



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA A NAIROBI

MILIMANI

PETITION NO: 131 OF 2016

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE MENTAL HEALTH ACT, CAP
248 LAWS OF KENYA**

AND

IN THE MATTER OF FOK (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY DO TO BE APPOINTED GUARDIAN OVER
THE AFFAIRS AND MANAGER OF THE ESTATE OF FOK**

DO.....PETITIONER

RULING

The Petitioner herein DO is an adult of sound mind and disposition who is domiciled and works for gain in Kenya. He is the elder brother of FKO; the subject herein and they are the only members of the family who reside in Nairobi.

FACTS

The Subject herein was diagnosed with chronic schizophrenia and was put on daily medication. According to the Doctor's report dated 30th July 2015, the nature of the Subject's illness was such that a relapse may occur that warrant residential treatment as they are caused by default in taking medication. The Report further stated in April 2015, the Subject suffered a major relapse that caused him to wander away from home, lose interest in himself and his duties, social withdrawal and depression. He was thereafter seen and recommended to stay off duty a home for one month and on treatment.

Further, according to another Report dated 23rd March 2016, it was asserted that the patient still needed supervised intake of medication at home and that he is not in a position to be fully conversant with the need to go to work and think coherently and that he has poor judgment.

The Subject herein is an employee of National Hospital Insurance Fund (N.H.I.F), he maintains an account at Barclays Bank and has serviced a mortgage with Kenya Commercial Bank (K.C.B) which was redeemed as of March 2016.

The Petitioner stated the Subject is not married and that there is need to look after his daily needs.

Family members M A O, R A O siblings of the subject gave consent to appointment of the Applicant as legal guardian of the subject and manager of his estate. The Applicant will ensure the care and well being of the subject and obtain funds to facilitate his medical care and necessities. The Applicant will manage the subject's estate that includes;

a) Managing of the Bank account

b) Managing his transition from employment

c) Obtaining the title for the property Land Reference Number [Particulars withheld] that was under mortgage and managing the said property.

Based on the foregoing, the Petitioner prayed for orders that the Subject be declared as suffering from mental disorder under **section 26 of the Mental Health Act, Cap 248 Laws of Kenya**, that he be appointed legal guardian and manager of the estate of the Subject.

DETERMINATION

From the foregoing, the issue(s) that are to be determined by the Court are:-

1) Whether the Subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.

2) Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.

The Mental Health Act provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. **Section 26** of the **Act** gives the Court powers to make orders for the management of the estate of such persons and for their guardianship by any near relatives or any suitable persons.

Under **section 26(3)** of the **Act**,

“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 persons, including proper provision for his maintenance...”

From the evidence produced by the Petitioner, the Medical Reports on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under **section 26** of the **Mental Health Act**.

From the latest Medical Report dated 2nd February 2017 by Dr. Jumba, Consultant Psychiatrist states that,

“...He (the Subject) has been visiting the outpatient department several times and was admitted last year in 2015. During this time, he was diagnosed to suffer from schizophrenia; a chronic debilitating mental illness. This has rendered him incapable of attending work for the last one and a half years.”

The Report further elucidates that,

“He (the Subject) suffers from schizophrenia and is unlikely to recover fully. He however needs to be encouraged to attend clinics and comply with medication. He also needs family support.”

Relying of this Report alongside the others, the Court is satisfied that the Petitioner has made out his case

in support of the Petition.

In light of the above, the Court holds that:-

1) FKO (the Subject) is hereby declared to be suffering from mental disorder pursuant to section 26 of the Mental Health Act, Cap 248 Laws of Kenya.

2) DO is hereby appointed as the guardian to FKO.

3) DO is hereby appointed as manager of the estate of FKO including any such description of moveable or immoveable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.

DELIVERED DATED SIGNED IN OPEN COURT ON 6TH MARCH, 2017.

M.W.MUIGAI

JUDGE