



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. 53 OF 2019

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

SECTIONS 26, 27, 28, 32, 33

AND

IN THE MATTER OF ANN

AND

IN THE MATTER OF THE APPLICATION OF JN AND SWN

RULING

1. The Applicants herein JMN and SWN have filed this Petition seeking to be appointed Guardians and managers of the affairs of ANN (hereafter referred to as the ward on the grounds that the ward lacks mental capacity to take care of his own personal and financial welfare.
2. The ward is currently detained at Kajiado G. K. Prisons at the President's pleasure after having been convicted for causing grievous harm in MCCR 596/2017 (R Versus ANN).
3. The ward was adjudged insane by the Magistrate who committed him to Prison and ordered that the ward be detained in safe custody at Kajiado G. K. Prison.
4. The Applicants filed a Medical Report by DR JUMBA, a Consultant, Psychiatrist at Mathari National Teaching and Referral Hospital which confirms that the Ward is unable to undertake tasks to completion and is in need of care and Supervision in order to live a near normal life.
5. **Section 26 of the Mental Act** provides as follows;

“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 relative or any other suitable person”.

6. See the case of **In Re R N C [2016] eKLR** where Justice Musyoka stated that;

“The law which governs the handling of persons suffering mental illness is the Mental Health Act. It provides, among other things, for custody of such persons and the management of their estates. Part XII of the Act deals with the judicial power over persons and estates of persons suffering from mental disorder. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates. A petition and or application for appointment of a guardian under the Mental Health Act Cap 248 is clearly spelt out in Sections 26.

7. I accordingly allow the Application dated 12th April 2019 in the following terms;

(i) THAT the ward ANN is adjudged a person suffering from mental disability under the Mental Health Act.

(ii) THAT JMN and SWN (hereafter referred to as the Applicants be and are hereby appointed Guardians and Managers of the Affairs of the Ward with power to sign and file court documents, enter into a deed for all family settlement and release on behalf of the Ward and to carry out other incidental and general functions of the Ward.

(iii) THAT the Applicants be and are hereby appointed managers of the Estate of the Ward in accordance with the Mental Health Act with special permission pursuant to Section 27 (1) (a) of the Mental Health Act to Mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist.

(iv) THAT the Applicants be and are hereby granted special permission to deal with the Ward's share from the Estate of PNG (Deceased) in order to manage his day to day upkeep and Medical expenses.

Orders to issue accordingly.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 12TH DAY OF JULY, 2019.

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.