2023 presented the current medical report from Dr Kendi L.M a Consultant Psychiatrist at Trinity Wellness Hospital dated April 12, 2023 which she made findings and came up with a Medial Report who upon examination was diagnosed with Alzheimer's Dementia and made the following observations;
 - i. The petitioner presented medical report showing that the subject was first reviewed on November 23, 2022 after exhibiting symptoms of memory loss and forgetfulness of past events.
 - ii. The Subject has progressive cognitive decline in terms of memory of events and even people which has deteriorated in the last two (2) years.
 - iii. the subject reported having poor sleep, frequent panic attacks and restlessness. He also has poor memory impaired judgment and appeared anxious and restless.
 - iv. A diagnosis of Alzheimer's Dementia was made which is a mental disorder characterized by a loss of thinking ability, memory, attention, logical reasoning and problems with doing daily tasks.
 - v. The subject has been on medication to manage his mental condition.
 - vi. Despite being on treatment, his symptoms persisted hence requires continuous follow –ups and medication.
 - vii. The subject in his current state of mind is vulnerable to exploitation.
 - viii. The report from Dr. Ng'ang'a in his expert opinion stated he is not capable of managing his own affairs and therefore a next of kin be appointed to help manage his financial affairs and assist with complex decision making.
17. Accordingly, a letter from Assistant Chief Thika dated March 30, 2023 states that Mr. BS is a person known to him as he hails from his area of jurisdiction and the Subject requested in his presence that the subject's family be managing the affairs of his estate.
18. The Petitioner's application was canvassed by viva voce evidence that her mother is alive and she has consented to the application as well as her two (2) brothers where they filed their consents. All were presented in Court and confirmed that they had given their consent
19. In addition, the Subject (Mr. BS) also consented through while in Court that he had given his consent for his daughter SKM be appointed as guardian.

Determination

20. 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.
21. 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 1 (a) and (b) of the Act grants the court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
22. Section 28 (1) 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...”
23. From the evidence produced by the petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition envisaged under section 26 of the *Mental Health Act*.

Disposition

24. In light of the above, the court holds that: -
- i. Mr. BS (the Subject) is hereby adjudged to be suffering from mental disorder pursuant to section 26 of the *Mental Health Act*, cap 248 Laws of Kenya.
 - ii. SKM is hereby appointed the legal guardian to Mr. BS.
 - iii. SKM is hereby appointed manager of the estate of Mr. BS under section 28 of *Mental Health Act* to manage his 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.
 - iv. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging Mr. BS.
 - v. In accordance with section 27(4) of the *Mental Health Act*, 2022 the petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate Mr. BS.
 - vi. As Manager of the Estate of Mr. BS the Petitioner may dispose of the property only with the sanction of the court.
 - vii. The matter will be mentioned before court on December 7, 2023 to confirm compliance.
 - viii. Costs to be met out of the Estate of the Subject.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JULY, 2023.



P M NYAUNDI
HIGH COURT JUDGE

In the presence of:

Court Assistant Sylvia

