



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO 7 OF 2015

P P K N.....APPLICANT

VERSUS

A W N.....RESPONDENT

RULING

This matter originated by way of a petition filed on 23rd February, 2015 brought under **Section 26, 27, 28, 32 and 33 of the Mental Health Act Cap 248** by A W N on behalf of P P K N the subject herein.

The Applicant sought the Court's appointment of the guardian of the person of P P K N the ward or subject herein. The ward lacks mental capacity to care for his own personal health and financial welfare. He suffers from severe impairment to his mental capacity and lacks the capacity to make decisions.

The ward was examined by Dr. Catherine Syengo Mutisya as shown by a letter dated 26th September, 2014 to the advocate of the applicant and annexed to her affidavit as "AWN4". The doctor describes the ward's illness as; "bipolar 1 mood disorder; bipolar mood disorder (BMD) also called manic depression characterised by extreme mood swings. There are symptoms of extreme anger and irritability, poor financial choices, rash spending sprees and full blown manic episodes."

The doctor admitted the ward at Avenue Hospital on 5th August, 2014 with a history of irritability and being stressed. He was also on treatment for diabetes and hypertension. He was discharged after 3 weeks. Previously, he was admitted in the same hospital on 19th January, 2014 and was discharged on 26th January, 2014. The medical documents have been attached to the application.

According to the doctor's prognosis, the Bipolar disorder cannot be cured but treated effectively over a long term. It is best that the applicant and who is his wife manages the estate and has custody and care of the ward until he stabilizes and is capable to handle his affairs.

The Applicant A W N has filed a supporting affidavit to the petition and attached their marriage certificate. She has deposed there three (3) children of marriage; namely;

- 1) N N N
- 2) A K N
- 3) E K N

They are all adults and they filed written consents on 25th February, 2015 for their mother and wife to the

ward to be appointed guardian to the ward and to manage his estate. They were also present in Court and confirmed the same.

The Applicant has in paragraph 11 of the affidavit listed the properties that are subject to management by the manager of ward's estate and the guardian to maintain and make provisions for the ward and take care of the family.

The ward P P N was not brought to Court, the family produced to Court a letter dated 20th February, 2015 by Doctor Fredrick Owiti from Avenue Medical Centre describing the ward as being in admission at Avenue Hospital for continued treatment. His presence was dispensed with by the Court.

The issue for determination is who should take care of the ward. It is not disputed that the ward does not enjoy good health specifically mental health and capacity to make decisions and effectively take care of his personal health and financial affairs as shown by the doctor's letter and annexed admission documents. The family members have also signed written consents that at this stage there is need for intervention. The applicant, their mother and wife to the ward should be appointed guardian of the ward and manager of his estate.

This Court is satisfied the ward is sick and require help there is no objection by the family members to the Applicant being the guardian and manager. **Section 26 of the Mental Health Act Cap 248** mandates the Court to make orders for the management of the estate of any person suffering from mental disorder and for guardianship of any person suffering from mental disorder by any near relative or any other suitable person.

In the instant case, the Applicant, A W N is hereby appointed guardian to provide for the well being of the ward. She is also appointed as manager of the estate of the ward to protect the property from wastage and to utilize it in accordance with **Section 27 of the Mental Health Act** for proper provision for the ward's maintenance and family who depend on him.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF MARCH, 2015

M. MUIGAI

JUDGE

In the absence of; Parties.