



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**PETITION CASE NO. E004 OF 2020**

**IN THE MATTER OF P.N.K. (A PERSON SUFFERING FROM MENTAL DISORDER)**

**J.W.N. & D.K.N.....PETITIONERS**

**JUDGMENT**

1. **J.W.N.** is the wife of **P.N.K.** who is the subject of this petition brought under the Mental Health Act Cap. 248. **D.K.N.** is the son of the subject. Both the wife and son of the subject have petitioned seeking the following orders:-

- (a) *That this Court do find the Subject (PNK) incapable of protecting his interest with regards to his personal affairs due to mental illness.*
- (b) *That the petitioners to be appointed as the managers of the subject's estate.*
- (c) *That the petitioners be appointed as the subject's personal representatives in his affairs and sign and execute any documents whenever required."*

2. Although the wife states she is the subject's wife she fails to say under which system of marriage she got married to the subject, and if the marriage was either under a religious system or it was a civil marriage certificate if any. Although there is a letter by the Chief of Githunguri location specifying that she is the only wife of the subject, that in my view does not suffice to satisfy this Court on a balance of probability that she is indeed a wife and the only wife.

3. The petitioners provided a medical report or Kiambu County Referral Hospital dated 16<sup>th</sup> January, 2020. That report reveals that the subject has been on follow-up of that hospital following his diagnosis of dementia. That condition according to that report is characterised by "memory loss including family member's confusion, disorganized behaviour and poor reasoning and inability to handle/administrative personal matters." The doctor's view, expressed in that report is that the subject requires assistance I handling personal and family matters by a next of kin.

4. **Section 26 of Cap. 248** is the section that empowers the court to make order for the management of the estate of a person suffering from mental disorder. That **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***
- 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.”*

5. The court in the case of ***NMK (2017) eKLR*** considered the provisions of **Section 26** and **27 Cap. 248** and stated thus:-

6. The petitioners seek far reaching orders which include orders to sign and execute any document whatsoever for the subject. They however fail to show how in execution of such documents will benefit the subject. The petition is wanting in the lack of details of what the petitioners wish to do with the estate of the subject. I am only persuaded in granting Limited orders.

**DISPOSITION**

7. I grant the following orders:-

(a) The subject PNK is hereby declared to be suffering from mental disorder pursuant to **Section 26** of the ***Mental Health Act***.

(b) The petitioners ***JWN and DKN*** are hereby appointed legal guardians of the subject **PNK Limited** to power of managing the subject's properties.

**JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 7TH DAY OF OCTOBER, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

**COURT ASSISTANT: NDEGE**

**FOR PETITIONER : NO APPEARANCE**

**FOR 1ST RESPONDENT :**

**FOR 2ND RESPONDENT : NO APPEARANCE**

**FOR 3RD RESPONDENT :**

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**