



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

PETITION CASE NO. E027 OF 2021

IN THE MATTER OF SECTION 26 AND 28(1) OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF THE ESTATE OF HMK ALIAS SNK

BETWEEN

1. AWM

2. GKM

3. AMM.....PETITIONERS

JUDGMENT

1. This is a petition under the Mental Health Act filed by the wife and two children of the subject.

2. *Dr. Rachel Njeri Kangethe* provided a medical report on the subject and also testified before court. The subject was admitted at Mariakani Cottage Hospital from 21st June to 19th July, 2021. He was under the care of *Dr. Kangethe* for Bipolar Disorder and Dementia.

3. The doctor set out the history of illness of the subject. The subject is a 76 year old gentleman who presented a history of forgetfulness for the last 5 to 6 years. He recently became violent in the background of longstanding mental health problems characterised by severe bouts of depression, bouts of grandiose and paranoid delusions. He also has experienced decline of cognitive functioning which is characterised by gradual loss of memory. The doctor also noted that the subject had impaired judgment, vulnerability to exploitation and suffered bouts of agitation and restlessness.

4. The doctor on examination of the subject diagnosed him to suffer from bipolar disorder which affects functional and decisional abilities. The subject was also diagnosed with major neurocognitive disorder/demential and Alzheimer disease.

5. The doctors prognosis is as follows:-

“Prognosis

Alzheimer’s Dementia is a severe, irreversible, progressive disease with poor prognosis that worsens with time and has no cure. On average, a person with AD lives 4 to 8 years after diagnosis, however, some live with dementia for 20 years. SVD and AD often occur together. SVD worsens the symptoms of AD. SVD can also cause dementia, which compared to AD, primarily affects judgment or ability to make decisions, as opposed to memory. Patients with the SVD dementia often progress to death more quickly. The average life expectancy for a person with SVD dementia is 5 years following diagnosis.”

ANALYSIS

6. **Section 2** of the Mental Health Act defines a person suffering mental disorder as follows:-

“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.”

7. The court is empowered by **Section 26** of the Mental Health act to make orders of one suffering mental disorder. That section 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.

(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.”

8. The report of Doctor Kangethe distinctly revealed that the subject is suffering from severe mental disorder. It is therefore fitting for the court to grant the orders sought.

DISPOSITION

9. The orders of the court are:-

(a) That the petitioners **AWM, GKM and AMM** are hereby appointed the legal guardians and managers of the estate of the subject **HMK** alias **SNK**.

(b) That the petitioners are hereby granted authority to make such decisions as may be necessary for the welfare of the subject.

JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 9TH DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice

For Petitioners : Mrs. Kuria

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE