



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**PETITION NO 3 OF 2019**

**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF W.K.G. (A PERSON SUFFERING FROM MENTAL DISORDER)**

**J. W. K.....1<sup>ST</sup> PETITIONER**

**P. J. G. K..... 2<sup>ND</sup> PETITIONER**

**J. M. K.....3<sup>RD</sup> PETITIONER**

**RULING**

1. The Applicants herein are **J.W.K, P.J.G.K** and **J.M.K.** being the wife and children, respectively of the Subject, **W.K.G.** Through their petition filed on 1<sup>st</sup> February 2019 the Petitioners seek three prayers, namely, that the Subject be adjudged to be a person suffering from a mental disorder under section 26 of Mental Health Act; the court be pleased to appoint the Petitioners as guardians of the affairs of the Subject and as managers of the estate of the Subject with special permission inter alia to sell, transfer, alienate or otherwise deal with any movable or immovable property comprising the Subject's estate.

2. The Petition is expressed to be brought under Sections 26 and 28(1) and (2) of the Mental Health Act and is supported by the affidavits sworn by the wife of the Subject, **J.W.K.** and the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners **P.J.G.K.** and **J.W.K.** and annexures thereto. The gist of the affidavits is that the Subject has been married to the 1<sup>st</sup> Petitioner for 50 years, having wed in April 1958. The couple is blessed with eight children all of them adults aged over 47 years, including the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners.

3. That the Subject is 85 years old and in poor health following chronic illnesses in the past and a stroke in May 2018. That following the stroke, the Subject underwent brain surgery and remained in semi-coma state for a long period thereafter and is presently incapable of communicating or moving and is confined to 24 hours nursing care at his home. That he is therefore incapable of making decisions, taking care of himself or managing his affairs.

4. Annexed to the affidavits are documents marked as annexure **J.W.K. 1** which include:-

a) A letter of introduction by the Assistant Chief Nderu Sublocation, dated 8<sup>th</sup> January, 2019 .

b) Letter dated 11<sup>th</sup> January 2019 by Dr. Charles Kariuki, an Interventional Cardiologist.

c) Inpatient hospital bill by Nairobi Hospital Intensive Care Unit in respect of the Subject reflecting his admission between 26<sup>th</sup> May 2018 and 22<sup>nd</sup> June 2018 and balance of KShs.3,822,380.94.

d) Minutes of the Subject's family meeting on 20<sup>th</sup> October 2018 authorising the filing of the present proceedings.

5. Prior to the hearing of the Petition, the Petitioners successfully moved the Court through a motion filed on 14/2/19 seeking an order to direct the Deputy Registrar to visit the Subject and file a report as the Subject could not be present at the hearing as the Court had directed on 4/2/19.

6. In compliance with the court order, the Deputy Registrar visited the Subject's home and filed his report dated 1<sup>st</sup> March 2019, to which he annexed a set of photographs.

7. The Petition was canvassed before me on 5/3/19 by counsel for the Petitioners, Ms Kinuthia. Counsel based her submissions on material already on record but qualified that if the court was more inclined to allow access to the Subject's bank accounts and disposal of moveable property for now, the Petitioners would utilize the proceeds to settle the medical bill at Nairobi Hospital and to cater for the Subject's upkeep and medical requirements. She stated from the bar that the Subject needs upwards of KShs.450,000/= per month for his medical and other costs.

8. The Court has considered the material placed before it in support of the Petition. Section 26 of the Mental Health 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.”**

9. The Court has noted from the medical report by Dr. Charles Kariuki that the Subject has since the brain surgery in May 2018 not regained his mental function to be able to communicate or comprehend and is unable to carry out higher brain function. His expert opinion is that the Subject is incapable of managing his own affairs. The report by the Deputy Registrar confirms that the Subject is unresponsive to external stimuli and is confined under the care of a full-time nurse in a room within his home, which has been converted into a nursing room.

10. I am satisfied that the Subject has lost his mental function and is incapable of taking care of himself or managing his affairs. Further, I am satisfied that the Petitioners who are members of the Subject's immediate family are suitable persons to be appointed as guardians. And that, based on the inventory of assets contained in the 1<sup>st</sup> Petitioner's affidavit, it is evident that the Subject owns several assets which require proper management. The Subject also requires continuous medical treatment and nursing care. Evidently, the income generated from the said assets will be required to provide for his medical needs, including the settlement of the hospital bill, as well as catering for the Subject's upkeep.

11. Section 27(1) of the Mental Health Act provides that:

**“(1) Where a manager is appointed under this part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist.”**

12. In this case, the Court notes that the Subject owns a number of movable and immovable assets. It appears that proceeds from the sale of movable assets combined with other income may well be adequate for meeting the Subject's present needs. In the circumstances, the Court allows the Petitioner's prayer by appointing them as managers with general powers of management concerning all the immovable assets of the Subject, but with special powers concerning the Subject's movable assets, including the Subject's bank accounts and with power to liquidate any movable assets of the Subject for purposes of meeting any medical or living and other expenses concerning the Subject and his estate.

13. This court further directs under Section 33 of the Mental Health Act that within six months of this appointment, the Petitioners do furnish the Court with a full inventory of the Subject's assets and a statement of account showing the sums of money realized or received and disbursed by them on account of the Subject's estate. The parties are at liberty to apply further.

**DELIVERED AND SIGNED AT KIAMBU THIS 8<sup>TH</sup> DAY OF MARCH 2019**

**C. MEOLI**

**JUDGE**

**In the Presence of:-**

Miss Kinuthia – None appearance

Court Clerk - Kevin