



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. E118 OF 2021

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA

AND

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

AND

IN THE MATTER OF AN APPLICATION BY TNG TO BE APPOINTED AS A GUARDIAN OVER THE AFFAIRS OF THE ESTATE OF MS. PWK

TNG.....PETITIONER

JUDGMENT

1. By a Petition dated 14.6.21, the Petitioner, TNG sought orders of Court that:

- a) PWK (the subject) be adjudged a person suffering from a mental disorder under Section 26 of the Mental Health Act.
- b) TNG be appointed as guardian over the affairs of the subject in accordance with the Mental Health Act, with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs of the subject.
- c) TNG be appointed as manager of the estate of the subject with special permission pursuant to Section 271(a) of the Act to charge, sell, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the subject's estate.

2. The subject aged 83 years, is the Petitioner's grandmother. The Petitioner stated that the subject has been battling several health complications among them osteoarthritis, hypertension, dementia and psychiatric disease for some time. The Subject is incapable of moving or doing anything for herself, including feeding and taking medication. For these ailments, the subject has been treated at St. Mary's Mission Hospital since October, 2010. The Petitioner further averred that she spends approximately Kshs. 50,000 per month to facilitate and cater for the subject's monthly expenses including medication, water bills and maintenance of the subject's home and farm. The Petitioner listed the subject's estate as comprising of the following assets:

- a) Limuru/Bibirioni/T.xxx – 0.155 Ha.
- b) Limuru/Bibirioni/xxxx – 0.23 Ha.
- c) Limuru/Bibirioni/xxxx – 0.20 Ha.
- d) Co-operative Bank account no. 011xxxxxxxxxx
- e) Post Bank account

3. In her affidavit sworn on 14.6.21, RWK, the only surviving child of the subject and mother of the Petitioner supported the Petition by her daughter. She stated that she suffers from leg ulcers which have confined her to her house, thereby rendering her incapable of taking care of the subject. The other children of the subject RBK and ENK are deceased.

4. In a medical report dated 10.4.21, by Dr. Gitundu Beth of St. Mary's Mission Hospital confirmed that the subject has been treated at the facility since 2010. The doctor stated that:

In 2017 her osteoarthritis got severe and led to her immobilisation and difficulty to ambulate despite constant physiotherapy, subsequently she developed psychiatric symptoms associated with memory loss, confusion and hallucination behaviour and was diagnosed with age-related dementia however despite initiation of treatment her condition worsened characterised by complete memory loss to an extent of requiring assistance to take her medication and feeding.

5. The Petitioner prayed that the Court appoints her as manager and guardian of the subject to take proper care of the affairs of the subject and to act in the best interest of the subject. She also stated that there are persons who seek to take advantage of the subject's condition to grab her property.

6. The Court has considered the Petition, the supporting affidavits, the exhibited medical report, as well as counsel's submissions. The Court was also able to observe the subject and confirmed that she is wheelchair bound and appeared confused and unable to have a logical conversation.

7. From the material before the Court, it is clear that the subject's condition has rendered him incapable of managing his own affairs or caring for himself. The Court accordingly makes a finding that the subject is a person suffering from mental disorder within the definition of Section 2 of the Mental Health Act, which provides:

“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 a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;

8. The Act empowers the Court to make orders relating to a person suffering from mental disorder. 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

9. The Court has made inquiry and makes a finding that subject is a person suffering from mental disorder and incapable of managing her affairs. It is therefore necessary to make orders for the guardianship of the subject and for the management of her estate.

10. The Court may also direct that the property of a person suffering from mental disorder be applied for such person's maintenance or his family. Section 29(1) of the Act provides:

Where it appears to the court that, having regard to the circumstances of a person who is suffering from mental disorder and of his family and any other relative circumstance, it is expedient that his property should be made available for his or their maintenance it may, instead of appointing a manager or, notwithstanding such appointment, order that the property or the proceeds thereof when realized be paid to such person as the court may think fit, to be applied for such maintenance.

11. In view of the Court's finding that the subject is a person suffering from mental disorder, it is necessary to make orders for the guardianship of the subject and for the management of her estate. Accordingly, it is hereby ordered as follows:

i) TNG is hereby appointed as the guardian of PWK for the purpose of managing her estate and for making proper provision for her maintenance.

ii) TNG shall have access to the funds in account number 0110xxxxxxxx held by PWK in Co-operative Bank and her account in Post Bank for the purpose stated in i) above.

iii) TNG shall for the benefit of PWK, have power for the management of and to institute or proceed with any litigation in relation to the following properties:

a) Title No. Limuru/Bibirioni/T.xxx

b) Title No. Limuru/Bibirioni/xxxx

c) Title No. Limuru/Ngecha/xxxx

iv) TNG shall in particular have the power to sell Title No. Limuru/Bibirioni/T.xxx for the purpose of making proper provision for the maintenance of PWK.

v) The costs of this Petition shall be paid out of the estate of PWK.

vi) TNG shall file accounts within the next 60 days.

vii) Mention on 13.10.21 for compliance.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 16TH DAY OF JULY, 2021.

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **Court Assistant**