



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

PETITION NO.7 OF 2018

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

AND

IN THE MATTER OF VWM

PKW.....PETITIONER

RULING

The petition dated 10/5/2018 was filed by **PKW** under the Mental Health Act Cap 248 Laws of Kenya.

He seeks the following orders:

(a) That the petitioner be appointed as legal guardian of VWM of Id.No.[.....];

(b) That the petitioner be appointed the manager of the estate of VWM and that he be granted access to receive properties belonging to VWM including monies held in Post Bank of Kenya Account No.[.....] and [.....] at Nyahururu Branch.

(c) Any other relief that the court will meet the ends of justice.

The petitioner has stated that he is the only child of the subject, VW who is now aged 84 years; that in 2015, she suffered mental illness and has been in and out patient at J.M. Kariuki Memorial County Referral Hospital. He attached the identification card, subject's last Will and a medical report from J.M. Kariuki County Referral Hospital dated 6/4/2018.

He further stated that the subject's condition has continued to deteriorate because she sometimes declines to take medication; that she has sometimes disappeared from home, lost her property and is incapable of managing her affairs; that the petitioner and the subject had opened a joint A/C.[.....] where they have made deposits prior to her illness. That there is a fixed deposit Account [.....] in the subject's names and that the subject has destroyed the ATMs.

The petitioner is unable to meet the cost of caring for the subject in addition to the medication, hence this application to appoint him as the guardian in order to access and control the subject's bank accounts.

The court directed that the Chief of the area file an affidavit and attend court to verify the petitioner's application. Joseph Gateri, chief of Kagaa Location swore an affidavit dated 9/7/2017 in which he confirmed that both the petitioner and subject hail from his location; that the subject was a single parent and the petitioner is the only child; that the said subject has been ailing for a while. The chief also attended court and was examined by the court.

The court also asked the petitioner to avail a more recent report from the hospital for the court to appreciate the subject's current condition.

Dr. Peter Munene, a Psychiatrist wrote a report dated 22/10/2018 to the effect that the mental status of the subject is that she has auditory and visual hallucinations, persecutory delusions, insomnia and very talkative; that she has features of dementia and was commenced on treatment.

Section 26 of the Mental Health Act grants powers to the courts to make orders in respect of custody, management and guardianship of estates belonging to persons suffering from mental disorder. In this case, there is ample evidence that the subject is suffering from mental disorder. The report of the Doctor dated 22/10/2018 confirms the earlier report and averments of the petitioner.

The petitioner also annexed a Will purportedly made by the subject in 2014 appointing him as an executor. However, we are not dealing with the Will at present because the subject is still alive.

Section 26 of the Mental Health Act provides as follows:

“(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.”

Section 27 limits the powers of the guardian or manager. It provides as follows:

“(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:

Provided that:-

(i) A manager so appointed shall not, without the special permission of the court-

(a) Mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;

(b) Lease any such property for a term exceeding five years; or

(c) Invest in any securities other than those authorized by Section 4 of the Trustee Act;

(ii) No manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.”

In this case, the petitioner only needs the power to manage the estate in order to care for the subject’s needs, and take care of medical bills and manage the estate generally. He does not have the power to mortgage, charge, transfer by sale or exchange immovable property as provided under Section 27. He cannot lease the land for over 5 years and cannot invest in securities other than those authorized by Section 4 of the Trustee Act e.g. Shares of a Building Society; securities issued by Kenya Railways; securities issued by Industrial Development Bank Ltd, in Units or securities recognized at Kenya Stock Exchange e.t.c.

Having satisfied myself that the petitioner is the only child of the subject and the subject is incapable of managing her own affairs due to mental disorder, I hereby grant the orders sought in the petition and appoint the petitioner as legal guardian of VWM and that he will be granted access to her Bank Accounts [.....] and [.....] Nyahururu for purposes of managing them for the subject’s benefit.

The petitioner’s powers are subject to the limitations listed above.

Dated, Signed and Delivered at NYAHURURU this 23rd day of July, 2019.

.....

R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Wanjiru Mureithi holding brief for Maina Kairu for petitioner

Petitioner – present

