



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

PETITION NO. E154 OF 2021

IN THE MATTER OF SECTIONS 26,27,28 AND 29 OF THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA

IN THE MATTER OF A PETITION FOR ORDERS OF CUSTODY, MANAGEMENT AND GUARDIANSHIP RELATING TO
NNG (A PATIENT)

DMW & AWMPETITIONERS

JUDGMENT

1. Before the Court this court is a Petition dated 11th August 2021 by which the Petitioners seek orders that: -

“a) The Patient NNG be declared to be suffering from mental disorder pursuant to section 26 of the Mental Health Act.

b) The Petitioners DWN and AMW be appointed the legal guardians to the subject NNG.

c) The Petitioners DWN and AMW be appointed managers of the estate of the Patient NNG under section 28 of the Mental Health Act to manage her entire estate including access to receive properties belonging to the patient NNG including access to money in the Co-operative Bank, Kenya Account No. 011xxxx and National Bank of Kenya Account No. 012xxxx pursuant to section 29 of the Mental Health Act.”

2. The Petition was supported by the Affidavit of even date sworn by the two Applicants. The Petition was canvassed by way of *viva voce* evidence on the online platform

3. The 1st Petitioner **DMW** told the court that he was the husband of the Subject one **NNG**, Annexed to the supporting affidavit is a copy of the couple’s Marriage Certificate Serial Number **xxxx** indicating that they solemnized their union on **10th September 2008** at the Registrar’s Office in **Nairobi**.

4. The 2nd Petitioner **AWM** told the court that he is a son to the Subject. The Petitioners stated that the Subject fell ill some time ago and had been diagnosed with **Dementia**. That **two (2)** years ago the condition of the Subject deteriorated. That she now requires 24 hour nursing care and is unable to do anything for herself. The Petitioners state that the Subject is unable in her present condition to take care of her own affairs hence this petition seeking guardianship.

5. I have carefully considered this Petition, the Affidavits and Reports filed in court as well as the evidence adduced in the matter. **Section 25** of the **Mental Act, Cap 248, Laws of Kenya** provides for the circumstances under which a court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs as follows: -

“Order for custody, management and guardianship

(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.” [own emphasis]

6. In order to merit the orders being sought in this Petition, court must be satisfied that the Subject is incapable of managing her own affairs. The Petitioners have both testified that the Subject fell ill some years ago but that in the last **two (2)** years her condition worsened rendering her incapable of doing anything for herself.

7. The evidence of the Petitioners regarding the condition of the Subject is corroborated by the other children of the Subject all of who live in a the family home in **Donholm**. They state that the mother suffers from Dementia and has to be fed, clothed and bathed. That the family have had to engage a full time nurse to help take care of the Subject.

8. I have perused the medical reports annexed to this Petition. There are two Discharge Summaries one from The **Nairobi West Hospital** indicating that the Subject was admitted at the facility on **21st February 2021** when she was admitted into the **High Dependency Unit** which was followed by a second admission at the same facility on **21st July 2021**. The admissions are indicated to have been due to a diagnosis of seizures and convulsions.

9. The medical report dated **13th April 2021** prepared by **Prof Erasuts Amayo** states that the Subject suffers from “**severe cognitive impairment**”. In the doctors opinion the Subject is unable to transact any business on her own.

10. I was able to see the Subject online. She was an elderly frail lady. She was shaking her head from side to side continually and clearly had no knowledge of her surroundings. The Subject did not respond when the court attempted to talk to her.

11. Based on the evidence adduced by the family, the medical reports produced and from my own observation, I find that the Subject suffers mental illness and is certainly not in a position to manage her own affairs.

12. The Petitioners being the spouse and son of the Subject are best placed to manage her affairs. The other children of the Subject testified online and told the court that they are aware of and support this Petition.

13. In conclusion, I allow this Petition and make the following orders: -

(1) The Patient **NNG** is hereby declared to be a person suffering from Mental Illness under **section 26** of the **Mental Health Act, Cap 26 Laws of Kenya**.

(2) The Petitioners **DWM** and **AMW** are hereby appointed as legal guardians of the Subject.

(3) The Petitioners **DWM** and **AMW** are hereby appointed as managers of the Estate of the Subject **NNG** under **section 28** of the **Mental Health Act** and are authorized to manage the entire estate of the Subject.

DATED IN NAIROBI THIS 12TH DAY OF NOVEMBER, 2021

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MAUREEN A. ODERO

JUDGE