



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO.110 OF 2018

IN THE MATTER OF AN APPLICATION FOR AN APPOINTMENT OF GUARDIAN AD LITEM BY DNM.

JMN.....APPLICANT

RULING

1. The Applicant filed in the Application dated 2.8.2018 amended on 4.4.2010 seeking to be appointed guardian ad litem of his father DNM.
2. The Application is supported by the Affidavit of the Petitioner/Applicant in which he has deposed that the subject is a party in ELC CA 190 of 2010 where he is named as the defendant and is seeking to represent him.
3. The Applicant availed recent medical report dated 26.9.2019 stating that DNM is suffering from dementia and he is incapable of making reliable decisions due to that condition.
4. The family filed a consent dated 2.5. 2019 in which they agreed that the Applicant be appointed as guardian ad litem to act on behalf of the subject in ELC CA 90 of 2010.
5. The family also agreed to appoint the applicant JMN, PKN AND LWN to assist their mother as guardians and managers of the affairs of DNM.
6. I find that there is medical evidence that the subject DNM is suffering from senile dementia and the family has consented on the persons to be appointed as guardian Ad Litem and managers.
7. **Section 26** of the Mental Act which 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”.**

8. 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.

9. The Application dated 2.8.2018 be amended on 4.8.2019 be and is hereby allowed in the following terms.

- (i) THAT the subject DNM be and is hereby adjudged a person suffering from mental sickness under the Mental Health Act.**
- (ii) THAT JMN be and is hereby appointed Guardian Ad Litem to act as guardian of the Subject in ELC CA 190 of 2010.**
- (iii) THAT JMN, PKN AND LWN be and are hereby appointed as managers to assist their mother RWN in managing the subject DNM.**

(iv) THAT costs of the Application be born by the estate of the subject.

Orders to issue accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 11TH DAY OF OCTOBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.