



REPUBLIC OF KENYA



**In re JMK ( A Person Suffering from Mental Disorder) (Children Miscellaneous Application E16 of 2021) [2022] KEHC 83 (KLR) (7 February 2022) (Ruling)**

Neutral citation: [2022] KEHC 83 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CHILDREN MISCELLANEOUS APPLICATION E16 OF 2021  
MW MUIGAI, J  
FEBRUARY 7, 2022  
IN THE MATTER OF GUARDIANSHIP OF SUBJECT-JMK  
ELSON MUTISO KAMULI ...PETITIONER**

**RULING**

**RULING**

1. The Applicant, EMK under certificate of urgency filed petition under Section 26(1) and 29 of the [Mental Health Act](#) Cap 248 and he sought to be appointed legal guardian of JMK and to manage his estate.
2. The subject, JMK ID xxxxxxxx, suffers from mental incapacity that hinders decision making and conduct of his affairs and ensuring his wellbeing.
3. The Applicant, EMK ID NO xxxxxxxx presented the subject's current medical report marked EMK-3 from Kangundo Level 4 Hospital of 26<sup>th</sup> June 2020 by Dr. Grace Mulinge Psychiatry RCO who confirmed the subject suffers from schizophrenia, he is mentally ill and he cannot make his own judgment or decisions.
4. The Applicant's letter from Senior Chief Isinga Location Kangundo of 23<sup>rs</sup> August 2021 who confirmed that the subject hails from Matetani location and has been suffering mental disability marked EMK -2. The Applicant deposed that he is brother to the subject, JMK who started developing mental problems at a very tender age, he has never attended school, he has not been married nor has he had children.
5. During the Succession Cause No 322 of 2011, proceedings of the estate of SKK (deceased) their late father, the Court granted Confirmation of Grant on 3<sup>rd</sup> October 2012, a copy is annexed hereto, the estate was distributed amongst the Applicant and subject and the rest of the siblings. The 1st Applicant



attached List of names of family members and obtained written consents from members of the family namely;

- a. RSK
  - b. DWK
  - c. PMK
  - d. CMK
  - e. NMK
6. The children of the deceased all signed consents, that the subject who is mentally challenged to have the Applicant be appointed his legal guardian and manage his estate as apportioned in the Confirmation of Grant of 3<sup>rd</sup> October, 2012.
7. JMK, the subject's current medical status makes him lack capacity to sufficiently understand information and make decisions on his affairs and well-being. The Applicant has listed in his affidavit the assets that comprise of the subject's estate and liabilities; namely;
- a. Kangundo/Isinga/xxxx
  - b. Shares in [Particulars Withheld] 1 & 2; [Particulars Withheld] Farmers Co. Ltd.
8. That owing to the mental condition of the subject, he is unable to execute the necessary documents to help in administering of the assets allocated to him under the Machakos Succession Cause No. 322 of 2011.

#### 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 subject JMK and for his guardianship by the Applicant and brother of the subject EMK.
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 Petitioner, the Medical Report 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 of the Medical Report Court is satisfied from the current medical report marked EMK-3 from Kangundo Level 4 Hospital of 26<sup>th</sup> June 2020, that the Petitioner has made out the case in support of the Petition that the subject suffers mental incapacity and requires care and attention for his well-being. Therefore, in the interest of justice, the Applicant ought to be his legal guardian to execute the documents on the subject’s behalf and manage his estate for the Subject’s wellbeing.

#### Disposition

In light of the above, the Court holds that:-

1. JMK (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. EMK is hereby appointed the legal guardian to JMK.
3. EMK is hereby appointed manager of the estate of JMK 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.
4. EMK to manage the subject’s immovable properties and/or settle liabilities with regard to suit properties;
5. EMK to manage and utilize the Subject’s estate to ensure he is well taken care of, provision of necessaries; fixed abode, food and clothing and medical care and assistance.

**DELIVERED DATED SIGNED IN OPEN COURT IN MACHAKOS ON 7<sup>TH</sup> FEBRUARY, 2022.**

**M.W. MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

Muia - For the Petitioner

Geoffrey - Court Assistant

