



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS APPLICATION NO E040 OF 2021**

**IN THE MATTER OF MENTAL HEALTH ACT CAP 248 OF THE LAW OF KENYA**

**AND**

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

**AND**

**IN THE MATTER OF AN APPLICATION BY BWK TO BE APPOINTED GUARDIAN OVER THE AFFAIRS OF SKK.**

**JUDGMENT**

1. By the petition dated 3<sup>rd</sup> March, 2021 the Petitioner invoked **Sections 26, 28(1) and (2)** of the Mental Health Act, Cap 248, Laws of Kenya and sought the following prayers:-

- i. A declaration that SKK is a person suffering from mental disorder within the meaning of the Mental Health Act(Cap 248) Laws of Kenya.
- ii. That the Petitioner herein BWK be declared as fit to act as the legal guardian of SKK
- iii. That this Honourable Court be pleased to appoint BWK of P.O Box xxxx-xxxx Nairobi as the legal guardian of SKK.
- iv. That the cost of the petition be provided for.
- v. That this Hounarable Court make any such orders it deems fit.

2. The application is premised on the grounds that SKK is a male adult aged 71 years. That following a medical assessment he was diagnosed with dementia which is characterised by an inability to express himself verbally or in writing. Further, that he has constant drowsiness, is unable to walk and is therefore dependent on a wheelchair for mobility. That consequently, the subject is unable to make decisions affecting his personal needs and therefore incapable of taking care of himself or managing his estate.

3. The Petitioner avers that she has been taking care of all the subject's needs but has faced restrictions and is therefore in need of legal authority to substantively manage his affairs. She states that the subject's estate comprises of several bank accounts at Equity Bank whose access is needed to attend to his medical needs. She states that she is the wife of the subject as evinced by the marriage Certificate Serial No. xxxx. Further, that their marriage has been blessed with two children namely; MW and JK. The Petitioner undertakes to manage the estate faithfully and with accountability.

4. The Petitioner attached a Medical Report from Dr. Njiru Alex a Neurosurgeon at Metropolitan Hospital, Nairobi. The report states that the subject is mentally and physically incapacitated. The examination revealed that the patient is not able to talk, feed himself, walk, understand or comprehend speech and is constantly drowsy. Further, that he is not able to read or write and is ambulating with the assistance of a wheelchair. It is the expert's opinion that the subject is suffering from dementia due to Alzheimer's disease and Epilepsy. The doctor concluded that any assistance afforded to the subject was necessary.

5. In an affidavit dated 23<sup>rd</sup> March 2021, MW stated that she is a child of the Petitioner and the subject. She deponed that she is aware of her father's condition and gave her consent for the appointment of her mother the Petitioner herein as a guardian to her father.

6. A letter from the Office of the Assistant Chief, Uhuru location, Kamukunji Sub-County dated 29<sup>th</sup> March, 2021 produced in court confirms that the Petitioner is the only wife of the subject herein.

7. 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 order for the management of the estate of a subject and for their guardianship by any near relatives or any suitable persons.

8. **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. The Petitioner will require to access funds from the subject's bank account at Equity Bank for the purpose of maintaining the subject to the best possible medical condition.

9. Under **Section 26(3)** of the Act it provides that:

**“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...”**

10. From the evidence produced by the Petitioner and the Medical Report on record, I am persuaded that the Subject is a person who is suffering from a mental disorder as contemplated under **Section 26** of the Mental Health Act. He is therefore incapable of taking care of himself and conducting his own affairs. I also find that BWK being his wife and having no adverse report against her is the most suitable person to manage the estate of the subject.

11. There being merit in the Petition dated 3<sup>rd</sup> March, 2021, I hereby allow it and order as follows:

- i. SKK is hereby declared to be a person suffering from mental disorder within the meaning of the Mental Health Act Cap 248 of the Laws of Kenya.
- ii. BWK is hereby declared fit to act as the legal guardian of SKK the subject herein.
- iii. BWK of P.O Box xxxx-xxxx Nairobi is hereby appointed as the legal guardian of Stanley Kamau Kuria.
- iv. No orders as to costs.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 8<sup>TH</sup> DAY OF JULY, 2021.**

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**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of ..... Advocate for the Petitioner**