



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

PETITION NO. 23 OF 2021

IN THE MATTER OF SECTIONS 26(1) & (3), 28 (1) & 33 OF THE MENTAL HEALTH ACT 1989

IN THE MATTER OF THE ESTATE OF OMN (SUFFERING FROM MENTAL DISORDER)

PETITION FOR THE MANAGEMENT OF THE ESTATE OF OMN

JUDGMENT

1. BRO and BMO (the Petitioners) have filed a Petition dated the 28th November 2021 for orders of Guardianship and Management of the Estate of OMN.

2. The Petitioners aver that they intend to manage the estate of OMN for his treatment and incidental purposes. That they present the petition in their capacity as sons and dependents of the patient. That they will faithfully manage the estate according to the law all for the use and benefit of the patient for mental disorder together with his dependents and that they would render a just and true account when required by law to do so.

3. In an affidavit dated the 28th November 2021 BM deposes as follows; that he has the authority of BRO who is his brother to swear the affidavit of his behalf. That their father **OMN** is suffering from mental disorder for about three years. Their mother died on 18th September 2012 leaving them with their father and his brother. That due to the mental status of his father he is not able to manage his estate for his own benefit and the dependants. That they are seeking orders of guardianship and management of the estate of their father. That they are aware that the father has the following properties;

a. [Particulars Withheld] Insurance Policy Cover

b. Motor Vehicle Registration No. KBX xxxx

c. Family Bank Account No. 027xxxxxxxx

d. Co-operative Bank Account No. 0110xxxxxxxx

e. Stima Sacco, Membership No. xxxxxxx

f. Parcels of land.

4. In a further affidavit dated the 16th December 2021 B deposes that financial proceeds from his estate will be used to cater for his monthly medical and drugs prescriptions that cost approximately Kshs. 1,750/-. The other items to be paid for will be his hospital visits for check-ups and any emergencies. That his quarterly medical check-ups costs are Kshs. 3000/- per visit. That their father also needs a caregiver whose salary is Kshs.7000/-. He also needs monthly maintenance and upkeep of Kshs. 26,000/- and entertainment and other essential services of Kshs. 5800/-. That their monthly expenses for their father his brother and himself as his dependents amount to Kshs. 50000/-.

5. During the hearing B testified that they live with their father in Nyanchama. Their father is 58 years old. He is 33 years old. His brother is 27 years old. That their father has had dementia for the last 3 years. He speaks but he cannot coordinate. His father did not remarry. OMN the patient testified he is 60 years old and the 2 are his sons. He does not know why he is court. He left work last year. He was working with [Particulars Withheld]. That the 2 sons can his guardian. He does not recall where his properties are. That his wife JW travelled to America last year and that she did not die. That RMM was his late wife, then he married J.

6. B informed the court that J and his father were workmates and that she died in 2020 and that ever since she died he has been in the state he

is in now.

ANALYSIS AND DETERMINATION

7. I have considered the law relating to Mental Health Act, the affidavits filed in support of the petition. The petitioners attached a Medical Report dated the 1st July 2021 prepared and signed by Doctor Onger Angwenyi an attending physician. The report indicates that **OMN has been his patient since 9th December 2019. That when he first saw him he had hiccups and along the line he developed hypertension and stroke documented on 12th May 2020. That even though he was initiated on treatment, his ability to remember information (short term) is severely compromised now. That what's is of interest is that he is able to do a signature as appended at the bottom of the letter. That the system exam- heart, lung, muscles and skeleton and abdomen are optimum. That it is his considered opinion that his mental status can't allow him to optimally function short term memory compromised.**

8. The Petitioners also attached a letter from the Chief Ayienda dated the 3rd September 2021. The Chief indicates that he knows that OM has health problems and that his wife died leaving him with two sons the petitioners.

9. Under section 26 (1) & (3) of the Mental Health Act Cap 248 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.

(3) 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 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

10. Section 2 of the Act provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”

11. There is sufficient material before me, the medical report and evidence from the 2 petitioners that the Patient OMN mental status cannot allow him to optimally function as his memory is compromised. The Petitioners have undertaken to diligently manage his estate which has been particularized in the Petition. It is apparent that the Patient suffers from a mental disorder which affect his mental capacity and ability to take care of his affairs or of himself.

12. I find that the Patient is a person suffering from a mental disorder within the definition of the Mental Health Act and hereby appoints the Petitioners jointly as the guardians. I also appoint them as general managers of the estate of the Patient as particularised in this petition.

13. In the further affidavit the Petitioners detail the amount needed for the Patient's care and their maintenance. The amount is about Kshs. 100,000/-. I authorise the petitioner to withdraw the said sums for the maintenance of the Patient and themselves.

14. The Petitioners general powers will not include the power of alienation, sale or transfer of the Patient's **immovable assets** but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the subject in respect of any of the assets forming part of his estate. No orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 9TH DAY OF FEBRUARY, 2022

R.E.OUGO

JUDGE

In the presence of:

M/s Maina for the Petitioners

1st and 2nd Petitioners Absent

Kevin Court Assistant