



In re BST (A Person Suffering from Mental Disability) (Miscellaneous Case E270 of 2024) [2025] KEHC 1335 (KLR) (Family) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1335 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS CASE E270 OF 2024

H NAMISI, J

FEBRUARY 27, 2025

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

AND

IN THE MATTER OF BST (PERSON SUFFERING FROM MENTAL DISABILITY)

BETWEEN

BST SUBJECT

AND

MST PETITIONER

JUDGMENT

1. The Petition before the Court was brought by MST, being the brother to the subject, BST. BST is an adult male, aged 52 years residing with his parents and the Petitioner in Parklands, Nairobi. The Petition is supported by an Affidavit sworn by the Petitioner, as well as annexures thereto.
2. In the Affidavit, the Petitioner depones that the Subject has no wife and children. He resides with their parents, PST and GKT, together with the Petitioner and his family. At the age of 16 years, the Subject was diagnosed with schizophrenia, which has significantly impaired his ability to take care of himself.
3. At the hearing of the Petition, the Petitioner testified that there is no other living sibling care for BST, and their parents are elderly. The Petitioner provided two medical reports. The first medical report by Dr. Violet C.A. Okech-Helu is dated 30 October 2023 noted that BST is oriented in person and time but not in space. The diagnosis is that BST suffers from schizophrenia with significant impairment of his ability to take care of himself.



4. The second medical report by Dr. Juliana M. Mbuthia is dated 3 February 2024. Its contents and diagnosis are similar to those of the earlier report.
5. There are Supporting Affidavits dated 4 February 2025 sworn by the parents of BST. Equally, they confirmed to the Court that their son, who was a brilliant young man, fell ill at the age of 16 years and has been ill since. They gave a history of the visits to hospital and treatment given to BST.
6. I had an opportunity to speak to the Subject. He appeared well kempt but his speech was incoherent. I am persuaded that this Petition is properly before the Court.
7. Section 26 of the said Act states that:
 - (1) 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 near relative or by any other suitable person.
 - (2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
 - (3) 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 person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder
8. I have also considered all the material placed before me. It is apparent that the Subject suffers from a mental disorder and that he is incapable of managing his own affairs, although he is not dangerous to himself.
9. The definition in Section 2 of the Act provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
10. In the circumstances, the court makes a finding that the Subject is a person suffering from a mental disorder within the definition of the *Mental Health Act* and hereby appoints the Petitioner as the subject’s guardian. Additionally, the court appoints the said Petitioner as general manager of the estate of the subject. For the avoidance of doubt, such manager’s general powers will not include the power of alienation, sale or transfer of the subject’s immovable assets but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the subject in respect of any of the assets forming part of his estate.

DATED AND DELIVERED AT NAIROBI THIS 27 DAY OF FEBRUARY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT



Delivered on virtual platform in the presence of:

Mr. Amukhale....for the Petitioner

Libertine Achieng..... Court Assistant

