



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO. E174 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF GUARDIAN AND MANAGER OVER THE AFFAIRS OF  
THE ESTATE OF BNM**

CMM.....1<sup>ST</sup> PETITIONER

SNM.....2<sup>ND</sup> PETITIONER

**JUDGMENT**

1. By a Petition dated 28<sup>th</sup> September, 2021, filed under Certificate of Urgency, and brought under **sections 26, 27, and 28** of the **Mental Health Act, CAP 248 Laws of Kenya**, the Petitioners herein seek to be appointed as legal guardians of BNM (*hereinafter referred to as the Subject*).

2. The Petition is premised on the ground that on or about 18<sup>th</sup> March, 2021, the Subject suffered a stroke that caused brain damage, which has greatly impaired his memory and ability to communicate orally or in writing. For six (6) months, the Subject has been hospitalized at Nairobi Hospital, and his medical bill has since accumulated to the tune of Kshs. 23,096,645/= as at 24<sup>th</sup> September, 2021. A provisional bill generated at the Nairobi Hospital on 24<sup>th</sup> September, 2021 is on record. The Subject has since been cleared for home care but is yet to be discharged due to the pending hospital bill, which continues to accumulate as the Subject remains hospitalized.

3. Due to his medical condition, the Subject does not have capacity to make decisions affecting his personal needs including settling the medical bill and accessing his bank accounts. It is for this reason that the Petitioners are apprehensive that unless they are appointed guardians and/or managers of the Subject's estate, he shall continue to accrue unnecessary hospital bills since he has now been cleared for home care. Therefore, they pray that they should be appointed as legal guardians and managers of the Subject's estate for purposes of providing for his personal needs and most importantly medication and general upkeep.

4. The affidavit sworn by the 2<sup>nd</sup> Petitioner on 28<sup>th</sup> September, 2021 in support of the petition discloses that the Subject has three dependants: his wife CMM, and two sons SNM and WMM. There is on record a copy of a letter dated 6<sup>th</sup> July, 2021 prepared by the Assistant Chief Imara Daima Sub-location which attests to this, and further lists one BKM, a sister to the Subject as a dependant. Copies of the National Identification Cards (I.D) and birth certificates of S and W are on record. W has consented to the appointment of the Petitioners as guardians over the affairs of the Subject. A consent dated 28<sup>th</sup> September, 2021 duly signed by both Petitioners and WN to this effect is on record.

5. Annexed to the affidavit is a letter dated 21<sup>st</sup> July, 2021 and a Medical Report dated 26<sup>th</sup> July, 2021 both prepared by Primecare Heart Clinic, Nairobi Hospital Consulting Office. The letter indicates that the Subject has been under the medical care of Primecare Heart Clinic and further that he has been hospitalized at the Nairobi Hospital since 18<sup>th</sup> March, 2021 having suffered a stroke.

6. The medical report details that the Subject was presented with a history of loss of consciousness noted by his wife when she tried to wake him up on the morning of 18<sup>th</sup> March, 2021. On the said day, the Subject was also observed to be vomiting. He had no preceding chest pain to suggest angina pectoris and no exertional dyspnea but was a known hypertensive, having been diagnosed two years prior, and was on the medications known as Amlodipine and Co-micardis. He however had no other significant past medical history. On review, the Subject had no polyuria, polydipsia or polyphagia; normal bowel and micturition habits; and no known drug allergy. His major coronary risk factors were noted as age, gender and hypertension.

7. The report further indicates that the Subject has been in the joint care of Dr. C. K. Musau, consultant neurosurgeon, Dr. P. Mbugua, consultant Nephrologist, Prof. M. Macharia, Consultant ENT Surgeon and Dr. Muithya, consultant Anesthesiologist. During his hospitalization, the Subject has received blood transfusion and haemodialysis and undergone various medical investigations. He had left sided external ventricular drain insertion on 21<sup>st</sup> March, 2021 and removal on 31<sup>st</sup> March, 2021, tracheostomy on 5<sup>th</sup> April, 2021, and decannulation on 20<sup>th</sup> July, 2021. He had been on gastric tube feeds and is on daily occupational and physiotherapy. That as a result of his condition, the Subject is unable to communicate verbally or in writing.

8. After carefully considering the pleadings filed in this matter, and in view of the expert opinion of the Cardiologists at Primecare Heart Clinic, I am persuaded that BNM, the Subject herein, is a person incapable of making independent decisions and conducting his own affairs as envisaged under the provisions of the **Mental Health Act**. I am also convinced that the Petitioners are fit to be appointed legal guardians over the Subject's affairs. I also note that every person having an equal, or prior right to a grant of guardianship herein has consented to the appointment of the Petitioners.

9. In view of the foregoing, I hereby allow the Petition dated 28<sup>th</sup> September, 2021 with the following orders:

a. BNM, the Subject herein, be and is hereby adjudged to be a person suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act, CAP 248 Laws of Kenya**.

b. CMM and SNM (the Petitioners herein) be and are hereby appointed as legal guardians of the Subject namely BNM.

c. The Petitioners shall jointly act as managers in respect of the estate of the Subject including any such description of moveable and immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods in accordance with **section 27** of the **Mental Health Act**.

d. The Petitioners are hereby granted access to funds held by the Subject to settle his medical bill at the Nairobi Hospital, and attend to his personal needs, medication and general upkeep. In particular, the Petitioners are hereby granted access to the following bank accounts:

i. SBM Bank (Kenya) Limited City Center Branch Account Number 0012xxxxxxxx.

ii. Standard Chartered Bank Limited Moi Avenue Branch Account Number 0100xxxxxxxx.

iii. Kenya Commercial Bank Limited Gateway House Mombasa Road Branch Account Number 123xxxxxxxx.

It is so ordered.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 5<sup>TH</sup> DAY OF OCTOBER, 2021.**

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**L. A. ACHODE**

**HIGH COURT JUDGE**