In re PKM (Miscellaneous Application E022 of 2024)
[2024] KEHC 8512 (KLR) (31 May 2024) (Ruling)

Neutral citation: [2024] KEHC 8512 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KIAMBU

MISCELLANEOUS APPLICATION E022 OF 2024

DO CHEPKWONY, J

MAY 31, 2024

IN THE MATTER OF PKM (SUFFERING FROM MENTAL DISABILITY)

AND

IN THE MATTER OF PWK SEEKING APPOINTMENT AS A GUARDIAN

RULING

1. For determination before this court is the Notice of Motion application dated 17th May, 2024 which is premised on the grounds set out in the Supporting Affidavit of PWK and on the face of the application. The application seeks the following orders:-

    a. Spent.

    b. That the Applicant be appointed as one of the Administrators of estate of MK alias JM.

    c. That the court be pleased to make such further orders as it may deem fit.

2. According to the Applicant, she is the spouse of subject and together they have four issues. The Applicant has averred that the subject has had a mental condition since 2022 and has been receiving treatment at Neurology Centre ever since. The Applicant contends that the subject has a bank account being Absa Bank Limited, Account No. (Particulars withheld) Branch Industrial area Avon Enterprise Road. She avers that the subject is currently under medication and requires constant care in terms of medical, food, clothing and has thus urged the court to allow the application and she can be appointed as his administrator.

3. The law on an applications such as the present one is made under Section 26 of *Mental Health Act*, Cap 248 Laws of Kenya which gives the court judicial power over persons and estates of persons who are shown to be suffering from mental disorder and/or any incapacity as follows:-

    " 26. Application for administration

1. An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—

    a. a supporter of the person with mental illness; or

    b. the representative of the person where the person with mental illness has not appointed a supporter.

2. An application under subsection (1) shall be submitted together with an affidavit setting out—

    a. the grounds upon which the application is made;

    b. the full particulars as to the property and relatives of the person to whom it relates; and

    c. a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.

3. A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the—

    a. person in respect of whom the application is made; or

    b. where an application is made by a supporter to the representative of the person with mental illness.

4. Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.

5. The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.

6. The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—

    a. court to examine the person; or

    b. person to be examined by a qualified registered mental health practitioner

7. The court is guided by the decision *In The Case of Re N M K* [2017] eKLR which set out what should guide the court when

applying Section 26 and 27 of the *Mental Health Act*. The court held as follows:-

> "In considering an application brought under sections 26 and 27 of the *Mental Health Act*, the Court is guided by three main factors:
>
> i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
>
> ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
>
> iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject."

4. In this case, the Applicant has attached a card for persons with disability Registration No. NCPWD/P/582004 which shows the subject's disability as Intellectual and autism spectrum, Disability subtype Schizophenia Spectrum and other psycho. Upon perusing the said medical evidence attached, the court finds the same is sufficient to show that the subject suffers from mental disability and hence requires assistance.

5. For that reason, the Notice of Motion application dated 17th May, 2024 is hereby allowed in the following terms:-

   This court appoints PWK as an Administrator of the Estate of MK alias JM".

   It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 31ST DAY OF MAY , 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Nganga holding brief for M/s Moi counsel for the Applicant

Court Assistant - Sanja