



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC CIVIL CASE NO. E06 OF 2021

MWM (Suing on behalf of JNK).....APPLICANT

RULING

Brief Facts

1. This is a Summons application dated 15th February 2021 and filed in court on 16th February 2021, brought under Order 37 Rule (1) (f), 12, 16 and Order 50 of the Civil Procedure Rules seeking to grant the applicant guardian ad-litem of the subject one JNK herein after referred to as “the subject.”
2. The applicant states that she is an adult of sound mind who resides and works in Karatina and who is the elder sister of the subject.
3. The grounds supporting the application is that the subject is a brother to the applicant and is mentally challenged. He is currently being treated for schizophrenic illness at Karatina Sub-county Hospital and Nyeri Provincial General Hospital. Dr. P. Ndirangu, a psychiatrist in Karatina sub-county hospital certified the subject as suffering from schizophrenia which has incapacitated him to manage his health and manage his properties. He is currently under the care of the applicant and her aged parents.

The Applicant’s Case

4. The application is supported by the affidavit of the applicant herein sworn on 15th February 2021. The applicant has attached a letter from the Area Chief and a psychiatric report from the Department of Health Services at Karatina sub-county Hospital to support the contention that her brother is mentally challenged.
5. The applicant has further deponed that her brother owns a kiosk No. 4B within Karatina town at the Karatina bus stage documentation to support ownership of the kiosk by her brother are attached. It is contended that there is someone who has taken advantage of her brother’s situation and grabbed the kiosk from him. She has annexed court proceedings in Karatina Civil Case No. 29 of 2020 where she instituted a suit on behalf of her brother which was struck out for lack of authority to sue. This led the applicant to file this application to be appointed as manager or guardian *ad litem* of the subject’s estate.
6. The applicant further contends that her parents were not in a position to apply for guardianship because they are elderly. To support her contention she has filed an affidavit by her mother one MKM stating that the family is in agreement that the applicant ought to be appointed as the guardian of her brother’s estate. Her prayer is that she be granted guardianship over the subject’s estate so she can assist in renting out the kiosk to help her brother cater for his medication and basic needs.
7. The application came up for hearing on 23rd March 2021, whereby the applicant made oral submissions in support of her application.

Applicant’s Oral Submissions

8. The applicant reiterated her grounds, in support of her application and further added that she has attached documents from Nyeri County Government, receipts and clearance fees to show that the kiosk earlier belonged to Edward Kimathi who transferred it to her brother. She has also attached an affidavit by Mary Gathigia Muriuki, the wife to Edward Kimathi, who states that her husband sold the kiosk No. 4B to Ephraim Kiumu Muya who then transferred it to the subject. The said Mr. Kimathi died in 2017, he transferred the kiosk to the subject.
9. The applicant further reiterated that she has attached an affidavit by her mother who has consented to her being appointed the guardian over the subject’s estate. It then follows that in view of the subject’s illness and due to the fact that he is not capable of protecting his own interest and managing his own affairs, the applicant seeks to be appointed as guardian over the subject’s estate to manage his affairs.

Issues for determination

10. On perusal of the Summons application, the affidavits and the oral submissions, the only issue for determination whether the applicant

qualifies under the law to be appointed guardian and manager of the subject's estate.

The Law

Whether the applicant qualifies under the law to be appointed guardian and manager of the subject's estate.

11. **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.

12. **Section 2** of the Act defines "person suffering from mental disorder" as follows:-

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

13. **Section 26 provides for custody, management and guardianship**

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 of the guardian of any such person.**

3) **Where upon 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.**

14. According to the Medical Report by Dr. P. Ndirangu, the subject has been a patient in Karatina sub-county Hospital since 2000. He was treated for schizophrenic illness and when his situation worsened, he was admitted at Nyeri PGH, at the psychiatric ward. He further states that due to his condition, the subject has lost cognitive ability to manage his physiological, physical and management of his estate. Dr. P. Ndirangu is a psychiatrist and is currently practicing in Karatina sub-county Hospital. Additionally, the applicant has availed to the court a letter from the area chief confirming the mental illness of the subject.

15. It is apparent from the doctor's report that the subject is suffering from a mental disorder as per section 2 of the Mental Act and further a medical condition contemplated under section 26 of the Act and is thus incapable of managing his own affairs.

16. Notably, section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.

17. The applicant is an elder sister to the subject and the family has consented and entrusted the applicant with the responsibility of taking care of her brother and of applying for guardianship herein. This is confirmed by the affidavit of MKM, the mother to the applicant and the subject.

18. In my considered view, the applicant has availed sufficient evidence to demonstrate that the subject suffers from schizophrenia and is incapable of managing himself and his property which is already under threat of being grabbed by a third party. It is not in dispute that the applicant is a close relative of the deceased and has shown commitment to take care of the subject's property by filing legal proceedings in Karatina court.

19. I am satisfied that the applicant has established that she is qualified to be appointed a guardian of the subject and a manager to his property

20. I find this application is merited and it is hereby allowed. The applicant is hereby appointed guardian of the subject JNK and a manager of his property.

21. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 6TH DAY OF MAY, 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 6th day of May, 2021.