



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISCELLANEOUS APPLICATION CAUSE NO. 138 OF 2018**  
**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF PMM**

**IN THE MATTER OF AN APPLICATION BY RWK AND NANK (PETITIONERS) TO BE APPOINTED GUARDIANS  
AND MANAGERS OF THE ESTATE OF THE SAID PMM**

**PETITION FOR APPOINTMENT OF MANAGERS AND GUARDIANS UNDER SECTIONS 26, 27, 28 & 29 OF THE  
MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA AND ALL ENABLING PROVISIONS OF LAW**

**RULING**

1. The Petitioners/Applicants RWK and NANK (hereafter referred to as the Petitioners) have petitioned this Court under Sections 26, 27 and 29 of the Mental Health Act (Cap 248 of the Laws of Kenya) seeking the following orders.

- (i) THAT the Petitioners be appointed as managers and guardians of the subject namely PMM (herein referred to as the subject)
- (ii) THAT the Petitioners shall jointly act as managers and guardians in accordance with the directions of this Court and in particular the following:
  - a) Manage the Subject's health case
  - b) Have access and operate the Subject's bank accounts.
  - c) Execute documents on behalf of the subject
  - d) Make decisions regarding the Subject's inherited estate with approval and directions of the Court.
  - e) Make decisions and handle the subject's Statutory Payments to the Government with regards to the Subject's NHIF, rental income tax, leases, agreements, Stamp duty and capital gains tax.
  - f) That the Costs and Legal fees of this application be provided for from the Subject's Estate.

2. The Petition is supported by the Affidavit of the 1<sup>st</sup> Petitioner sworn on 9<sup>th</sup> October, 2018 in which she has deposed as follows:

- (i) THAT the Petitioners in this case are biological siblings of the subject together with SMK who lives in the United States of America.
- (ii) THAT the Petitioners are the administrators of the Estate of their parents in Succession Cause No. 2521 of 2009.
- (iii) THAT the Subject herein has for a long time had health issues due to prolonged alcohol abuse and has needed family support and care which the Petitioners have provided for a long time.
- (iv) THAT DOCTOR PETER N. NJAGI is a qualified Psychiatrist who runs a drug abuse Rehabilitation and Treatment Centre examined the current mental state of the Subject which revealed acute mental symptoms of Psychotic condition including being overly aggressive, flights of ideas, grandiose, delusion, and hallucinations which have affected his intellectual functions and diminished his ability to make rational decisions.

(v) THAT the Subject is now totally dependent upon the family for his physical and emotional well being.

(vi) THAT the Petitioners believe they are fit and proper persons to be appointed as guardians and managers jointly in respect of the subject.

3. I have considered the submissions by the Petitioners herein together with the affidavit in support of the Petition. I have also taken into account the report by Dr. Peter N. Njagi of Brightside Drug Abuse Rehabilitation and Treatment Centre.

4. I find that the Petition herein has merit and I allow it and I order that the Petitioners be and are hereby appointed as joint managers and guardians of the Subject and in particular to do the following;

(i) Manage the Subject's health care

(ii) Have access and operate the Subject's bank accounts.

(iii) Execute documents on behalf of the subject

(iv) Make decisions regarding the Subject's inherited estate with approval and directions of the Court.

(v) Make decisions and handle the subject's Statutory Payments to the Government with regards to the Subject's NHIF, rental income tax, leases, agreements, Stamp duty and capital gains tax.

(vi) That the Costs and Legal fees of this application be provided for from the Subject's Estate.

Orders to issue accordingly.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI**