



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

PETITION CAUSE NO. 20 OF 2020

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

RWM & JKM.....PETITIONERS

JUDGMENT

1. A petition, under Sections 26, 28 and 29 of the Mental Health Act Cap 248, has been filed by **RWM** and **JKM** (hereinafter the petitioners). R.W.M. is the wife of the subject of this petition, DMK. JKM is the son of the subject. The petitioners seek for declaration that the subject is suffering from mental disorder, for an order for the petitioners to be appointed guardians of the subject as provided under **Cap 248**, and for an order that the petitioners be granted as managers of the subject access to receive properties belonging to the subject including accessing his bank account.
2. RWM was married to the subject in 1974 under the Kikuyu Customary Law. That marriage was solemnised under the **African Christian Marriage and Divorce Act Cap 151**, on 19th December, 1998.
3. Both petitioners swore affidavits in support that the subject was unable to express himself and was completely detached from reality. That hospital also noted that the subject needed urgent/emergency admission into a hospital for treatment.
4. On 9th March, 2021 Dr. Kamau attended court and testified under oath. He is based at Mathari hospital. He is the one who examined the subject. He found the subject was suffering from dementia. He assessed him as suffering severe mental disorder. He recommended the subject to be admitted at a hospital for treatment. He suggested the subject to be admitted at a private hospital because of the present COVID-19 pandemic.
5. The court conducted an interview of the subject which ended up with the subject shouting and looking very confused.

DETERMINATION

6. The petition is filed by the wife and son of the subject. I have considered the affidavit, evidence and the medical report. I also benefited from hearing the evidence of Dr. Kamau who examined the subject. All the evidence before court reveal that the subject is suffering mental disorder to such an extent that he is unable to manage his affairs. The subject appeared before me in court, and it was clear that he is suffering from mental confusion. That interview before court ended with the subject shouting uncontrollably. It is clear that the subject falls within the provisions of **Section 26** of **Cap 248** and the orders sought are indeed deserving. **Section 26** provides:-

“(1) 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.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such 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.”

7. In the case *NMK (2017) eKLR* the court considered the a matter under **Section 26** and stated:-

“14. In considering an application brought under sections 26 and 27 of the Mental Health Act, the Court is guided by three main factors.”

8. DISPOSITION

(a) The subject DMK is hereby declared to be suffering from mental disorder pursuant to **Section 26** of the Mental Act.

(b) The petitioners RWM and JKM are hereby appointed as the legal guardians to the subject DMK.

(c) The petitioners RWM and JKM are hereby appointed as managers of the Estate of the subject DMK under Section 28 of the Mental Health Act to manage his estate including access to receive properties belonging to the subject DMK including access to money in the Co-operative Bank Kenya Account No. Pursuant to **Section 29** of the **Mental Health Act**.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 13TH DAY OF MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court AssistantNdege

For the Petitioners.....Mr. Chacha

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE