



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

MENTAL HEALTH ACT

PETITION CASE NO. E013 OF 2021

1. NWM

2. MWN.....PETITIONERS

VS.

IN THE MATTER OF S.M.N. - SUBJECT

JUDGMENT

1. **MWN** is the mother of **SMN**, the patient (hereinafter the subject). **NWM** is the wife of the subject. **MWN** and **NWM** (petitioners) have petitioned this Court under the **Mental Health Act Cap 248** seeking an order for authority to be granted to **MWN** to execute the necessary transactional documents for the sale of the property under share certificate No. xxxxxxxx Registered under **Nyakinyua Investments Ltd**. That property is registered under the names of the subject and his wife, one of the petitioners hereof.

2. The affidavit evidence hereof reveals that the subject, since 2015 began to suffer an ailment. His condition gradually deteriorated. His ailment is related to diabetes, hypertension, dementia and convulsive disorder. The ailment is said to have taken a toll on the subject's general health and presently, he is unable to fend for himself. The subject is unable to communicate effectively and has to have a constant care-giver day and night. The petitioners stated that the subject's ill health has taken a toll on the family's finances, due to escalating medical bill. It is on that basis that the petitioners seek the orders in the petition.

ANALYSIS

3. I have sighted medical reports from Kenyatta National Hospital which confirm the subject is suffering the ailments stated by the petitioners. From those reports, there is no doubt the subject is suffering from mental impairment as defined under **section 2 of Cap 248**. That section provides:-

“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.

4. The case ***In re CHEGE NJEKE JOSEPH JACK NDUNGU MBURU [2016] eKLR*** discussed the rationale of **Cap. 248** and stated thus:-

“The rationale behind the enactment of the Act was well stated in NJUGUNA AND ANOTHER VS SHAH, Civil Case No 2456 of 1994 (OS), where the Court stated that:-

‘The general reading of the Mental Health Act (Cap 248) leaves one with the impression that those concerned or suffering from mental disorders are persons who are, to paraphrase, mentally sick. That by the sickness of the mind from one cause or another including taking drugs, a person cannot properly and fully address his mind to his affairs or his estate. That accordingly a manager or a guardian should be put in place on that account.’

5. The petitioners have approached this Court under the provisions of **Section 30 of Cap 248**, which provides:-

“30. Powers of court over property of person who has no manager appointed Where no manager is appointed, the court may, if it appears to be just or for the benefit of the person suffering from mental disorder, order that any property of such person, be sold, charged, mortgaged or otherwise disposed of as may seem most expedient for the purpose of raising, securing or repaying, with or without interest money to be applied, or which has been applied to all or any of the following purposes:-

(a) the payment of the debts or engagements of such person;

(b) the discharge of any encumbrance on his property;

(c) the payment of any debt or encumbrance on his property for the maintenance of such person or otherwise for his benefit;

(d) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from Kenya if he is so removed and all expenses incidental thereto; or

(e) the payment of the costs of any inquiry under this Act and of any costs incurred by order or under the authority of the court.”

6. No manager has been appointed for the estate of the subject. The petitioners however, seek for orders to permit them sell the property registered in both names of the subject and his wife. The intention of the petitioners is to apply the proceeds of that sale to defray the medical bills that have accumulated following hospitalization of the subject. The petition in my view is well merited.

DISPOSITION

7. This petition is determined in the following terms:-

(a) The subject, **SMN** is hereby adjudged to be a person suffering from mental disorder.

(b) An order is hereby issued granting power to **MWN** to execute on behalf of **SMN** necessary transactional documents in respect to the property identified vide share certificate No xxxxxx registered under **Nyakinyua Investments Ltd.**

(c) There shall be no order as to costs.

JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 3RD DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

For Petitioners : Natocho holding brief for Mr. Kuria

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE