



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

PETITION NO. 31 OF 2019

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE
MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

AND

IN THE MATTER OF MNN (A PERSON SUFFERING FROM A MENTAL DISORDER)

AND

IN THE MATTER OF AN APPLICATION BY BCM TO BE APPOINTED

GUARDIAN OF MNN AND MANAGER OF THE ESTATE OF MNN

BCMPETITIONER

JUDGMENT

1. The Petitioner herein is **BCM**. He is the husband of the subject herein, **MNN** who is aged about 49 years. The Petitioner is seeking to be appointed as a guardian of the subject and a manager of her affairs. The couple has nine children, some of whom are minors. The two eldest children are **MWN** and **JMC** and they have consented to Petition.
2. The subject was diagnosed to be suffering from bipolar disorder since 2013 and hospitalized at various hospitals including Mathari National Teaching and Referral Hospital. It appears that her condition did not improve significantly and in 2013 her erstwhile employer, the County Government of Nairobi retired the subject on medical grounds. Due to the COVID-19 pandemic the court's order that the subject appear at the hearing of the Petition could not be complied with. At the time of the hearing on 28.10.2020 the Petitioner and her eldest children **MWN** and **JMC** virtually attended court from a cyber cafe. Both **MWN** and **JMC** informed the court that the subject could not attend in the same manner, and was not in a condition to communicate on the phone to be interviewed as had been ordered by the court on 14/7/2020. The court therefore waived the requirement for the subject's attendance.
3. The court has now considered the material on record, and in particular the copies of letters marked as annexures **BCM 5** and **BCM 6** authored by different hospitals between 2012 and 2014. These are annexed to the affidavit in support of the Petition. The diagnosis in all these annexures is that the subject suffers from bipolar mood disorder. According to the Petitioner, the subject is incoherent and incapable of managing her affairs or taking care of herself. It appears that the subject's dues in respect of her employment with the Nairobi County Government are yet to be processed because of this. The subject and the Petitioner have several young children who are dependent on the Petitioner and subject for their provision and upkeep.
4. Section 2 of the Mental Health Act defines a person suffering from mental disorder as a person who has been found to be suffering under the Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.
5. Section 26(1) of the Act provides that:

“(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.”

6. The subject is clearly a person suffering from a mental disorder and it is only proper in the circumstances of this case that a guardianship order be made. This court therefore appoints the Petitioner and his eldest daughter **MWN** as guardians of the subject. Similarly, pursuant to the provisions of Section 26(1) (a) and 27 of the Mental Health Act the court appoints the Petitioner and his daughter **MWN** as general managers of the estate of the subject and with specific powers to pursue the subject’s dues with her erstwhile employer and to apply the said dues for the upkeep, maintenance and treatment of the subject and for the maintenance of the entire family which appears indigent at the moment.

SIGNED AND DELIVERED ELECTRONICALLY ON THIS 1ST DAY OF DECEMBER 2020

C MEOLI

JUDGE