



REPUBLIC OF KENYA



KENYA LAW
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In re SMK (Person Suffering from Mental Disability) (Miscellaneous Application E028 of 2025) [2025] KEHC 3522 (KLR) (Family) (24 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3522 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS APPLICATION E028 OF 2025

H NAMISI, J

MARCH 24, 2025

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

AND

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

AND

**IN THE MATTER OF A PETITION BY MM TO BE APPOINTED GUARDIAN
OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF THE SMK**

IN THE MATTER OF

MM PETITIONER

JUDGMENT

1. The Petition before the Court was brought by MA, being the wife to the Subject, SMK. The Subject was a licenced practitioner with specialty in urological surgery. He was a consultant at Nairobi Hospital and ran a private clinic in the name and style of East & Central African Healthlink Limited. Currently, the Subject resides in Lavington, Nairobi with the Petitioner. They have 3 children.
2. The Petition which is brought under sections 26, 27 and 28 of the *Mental Health Act*, is supported by an Affidavit sworn by the Petitioner, as well as annexures thereto. The Petition seeks the following orders:
 - i. That this Honourable Court do issue a declaration adjudging SMK a person suffering from mental disorder within the meaning of Section 26 of the *Mental Health Act*, Cap 248 of the Laws of Kenya;



- ii. This Honourable Court do issue an order appointing MM as the legal guardian of SMK;
 - iii. This Honourable Court appoints MM as manager of the estate of SMK under section 28 of the *Mental Health Act*, Cap 248 of the Laws of Kenya to manage his estate including movable and immovable 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;
 - iv. This Honourable Court appoints MM as manager of the estate of SMK with approval under Section 28 (2) of the *Mental Health Act*, Cap 248 of the Laws of Kenya to charge properties title numbers Nairobi/Block 146/xxx and Nairobi/Block 146/xxx with KCB Ltd for the sum of Kenya Shillings Six Million (Kshs 6,000,000/=);
 - v. This Honourable Court appoints MM as manager of the estate of SMK with approval under sections 28(2) of the *Mental Health Act* Cap 248 of the Laws of Kenya to sell property title number Nairobi/Block 110/xxx for not less than Kenya Shillings Thirty-Two Million (Kshs 32,000,000/=) to enable completion of construction of their home;
 - vi. This Honourable Court do issue an order appointing MM as the legal guardian to sure and/or defend a suit for and against the estate of SMK where necessary;
 - vii. Costs of this petition be provided;
 - viii. Any other reliefs that this Honourable Court may deem fit and just to grant
3. The Petitioner also filed a Notice of Motion dated 4 February 2025 seeking the following orders:
- i. (spent)
 - ii. That this Honourable Court be pleased to order Safaricom PLC to unblock telephone number 0722xxxxxx registered in the name of SMK;
4. The Notice of Motion is supported by an Affidavit sworn by the Petitioner/Applicant and premised on the following grounds:
- a. That the Applicant has presented her Petition dated 31 January 2025 to be appointed legal guardian and manager of the estate of SMK;
 - b. That the Subject's telephone number 0722xxxxxx has been blocked by his mobile service provider, Safaricom PLC, since the Subject cannot recall his passwords;
 - c. That various invoices are sent to the said number including government statutory obligations being: The annual land rent and land rates payable before March; Water bill invoices from Nairobi City County Water and Sewerage Services and Nyeri County water and Sewerage Services for the Subject's and Applicant's homes; Electricity invoices from Kenya Power for the Subject's and Applicant's homes
 - d. That additionally, the Petitioner/Applicant is unable to provide Certificates of Official Searches over properties forming part of the Subject's estate within Nairobi County since codes for approval of the applications made through the Ministry of Lands and Physical Planning's digital platform called "Ardhisasa" are sent to the said telephone number hence the Applicant is unable to show this Honourable Court that the properties are part of the Subject's Estate;



- e. That unless this Application is heard urgently and orders sought are granted the Applicant's and Subject's obligations to pay Government dues will fall into arrears and start attracting penalties and the Applicant's Petition will be incomplete;
 - f. That no prejudice will be suffered by any party if the orders sought herein are granted;
 - g. That it is in the interest of justice and fairness that the Application herein be heard expeditiously
5. I will determine both the Petition and the Application concurrently.
 6. In the Affidavit in support of the Petition, the Petitioner depones that for the past 2 years, the Subject's health has been deteriorating progressively with decline in cognitive function characterised by gradual loss of memory. On 20 January 2025, the Subject was diagnosed with advanced dementia from Alzheimer's disease by Dr. Juzar Hooker, Consulting Neurologist at Kenyatta National Hospital. Further, the Petitioner depones that the Subject is unable to take care of himself and his interests nor conduct his affairs as a rational person, thus rendering him incapable of handling his day-to-day activities, making management decisions, supervising and/or operating his business, administering medication amongst other tasks.
 7. The Petitioner, who is a certified public Accountant, provided a list of assets in the Subject's estate comprising of assets owned wholly by the Subject, those owned jointly with the Petitioner and those held in the name of an investment company in which the Subject and Petitioners are shareholders. The two assets which the Petitioner prays for authority to charge, namely Nairobi/Block 146/xxx and Nairobi/Block 146/xxx, are owned wholly by the Subject. The other property which the Petitioner seeks authority to sell, namely Nairobi/Block 110/xxx, is a vacant plot owned jointly by the Petitioner and the Subject. Attached to the Affidavit are copies of title documents for the various properties including the three aforementioned properties.
 8. The Subject's diagnosis was done by Dr. Juzar Hooker, who presented his report dated 20 January 2025 confirming the condition. According to the Doctor, the condition is a progressive one, it cannot be treated or cured or reversed. The report indicates that a cognitive protocol MRI scan of the brain revealed marked bilateral hippocampal atrophy. Dr. Hooker was of the opinion that it is expected that the condition will progressively worsen with time, such that the Subject would be even more dependent. He will need 24-hour care.
 9. The Petitioner presented copies of the Certificate of Marriage between herself and the Subject, copies of their children's national identity cards, copies of the contract with contractors for the construction of their retirement home in Karen, Nairobi County and copies of letter of offer for a mortgage facility for Kshs 6 million.
 10. The Subject's three children have signed and presented consent dated 3 February 2025. The first born, SNM, appeared in Court to confirm the family's decision to have their mother appointed as legal guardian of the Subject. She confirmed that the Subject's has been worsening with time and that the primary caregiver is the Petitioner. The Court also had a chance to speak to the Subject, who was uncooperative and could hardly respond to any of the questions posed.
 11. In view of the evidence presented and observations made, I am persuaded that this Petition is properly before the Court.
 12. 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
13. 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 a danger to himself.
14. 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.”
15. 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.
16. In view of the foregoing and pursuant to the Petition and Notice of Motion filed herein, I make the following orders:
- i. That SMK is hereby declared as a person suffering from and living with a mental disorder within the meaning of section 26 of the *Mental Health Act*;
 - ii. That MM is hereby appointed as the legal guardian and manager of S.M.K;
 - iii. That MM, as manager of SMK, is hereby authorised to charge properties title numbers Nairobi/Block 146/xxx and Nairobi/Block 146/xxx with Kenya Commercial Bank Ltd for the sum of Kshs 6 million;
 - iv. That M.M, as manager of SMK, is hereby authorised to sell property title number Nairobi/Block 110/xxx for not less than Kshs 32 million;
 - v. That Safaricom PLC is hereby ordered to unblock mobile number 0722xxxxxx registered in the name of SMK;
17. For the avoidance of doubt, such manager’s general powers will not include the power of alienation, sale or transfer of any other assets held by the Subject, save for those mentioned hereinabove, 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.

18. In view of the nature of the case, I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF MARCH 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Mr. Nyamagwa h/b Ms. Sudi.....for the Petitioner

Libertine Achieng..... Court Assistant

