



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

PETITION NO. 8 OF 2019

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

AND

IN THE MATTER OF CWK

CNW.....PETITIONER

JUDGEMENT

1. By a petition dated 10th September 2019. The petitioner seeks orders that:

Ø She be appointed legal guardian of CWK of identification Card Number xxxxxx.

Ø She be appointed the manager of the Estate of CWK and that she be granted access to receive properties belonging to CWK including retirement benefits payable by the Teachers Service Commission for his TSC No. xxxxxx.

Ø Such further seeks relief be granted as will meet the ends of justice in this course

2. The petitioner is the wife of the subject CWK. The background of the matters is:

3. That sometimes in the year 1993, CWK suffered mental illness and has on many occasions been treated as an in-patient and out-patient at PROVINCIAL GENERAL HOSPITAL NAKURU, GILGIL HOSPITAL, MATHARI HOSPITAL NAIROBI and NYAHURURU COUNTY REFERRAL HOSPITAL. (Annexed and marked "CNW2(a-d)" are copies of general out patient records, discharge summaries, and medical reports).

4. That CWK the Petitioner's husband has become incapable of managing his affairs due to his deteriorating condition and requires proper maintenance by his wife to get to good health, he was actually forced to retire as a teacher(principal) [particulars withheld] Secondary School effective 12.12.2016. (See the various medical reports in "CNW2" and a letter from the Teachers Service Commission dated 16.09.2016 marked "CNW3")

5. That the Petitioner and her husband own property in terms of parcels of land that are registered in the names of her said husband and is precluded from dealing with the said property by the fact that the same are registered in her husband's names who is not incapable of managing any affairs that arise therefrom (Annexed and marked "CNW4" are a bundle of copies of title documents for the said properties).

6. The Teachers Service Commission is willing to pay the petitioner's husband's retirement benefits but cannot pay directly to him owing to his condition and requires that the Honourable Court appoints a guardian to whom now the said retirement benefits can be paid

7. *The petitioner is unable to meet the costs of the husband's ever increasing costs of medication and other incidentals thereto with her meager income.*

8. *That it is in the interest of the said CWK that the court does appoint the Petitioner as his guardian and order that the Petitioner does access and control the said properties and retirement benefits of his medication, family welfare and other incidentals thereto.*

9. The same is supported by the Verifying Affidavit of CNW Sworn on 10.09.19. I have gone through the annexures hereto and interrogated the same.

10. By a letter of 14.8.18 the Chief Kiambogo Location confirms that the subject was a teacher from 1993 to 2013 when stopped teaching due to mental illness. He is currently dependent on his wife who has 3 children in school.

11. There are also treatment documents attached and Doctor Njau's Medical report dated 1.11.10 conforming that the subject suffers from mental illness (Bipolar disorder) a mood disorder characterized by mood swings, grandiose delusion, bizarre behavior, thought and perception problems.

12. Further Doctor J. Githinji of Nyahururu County hospital confirmed same conditions via a letter dated 22.7.19 which recommended the subject to go for early retirement on medical grounds thus by a letter dated 16.9.16 the T. S. C approved his retirement.

13. Thus I am therefore satisfied that in pursuance to section 2 of mental Health Act (MHA) as read together with section 14(3), the patient be medically recommended as a person suffering from Mental disorder whose Affairs and estate require immediately care attention and preservation. In furtherance of section 26 and section 28 of the said Act I accordingly appoint petitioner a manager of the estate of the patient.

14. I further also appoint petitioner a legal guardian of the said patient under the said Act thus prayers (a) and (b) of the petition are granted as prayed.

15. Thus the final orders are ;

- i) **CNW be and hereby appointed legal guardian of CWK of identification Card Number xxxxxxx.**
- ii) **CNW be and is hereby appointed the manager of the Estate of CWK and that she be granted access to receive properties belonging to CWK including retirement benefits payable by the Teachers Service Commission for his TSC No. xxxxxx.**

Dated, Signed and Delivered at NYAHURURU this 17th day of December, 2020.

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CHARLES KARIUKI

JUDGE

PRESENT:

Ms. Rugut for state

Henry court assistant



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