



**REPUBLIC OF KENYA**

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

**HC. F. A. MISC. NO. 25 OF 2018**

**IN THE MATTER OF THE ADMINISTRATION OF THE ESTATE OF A PERSON OF UNSOUND MIND**

**AND**

**IN THE MATTER OF MENTAL ACT NO. 10 OF 1989 AND**

**IN THE MATTER OF JCM**

ANC alias RN.....1<sup>ST</sup> PETITIONER

MWC.....2<sup>ND</sup> PETITIONER

**JUDGMENT**

1. The two Petitioners in this case ANC alias RN and MWC have filed this Petition seeking the following prayers;

- (i) THAT JCM be adjudged to be a person suffering from mental disorder.*
- (ii) THAT the Petitioners ANC alias RN and MWC be appointed as Guardians of the Estate of their father JCM*
- (iii) THAT the Petitioners be appointed agents and manager for the estate of their father.*
- (iv) THAT the Petitioners be granted access to any bank account in the name of JCM.*

2. The Petition is supported by the joint Affidavit of the Petitioners in which they have deposed as follows;

- (i) THAT the ward has undergone treatment both in USA and Kenya since 1992 when he sustained head injuries as a result of a road traffic Accident which resulted in the manifestation of (PTSD) Post Traumatic Stress disorder.*

3. In the matter of **Gerison Kirima [2009] eKLR** where the Court considered the definition of a person suffering from a mental disorder and concluded that:

*“the petitioner while bringing in a petition for orders under Section 26 of the Act has to show the court by providing medical reports to substantiate the averment made in the petition. The petitioner, when he comes before the Court, has to show prima facie that the person against whom the orders are sought is a person suffering from mental disorder so as to be incapable of coping the ordinary demands of life and the orders sought is for the welfare of the person concerned.*

4. In the case of **Grace Wanjiru Munyinyi & Another vs Gideon Githunguri & 5 Others [2011] eKLR**, where the court held that,

*“there is always a presumption that every person is of sound mind until the contrary is proved and the onus of proof is on the person who alleges the contrary.....it is a very serious thing to say of and concerning a person, that such a person of unsound mind or suffers mental disorder. The law presumes that very person is mentally sound, unless and until he is proved mentally disordered.”*

5. I have considered the medical report filed herein together with the viva voce evidence and I find that the Application is meritorious and I accordingly allow it and order as follows;

- (i) THAT JCM be and is hereby adjudged to be a person suffering from mental disorder.*

*(ii) THAT the Petitioners ANC alias RN and MWC be and are hereby appointed as Guardians of the Estate of their father JCM*

*(iii) THAT the Petitioners be and are hereby appointed agents and manager for the estate of their father.*

*(iv) THAT the Petitioners be and are hereby granted access to any bank account in the name of JCM*

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5<sup>TH</sup> DAY OF APRIL 2019.**

**ASENATH ONGERI**

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