



REPUBLIC OF KENYA



In re GKB (Petition E004 of 2023) [2023] KEHC 23381 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
PETITION E004 OF 2023
RL KORIR, J
OCTOBER 12, 2023**

IN THE MATTER OF

MCB PETITIONER

RULING

1. M C B(Petitioner) filed the present petition dated 23rd August 2023 which sought the following Orders: -
 - i. An order that the petitioner be appointed the legal guardian of G K B.
 - ii. An order that the petitioner be appointed the manager of the Estate of G K B and she be granted access to receive properties including the money held at Absa Bank Account No. 202***8449 Bomet Branch.
 - iii. Such further orders be granted by this honourable court.The Petition was brought under Section 26(i) and 28 of the [Mental Health Act](#) Cap 248 Laws of Kenya and supported by the sworn affidavit of the petitioner.
2. Along with the Petition, the Petitioner filed a Notice of Motion Application dated 23rd August 2023 which also sought the following Orders: -
 - i. Spent.
 - ii. That pending the hearing and determination of this Petition, MCB be appointed the legal guardian of G K B(patient).
 - iii. That the Petitioner be appointed the manager of the estate of G K B (patient) and she be granted access to receive properties including the money held at Absa Account Number 202***8449, Bomet branch.
 - iv. That such further orders be granted by this honourable court.



3. The Application was brought under order 51 rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and Sections 26(1) and 28 of the Mental Health Act. The Application was based on the grounds on the face of the Application and further by the supporting affidavit sworn by M C B on 23rd August 2023.
4. The Petitioner/Applicant stated that she was the lawful wife of G K B (hereinafter referred to as the subject) with whom they have five children. She further stated that the subject was a civil servant working with the Teachers Service Commission since 1992.
5. It was the Petitioner's case that the subject suffers from mental illness and as a result, he is unable to continue with his teaching career and has applied for early retirement. That the patient requires medical treatment and that the drugs were expensive and she could not afford them.
6. The Petitioner stated that the patient has an Absa bank account number 202***8449 in Bomet and that she was unable to access that account without a court order. That their whole family depended on the patient's bank account for upkeep since she was not in any gainful employment.
7. It was the Petitioner's case that the patient was still receiving his salary in the Absa account and that other than upkeep, she wanted to use the money to pay school fees for their school going children. It was her further case that if she were to be allowed to access the account, she would use the money solely for the patient's benefit and for the family.
8. The Petitioner appeared before me on 3rd October 2023 and confirmed that she was the wife of the deceased having been married in the year 2001. She also confirmed that they had five children together. Elvis Kipkorir also testified that the patient was his father and that he had been ill and that the Applicant/Petitioner had been taking care of him. Joel Towett testified that he was the patient's cousin and confirmed that the patient had been unwell. They affirmed to the court that the application was in the best interest of the subject and his family.
9. The Petitioner filed a medical report dated 3rd October 2023 from Kapkatet Hospital which indicated that the patient had for the last 8 years been treated for brain atrophy (shrinking of the brain) and Alzeima (degeneration of brain cells) which presents apraxia (disorganization), amnesia and agnosia. The report further stated that the patient's condition was irreversible as all his cognitive functions had been impaired.

Determination.

10. Section 27 (1) (b) of the Mental Health Act states that: -

The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person.

11. In considering this Application, this Court is guided by three main factors: -

- i. There must be medical evidence warranting the determination by the Court that the Subject suffers from a mental disorder.
- ii. The persons to be appointed either managers or guardians must be fit to be appointed.
- iii. The Court must be satisfied that the proposed managers will utilize their powers for the benefit and welfare of the Subject.



12. The overriding guiding principle in applying the aforementioned factors is the welfare and best interests of the Subject. Section 28(4) of the [Mental Health Act](#) provides that: -

A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.

13. Having gone through the medical report dated 3rd October 2023 and after examining the various family members in court, I am satisfied that the subject suffers from mental illness. I am also satisfied that the Petitioner is the lawful wife of the patient and that it was in the interest of their children that the application was merited.

14. By virtue of the Petitioner being the patient's wife, I am satisfied that she is fit to be appointed as a guardian of the patient and a manager of the patient's estate.

15. As earlier noted, the Petitioner filed the present Petition together with an Application dated 23rd August 2023. Both the Petition and the Application sought the same orders which I have considered. This Ruling therefore conclusively deals with the Notice of Motion Application dated 23rd August 2023 and effectively disposes of the Petition dated 23rd August 2023. Both the Petition and Application stand allowed.

16. In the end, I make the following orders: -

- i. That M C B be and is hereby appointed the legal guardian of G K B.
- ii. That MCB be and hereby is appointed the manager of the estate of G K B and she be granted access to receive properties including the money held at Absa Bank Account Number 202***8449.
- iii. That this appointment does not in any way grant the Petitioner/Applicant powers to succeed or distribute the estate of the subject.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 12TH DAY OF OCTOBER, 2023.

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R. LAGAT-KORIR

JUDGE

