



REPUBLIC OF KENYA



KENYA LAW
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In re RNC (A Person Suffering from a Mental Disorder) (Family Miscellaneous Application E004 of 2024) [2024] KEHC 7773 (KLR) (26 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7773 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY MISCELLANEOUS APPLICATION E004 OF 2024
PN GICHOHI, J
JUNE 26, 2024
IN THE MATTER OF AN APPLICATION BY SCK AS A
GUARDIAN OVER THE AFFAIRS OF THE ESTATE OF RNC

IN THE MATTER OF

SCK PETITIONER

RULING

1. Under a certificate of urgency and through the firm of Gathoni & Company Advocates, the Applicant moved this Court by way of a Petition under Section 26 and 28 of the [Mental Health Act](#), Cap 248 Laws of Kenya seeking orders that :-
 1. RNC be declared to be a person suffering from mental disorder under Section 26 of the [Mental Health Act](#) (Cap. 248 Laws of Kenya).
 2. The Court be pleased to appoint SCK as guardian over all the affairs of RNC in accordance with [Mental Health Act](#), with powers to sign , access, withdraw, execute and /or carry out any act incidental to the affairs of the subject.
 3. The Court be pleased to appoint SCK as a manager of the estate of the Subject guardian over all the affairs of RNC in accordance with [Mental Health Act](#), with powers to sign , access, withdraw, execute and /or carry out any act incidental to the affairs of the Subject RNC, with special permission pursuant to Section 27 (a) of the [Mental Health Act](#) to charge, sale gift , surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the estate of the Subject.
 4. The costs be provided for.
 5. Any other relief and order that the Court may deem fit to grant.



2. The grounds are on the face of the petition which are further expounded by an Affidavit sworn on 13th February 2024 by SCK. Mainly, he depones that he is a pastor by profession and father to the Subject.
3. That Subject is not married and has only child one by the name S.W. aged 5 years and that both the Subject now aged thirty-six (36) years and the said minor are in custody of the Petitioner and his wife ZMC in their home in Subukia. He states that Subject has been unable to take care of her child due to her impaired mental capacity arising from alcohol and substance abuse and therefore, the Subject's biological mother has taken over parental responsibilities arising therefrom since year 2021.
4. In support, the Petitioner has annexed the Subject's title documents. One is in her name while the other is in the joint names of the subject and another. He has also annexed the birth certificate of the Subject and the minor. Further, there is a consent signed by ZMC in support of the appointment of the Petitioner as the Guardian of the Subject herein.

Determination

5. This Court has considered the petition and the annexures thereto. The medical report dated 2nd March 2023 from Lumakand County Hospital, Kakamega County indicates that the Subject is a patient at the clinic attending clinic follow-up for rehabilitation post alcoholic withdrawal syndrome and specifically states:-

“She often suffers from mental relapse due to the above mentioned. This has compromised her mental capacity and judgment.

She is therefore advised to seek consent from attorney or guardian guidance in regards to property management.”

6. This Court saw the Subject in when she attended Court in company of her parents, that is the Petitioner and ZMC. A simple question and answer session between the Subject and the Court revealed that the subject is irritable and at times wished to move away from her mother who sat beside her. She could vaguely recall that she has two properties, has a child and that they both live with her parents. She smiled when the Court congratulated her for owning the properties at her age. She then withdrew and appeared indifferent.
7. It is apparent that the Subject is yet to recover. There is no doubt that the Subject has a mental incapacity and may not be able to manage her affairs including her properties and the child too.
8. Section 26 of the *Mental Health Act* gives this Court jurisdiction to deal with such an application as the one presented before this Court as it provides as follows:

“(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.”

9. Under Section 28 of the Act, this Court has power to make orders as regards the Subject for it provides that:-

(1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate,



make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.”

10. As regards the power of the manager in respect of the estate, Section 27 provides that:

- (1) Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist: Provided that—
 - (i) a manager so appointed shall not, without the special permission of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
 - (b) lease any such property for a term exceeding five years; or
 - (c) invest in any securities other than those authorized by section 4 of the Trustee Act (Cap. 167);
 - (ii) no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.”

11. This court is therefore satisfied that by reason of her mental relapse that has compromised her mental capacity and judgment, the Subject is incapable of protecting her interests at the moment and in the circumstances . She therefore requires a Guardian Ad Litem in accordance with the law.

12. In conclusion , the Court makes the following orders:-

1. RNC be and is hereby declared by this Court as a person declared to be a person suffering from mental disorder.
2. SCK be and is hereby appointed as guardian over all the affairs of RNC in accordance with Mental Health Act with powers to sign , access, withdraw, execute and /or carry out any act incidental to the affairs of the Subject.
3. SCK be and hereby appointed as a manager of the estate of the Subject guardian over all the affairs of RNC in accordance with Mental Health Act, with powers to sign , access, withdraw, execute and /or carry out any act incidental to the affairs of the Subject RNC, with special permission pursuant to Section 27 (a) of the Mental Health Act to charge, sale gift , surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the estate of the Subject.
4. There are no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF JUNE, 2024.

PATRICIA GICHOCHI



JUDGE

In the presence of;

Ms Gathoni for the Petitioner/Applicant

Ruto- Court Assistant

