



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**PETITION NO.005 OF 2021**

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**

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

**JUDGMENT**

1. **VWK** (the petitioner) is the wife of **TKN** (the subject). The petitioner seeks with this petition for this Court to declare the subject to be suffering from mental disorder, for this Court to appoint the petitioner as the guardian of the subject and for the court to appoint the petitioner as manager of the estate of the subject.

2. **Section 2 of Cap 248** defines someone suffering from mental disorder as:-

***“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.***

3. The petitioner deponed in her affidavit dated 29<sup>th</sup> January, 2021 that she is the wife of the subject, now for 50 years. They are blessed with seven children, who are all adults. Those children have consented in writing to the appointment of the petitioner as the guardian of the subject. That in the course of the year 2002 the subject began to display strange behaviour which included fits of paranoia towards his family members poor sleep and “disorganized” behaviour which includes wandering around. The subject was taken to Aga Khan Hospital for medical attention where upon he was diagnosed with Alzheimer’s disease. The petitioner attached a medical report of Aga Khan Hospital, which indicated the subject was examined at that hospital on 10<sup>th</sup> September, 2020. That report confirmed the subject is suffering with Alzheimer’s disease. The report also stated:-

***“Alzheimer’s disease is a neurodegenerative disorder, which continues to worsen with time. Given his current clinical state, he has no capacity to manage his affairs including making decisions about his finances. Or health.”***

4. On 19<sup>th</sup> February, 2021 this Court directed this petition be heard by viva voce evidence. The intention was for the court to observe the subject. Such a hearing has however not been possible because of the COVID-19 pandemic and the resultant directives that the courts desist on the face-to-face hearing. The court therefore reviewed earlier orders and directed that the matter be heard by submission, which took place online.

5. A further affidavit was filed, sworn by a daughter of the subject, dated 26<sup>th</sup> May, 2021. The daughter deponed that in April,2021, the subject became ill and was admitted for treatment at Aga Khan hospital. The subject was in that hospital for three weeks. The subject discharge summary from that hospital shows that the subject was suffering from Alzheimer’s disease and COVID-19 pneumonia. The daughter deponed further and stated that the subject underwent intensive treatment and medication to improve his condition which resulted in medical expenses of Kshs.993,806. That the family faced financial challenge and had to provide the hospital with guarantees to pay the hospital bill before the subject could be discharged. The daughter also deponed that even after discharge, the subject continues to be in need of medical care.

6. The court is empowered to grant orders sought by the petition under **Section 26 of Cap 248** which 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

*c) 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.*

*d) Where upon inquiries 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 just 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. The powers that a manager appointed under **Cap 248** has are as follows:-

*1) Where a manager is appointed under this part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist; provided that:*

8. I am satisfied in this case that the petitioner has met the threshold of granting the orders sought. There is evidence of mental impairment of the subject, which in my view falls within the definition of **Section 2 Cap 248**. The subject requires a guardian/manager for his estate.

9. In view of the above finding, I order as follows:-

(a) **TKN** is hereby declared to be suffering mental disorder pursuant to section 26 of the Mental Health Act.

(b) **VWK** is hereby appointed guardian of **TKN**.

(c) **VWK** is hereby appointed manager of the estate of **TKN** under **Section 28** of the **Mental Health Act** to manage, as provided under **Section 27** of the Mental Health Act, his estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to evidencing title or rights to any including the property **K/K/xxxx** or giving rights to receive any money or goods.

10. Orders accordingly.

**RULING DATED AND DELIVERED AT KIAMBU THIS 6TH DAY OF JULY 2021.**

**MARY KASANGO**

**JUDGE**

CORAM:

Court Assistant: Ndege

For Petitioner: Mr. Waweru

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**