



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

PETITION NO 1 OF 2020

IN THE MATTER OF JOHN NGOTHO NDEGWA (SUBJECT)

CHARLES MWANGI NDEGWA.....PETITIONER

R U L I N G

1. The Petitioner herein, **CHARLES MWANGI NDEGWA**, has sought three main orders in the petition dated 09/12/2019 –

- a. That the Subject of these proceedings, **JOHN NGOTHO NDEGWA**, be adjudged to be a person suffering from a mental disorder under **section 26** of the **Mental Health Act, Cap 248**.
- b. That the Petitioner be appointed as **guardian ad litem** of the said Subject.
- c. That the Petitioner be appointed **guardian ad litem** to the said Subject for purposes of lodging proceedings on his behalf to claim damages arising from personal injuries suffered in a road traffic accident.

The Petition is expressed to be brought under **section 26(1)** and **section 28(1)** of the **Mental Health Act**.

2. The Petitioner is the brother of the Subject. I have read his affidavit sworn in support of the petition and a supplementary affidavit he filed on 04/02/2020 pursuant to an order of the court.

3. I have also read the following supplementary affidavits filed on 12th and 27th February, 2020 –

- i. 2 affidavits by **STEPHEN NDEGWA NJAMA**, the father of the Subject.
- ii. 2 affidavits by **MONICA MUMBI NDEGWA**, the mother of the Subject.
- iii. 2 affidavits by **ANN WAMBUI NDEGWA**, the only other sibling of the Subject.

4. The following facts emerge from all these affidavits –

- i. The Subject is an adult, but he is without spouse or issue.
- ii. On 22/07/2016 the Subject was involved in a road traffic accident along the Nanyuki/Nyeri highway. He suffered in the accident severe head/brain injuries for which he was hospitalized at **Nanyuki Teaching and Referral Hospital** and **Kenyatta National Hospital** for a long time.
- iii. As a result of the said injuries the Subject is now severely incapacitated both mentally and physically, and is confined to a wheel-chair.
- iv. The Subject is thus unable to take care of himself or his affairs as a result of his said mental and physical incapacity.

5. The court had occasion to observe the Subject when he was brought to court on 12/02/2020. Although he was able to answer a few simple introductory questions, it was quite apparent that he cannot take care of himself and his affairs.

6. This court is therefore satisfied that the Subject is suffering from a mental disorder (as a result of the injuries he suffered in the accident) to

such an extent as to be incapable of managing his affairs.

7. I will therefore grant prayers (a) and (b) of the petition as prayed. Prayer (c) is misconceived, in that there are rules under the ***Civil Procedure Rules*** for the filing of suits on behalf of persons under incapacity which ought to be followed. That prayer is hereby refused. Orders accordingly.

DATED AND SIGNED AT NANYUKI THIS 11TH DAY OF MARCH, 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 12TH DAY OF MARCH, 2020