



**In re LWM (Subject) (Miscellaneous Application E097 of 2024)
[2024] KEHC 9455 (KLR) (Family) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E097 OF 2024
SN RIECHI, J
JULY 31, 2024**

**IN THE MATTER OF AN APPLICATION/PETITION UNDER
SECTIONS 2,26,27,28 OF THE MENTAL HEALTH ACT CAP 248**

IN THE MATTER OF LWM

IN THE MATTER OF

**MWMN 1ST PETITIONER
EMM 2ND PETITIONER**

JUDGMENT

1. Before this Court is a petition dated 20TH May 2024 in which the petitioners seek orders that Petitioners be appointed as guardians and managers of affairs of the person known as LWM . The Petitioners are biological daughters of the subject.
2. The Petition is supported by affidavits of Petitioners sworn by the petitioners on even date. The petitioners reiterated averments in each other affidavit.
3. The petitioners briefly stated that they are daughters of the subject. The Subject has been battling with a neurocognitive disorder and dementia, causing her to be forgetful, disorientated and display bizarre behaviours. The petitioners averred that her symptoms have been progressing over the years, where she has been forgetting conversations, confusing her children’s names, misplacing money and having difficulties recalling past events
4. The Petitioners averred that since November 2023, the Subject has been treated at Chiromo Lane Medical Center for the stated ailments. The Doctors had laboratory tests and a C.T. scan done on the Subject, which led to the diagnosis of neurocognitive disorder as well as dementia.



5. The Petitioners averred that Dr Elizabeth Imalingat, among other doctors, has treated the Subject and came up with a Medical Report dated 6th May 2024 that state;
- (a) The Patient has been on follow-up at their facility since November 2023 with a diagnosis of neurocognitive disorder and dementia
 - (b) The Patient has been on medication to reduce symptom progressions and restore functioning to the best possible extent.
 - (c) The Subject's memory, judgement and reasoning have been affected and will continue to deteriorate as her diagnosis is of a progressive neurodegenerative disorder.
 - (d) While she is on medication, her symptoms will continue to progress, further deteriorating her mental health, causing more anxiousness, forgetfulness and bizarre behaviours.
 - (e) The Report concluded thus:

"It is our opinion that she is not mentally FIT to carry out certain transactions without assistance."

In support the petitioners annexed the medical report to the petition.

6. The Petitioners state that as a result of the above-mentioned mental conditions of the Subject, she is unable to make sound decisions or act reasonably. She is also incapable of dealing with her estate. The Petitioners state further that as a result of the above mental complications, the Subject is incapable of taking care of herself or dealing with the estate and continues to receive medical treatment and attention by qualified nurses and is under constant medical supervision.
7. By consent this matter was canvassed by way of viva voce evidence on the online platform. The 1st Petitioner MWMN in her testimony reiterated averments in her affidavit. She testified further that the subject was married Morris Maina who is deceased. They have 5 children namely Florence Wanjiru Maina-Deceased, MWMN ,AM ,DM and EM.
8. The Petitioner averred that the subject is 76 years old. The subject is started to show signs of dementia in November 2023. She testified that she took her to Dr.Emaligat at Chiromo Medical at Lavington.
9. The petitioners averred that Doctor diagnosed her with dementia. She is suffering from Memory loss and it makes her anxious. She cannot go to the bank. The Petitioner stated the subject used to work in the U.S. as a nurse. She now stays in Kahawa West. She stays with their younger sister EM.
10. The petitioner averred that she has 7 property in Nairobi and Thika. One is a rental property and she wants to sale it. The petitioner stated that she has not consulted AM and Daniel Maina. She proposed that MWMN and EM to be appointed as guardians.
11. EMM the 2nd Petitioner testified that she support the Petition.
12. Dr Elizabeth Imudu Imalingat testified that she examined the subject with complaint of being restless and forgetfulness. It was gradually worsening. She testified that she sent her to CTS Scan and she diagnosed her with having a brain disorder. She stated the subject has dementia and is on medication. She confirmed that she prepared a report dated 6.5.2024.
13. The subject LWM testified that she is 70 years old and a retired teacher. She was employed by TSC and she took early retirement. She stated that she went to America. She is her first born. Mwangi is her 2nd born and last born is Mumbi and they stay together in Kahawa.



14. AM Maina testified that the subject is his mother. He stay in Atlanta Goergia. He stated he met their mother in December 2022,he left in January 2024. He stated he visited her every other month and she was fine and healthy. She was forgetful and you have to constantly remind her. She was able to manage herself. She will need someone to take her to the Doctor. She canot make decisions on investments. He stated they want all of them to included in management. He stated he suggest that Alex Maina,Daniel Muriuki Maina,Mercy Wangoi,EMM to be appointed jointly.
15. Daniel Muriuki Maina testified that he object to appointment of petitioners alone and he propose to have all the four of them appointed as guardians.
16. The court was able to observe the subject on the online platform and the court tried to engage the subject. The subject appears to be forgetful.
17. I have carefully considered this application, the Affidavit filed in Court as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs as follows:-

“Order for custody, management and guardianship

- (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.” [own emphasis]
9. The Petitioners have sought to be declared as Guardians and Managers of the subject. To merit the above orders the Petitioners must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the Patient is incapable of managing her own affairs.
 10. The Petitioners stated that the subject has Dementia and she is incapable of managing his affairs. The petitioners produced Medical Report dated 6.5.2024 prepared by Dr.Elizabeth Imalingat and in the report it is stated inter alia that:-

“.....this disorder significantly affect memory,judgement and reasoning”
 11. Based on the material availed to this Court, I am satisfied that the Subject suffers from a mental illness under Section 26 of the *Mental Health Act*. I find merit of this petition dated 20th May 2024 and



make orders as follows;The court hereby appoint jointly Alex Maina ,Mercy Wangoi and EMM as the Guardians and Managers of affairs of the subject’s estate.

12. In accordance with the provisions of Section 33 of the Mental Act, the petitioners will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

DATED AT NAIROBI THIS 31ST JULY, 2024.

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S. N. RIECHI

JUDGE

