



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION NO. 160 OF 2019
IN THE MATTER OF SECTIONS 26 AND 27 OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES, ORDER 32 RULE 1, 2, 3 AND 15

AND

IN THE MATTER OF AN APPLICATION BY FNK FOR ORDERS OF CUSTODY, MANAGEMENT AND GUARDIANSHIP OF JKN (A PERSON SUFFERING FROM A MENTAL DISORDER)

F N K.....PETITIONER

RULING

1. Before this court for determination is a Petition dated 23rd September, 2019 brought under **sections 26 and 27** of the **Mental Health Act (Cap 248) Laws of Kenya**. The Petition seeks for orders that:

- a) The Patient JKN be declared to be suffering from mental and physical illness requiring administration and management of his estate by a guardian.
- b) The Petitioner, FNK be appointed as legal guardian in respect of JKN.
- c) The Petitioner as such guardian be allowed to access and give lawful and valid instructions in respect of the funds held in the Bank Account Number [Particulars Withheld] in the name of JKN held at the Co-operative Bank of Kenya Limited.
- d) The Petitioner do periodically after every three months update the court on the progress of the subject herein and general management of his estate.

2. The application is premised on the grounds that on 10th July, 2019 JKN, aged about 60 years, suffered a vicious ailment which quickly degenerated and affected his mental and physical ability. On 14th July, 2019 the Subject was rushed to M.P. Shah Hospital in Westlands Area Nairobi where he was admitted. Since the admission, the Subject's condition has deteriorated and he is now in a coma and vegetative state. That JKN is therefore incapable of taking care of himself and managing his estate.

3. The Subject's medical condition has seen him accrue a hospital bill which stood at Kshs. 4,293,363.00/- as at 25th August, 2019, a figure that continues to accumulate owing to the Subject's continued stay in the hospital. A copy of an interim bill from M.P. Shah Hospital dated 25th August, 2019 is on record. Under the circumstances, the Subject is unable to carry out normal functions including operating or carrying out transactions at the bank, yet the family has limited resources to cater for the medical bills.

4. The Petitioner urged that it is in the best interest of the Subject that she be appointed as guardian of the affairs of the Subject with the authority to administer his property, and in particular that she be allowed to access the funds held in the Subject's bank account held at the Co-operative Bank of Kenya Limited for the sole purpose of settling the medical bills and general care of the Subject as well as the family.

5. The Petitioner swore an affidavit dated 23rd September, 2019 in support of the Petition in which she deposed that she is the wife to JKN, the Subject herein having been married by him on 20th April, 1985. A copy of a marriage certificate of serial number 48***** is annexed to the application.

6. The Petitioner and the Subject begot three (3) children but the youngest child one G N'u K is now deceased having died in April 2019. A burial permit dated 17th April, 2019 is on record. The two (2) surviving children, ENK and JMK, both of whom are adults, have by a joint

affidavit sworn on 23rd September, 2019 consented to have their mother the Petitioner appointed as guardian of their father who is the Subject herein. They state that they have no other interest adverse to that of the Subject.

7. The Petitioner attached a letter dated 20th August, 2019 and a Medical Report dated 26th September, 2019 both prepared by Dr. Peter Waweru Munyu the Subject's attending doctor, which state that the Subject is currently hospitalized at the M.P. Shah Hospital having been admitted to the hospital on 17th July, 2019. The Subject was presented with a two week history of general body weakness, fever and abdominal pain. He had been diagnosed to have TB Spine eight (8) months prior and had been on medication. He was therefore admitted and continued with Anti TB medication and antibiotics.

8. Five days post-admission, the Subject developed a convulsion and became unresponsive. He was subsequently referred to the High Dependency Unit (HDU) where his coma scale improved. On 18th September, 2019 the Subject suffered a cardiac arrest and was successfully resuscitated and transferred to the ICU. His condition improved two (2) days later whereupon he was transferred to the HDU where he remains to date. The doctor noted that the Subject is now stable enough to go to the ward with a healthcare attendant.

9. The doctor carried out various tests on the Subject between 27th July, 2019 and 18th September, 2019 which tests include a CT scan of the abdomen, MRI brain scan, and a jejunostomy and meningeal biopsy. The Subject was diagnosed with disseminated resistant tuberculosis with TB Meningoencephalitis & Colitis; Complications due to tuberculosis (comatose with a GCS of 5T/15 and intestinal obstruction on intravenous feeding) and Klebsiella pneumoniae pneumonia. He has so far had four (4) interventions being a tracheostomy, jejunostomy, urinary cathetization and central venous catheter.

10. The doctor's prognosis is that the Subject still needs oxygen supplementation and will need long term nursing and rehabilitative care and intravenous anti-tuberculosis medication until he is able to absorb by gastrointestinal system. Further that due to his low coma scale, the Subject is not capable of taking care of himself or conducting his own affairs.

11. The Petition was fixed for hearing on 28th October, 2019 but the Petitioner brought an application dated 30th September, 2019 under certificate of urgency seeking that the Petition be disposed of on an urgent basis and preferably on an earlier date. On 1st October, 2019 the court certified the Petition urgent and directed that it be heard on 8th October, 2019 and that all of the Subject's children attend court on the hearing date.

12. The Petitioner and the Subject's son JMK were present in court at the hearing of the Petition on 8th October, 2019. Learned Counsel Mr. Mutua told the court that the Subject's daughter was unable to attend court. Both children have however consented to their mother, the Petitioner herein, being appointed as guardian over the Subject.

13. I have perused the pleadings filed in this matter, and in view of the expert opinion of Dr. Peter Waweru Munyu the Consultant Physician and Pulmonologist, I am persuaded that JKN, the Subject herein, is a person suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act**. He is therefore incapable of taking care of himself and conducting his own affairs.

14. There being merit in the Petition dated 23rd September, 2019, I hereby allow it in the terms proposed by the Petitioner. It is so ordered.

DATED SIGNED and DELIVERED in open court this **9th day of October, 2019.**

L. A. ACHODE

HIGH COURT JUDGE