



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

MISCELLANEOUS CIVIL APPLICATION NO. E009 OF 2021

IN THE MATTER OF AN APPLICATION UNDER THE MENTAL HEALTH ACT CAP 248

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF A GUARDIAN AS LITEM BY HCM BEING A PERSON INCAPABLE OF PROTECTING HER INTEREST THROUGH SKC

RULING

1. The Applicant SKC filed an ex parte Notice of Motion Application dated 24th May 2021 where he sought the following Orders:-
 - i. Spent.
 - ii. THAT SKC, the Applicant herein be appointed the Guardian Ad Litem of HCM.
 - iii. THAT the costs of this Application be provided for.
2. The Application was brought under Section 26 (1) (b) of the Mental Health Act, Order 32 Rule 3 and 15 of the Civil Procedure Rules, Section 1A, 1B, 3A and 63e of the Civil Procedure Act.
3. Section 26 (1) (b) of the Mental Health Act Cap 248 provides:-

“The court may make orders for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.”

Order 32 Rule 3 and Rule 15 provides:-

“(3) (1) Where a defendant is a minor, the court on being satisfied of the fact of his minority, shall appoint a proper person to be the guardian ad litem of such a minor.

(2) An order for the appointment of guardian ad litem may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in suit adverse to that of the minor and that he is a fit person to be so appointed.

(15) The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.”

4. The Application is supported by an affidavit sworn by SKC. He avers *inter alia* that HCM the subject was his mother and that she had suffered from mental illness for a while. That the mother had been sued as the 1st Defendant in ELC No. 49 of 2019 in Kericho and a pending Succession Cause No. E12 of 2021 in Bomet. That she was unable to defend herself in the aforementioned suits owing to her mental illness. The Applicant averred further that he had no adverse interests to the subject and that he was a fit person.
5. The court directed the attendance of his siblings. FKC, ACC and FC subsequently attended court on 19th October 2021. They informed this court that they had agreed that the Applicant be appointed guardian *ad litem* of HCM. The court further interviewed the Applicant to satisfy itself that there was no dispute, ill will or ulterior motive behind the Application for guardian *ad litem*.

6. A Medical Report from Tenwek Hospital was filed in court on 19th October 2021 and it confirmed that HCM had been suffering for over 5 years with mental illness – depressive psychosis and hypertension. The Report further stated that HCM had major cognitive impairment characterized by severely impaired memory and speech and as a result, she was unable to talk or reason things out.

7. A look at the medical report shows that the Application is consistent with the provisions of Section 26 (1b) of the Mental Health Act and Order 32 Rule 3 and 15 of the Civil Procedure Rules.

8. I am satisfied that HCM suffers from a mental disorder as contemplated under Section 26 of the Mental Health Act. I am also satisfied that the Applicant is a fit person to be appointed to represent her interests and manage her affairs.

9. The Application is allowed and SKC is hereby appointed as guardian *ad litem* of HCM. This order does not in any way entitle the Applicant to take possession of or distribute the estate of HCM within the meaning of Succession law.

10. There is no order on costs.

11. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 4TH DAY OF NOVEMBER, 2021.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in open court in the presence of the Applicant in person and Kiprotich (Court Assistant).