



REPUBLIC OF KENYA



**In Re SD Wachira Munhe wema (Miscellaneous Application E127 of 2023)  
[2024] KEHC 9779 (KLR) (Family) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9779 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**MISCELLANEOUS APPLICATION E127 OF 2023**

**SN RIECHI, J**

**JULY 31, 2024**

**IN THE MATTER OF**

**ROSE WANGUI WACHIRA ..... 1<sup>ST</sup> PETITIONER**

**ANNE WACHUKA WACHIRA ..... 2<sup>ND</sup> PETITIONER**

**JUDGMENT**

1. Before this Court is a petition dated 29<sup>th</sup> May 2023 in which the petitioners seek orders that Petitioners be appointed as guardians and managers of affairs of the person known as S.D.WACHIRA MUNUHE MWEMA. The Petitioners are the wife and biological daughter of 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. The petitioners briefly stated that they are the wife and daughter respectively of S.D. WACHIRA MUNUHE MWEMA now suffering from Dementia.
3. The Petitioners averred that 1<sup>st</sup> Petitioner and the subject (formalized their marriage in 1991 at the P.C.E.A Bahati Church, Nairobi and were blessed with five children namely; Jayne Njeri Yobera, Humphrey Munuhe Wachira (Deceased), Catherine Muthoni Wachira (Deceased), Grace Waguthi Wachira and Anne Wachuka Wachira.
4. The Petitioners stated that the subject with the joint effort of the 1<sup>st</sup> Petitioner during their marriage acquired the following properties currently registered in the name of the subject;  
NAIROBI/BLOCK126/336 Approximately 1.08 Ha  
NAIROBI/BLOCK126/337 Approximately 1.08 H  
KIRIMUKUYU/KIRIA/1444 Approximately 0.597 Ha  
Plot No. Block B 269 Ng'undu Farmers Co-op Society Ltd



Plot No. Block B 270 Ng'undu Farmers Co-op Society Ltd

Plot No. Block B 271 Ng'undu Farmers Co-op Society Ltd

Plot No. Block B 272 Ng'undu Farmers Co-op Society Ltd

Parcel No. NBI/BUL 126/532/292 Ng'undu Market Development Project

Parcel No. NBI/BUL 126/532/293 Ng'undu Market Development Project Parcel No. NBI/BUL 126/532/294 Ng'undu Market Development Project

Parcel No. NBI/BUL 126/532/295 Ng'undu Market Development Project Parcel No. NBI/BUL 126/532/296 Ng'undu Market Development Project

Parcel No. BLOCK LO10 Ng'undu Market Development Project

5. The Petitioners averred that the subject is currently suffering from Senile Dementia due to old age such that he is incapable of managing his affairs and those of his properties and the 1<sup>st</sup> Petitioner is fending for him in terms of looking after the properties, nursing him and generally taking care of him.
6. The Petitioners averred that they are aware that they are aware that the subject had had subdivided property known as Nairobi BLOCK 126/336 and Nairobi BLOCK126/337 and sold or allocated the subplots to various allottees, namely:



PLOT NUMBER	NAME/S
PLOT 336/1	
336/1	Anne Wachuka Wachira
336/2	Catherine Wambui Kinuthis
336/3	James Ruoro
336/4	Mary Wanjiku Njihia
336/5	Rahab Njeri Njihia
336/6	Njeri Wanjau
336/7	Michael Kamu Mwaura
336/8	Alex Karanja & Catherine Wairimu
336/9	Priscilla Wangari Kamithi
336/10	Paul Mugi Mbogo
336/11	Gladys Wanjiku Wambiri
336/12	Felix Kihia Kibanya
336/13	Daniel Kibugi Nga'nga
336/14	Anne Wachuka Wachira
337/1	Plot 337/1 Grace Waguthi Wachira
337/2	Olive Wairimu Wanyoike in trust for Dennis Wachira Munuhe
337/3 and 4	Peter Muriuki Wachira
337/5	Samuel B Onsoti
337/6,8 and 9	Mary Muthoni Kamotho
337/7	Mrs.Rose Wangui Wachira
337/10 and 11	Martin Ngunu Mureithi



337/12	Joshua Wamutaro Gachau and Monica Njoki Gathirwa
337/13	John Githinji and Christine Nyawira Wachira
337/14	Ian Mwangi Njoroge
337/15(Homestead)	Mr.S.D. Wachira Munuhe Mwema

7. The Petitioners averred that the subject herein is now unable to transfer the subplots to the various allottees who are legitimately entitled to the plots. That the situation has caused undue anxiety to the allottees and there is a possibility of institution of precipitate proceedings against the subject.
8. The Petitioners stated the subject has been ailing for quite a long period of time and he is currently suffering from Senile Dementia due to old age to the extent that he is incapable of managing his affairs of his properties and his personal affairs. The petitioners referred to annexed and marked "RW4" copies of medical report from Hope Medical Clinic and Head
9. The Petitioners stated the subject is eighty (80) years old and incapable of making any sound judgment on anything including inability to identify his family members/dependants. The Petitioners therefore are praying to be appointed as guardians of the said subject and managers of the estate of the subject. The Petitioners averred that the petition is consent to by all parties as evidenced by attached to the petition a copy of the consent.
10. The Petitioners averred that currently the subject is under 1<sup>st</sup> Petitioners care who is taking care of all his personal affairs hygiene, nursing and generally caring for him due to his present condition.
11. By consent this matter was canvassed by way of viva voce evidence on the online platform.
12. Rose Wangui Wachira 1<sup>st</sup> Petitioner in her testimony reiterated averments in her affidavit. She testified further that the subject is 83 years old and she is 78 years old. He has been well until 3 years ago when he started ailing. The Petitioner stated she is told it is called dementia. She stated further that they have taken her to Kenyatta University hospital. The 1<sup>st</sup> Petitioner stated that the subject was been fed through a tube. He sometimes forget her name and he has property in Kamulu, land in Nyeri and Pension benefits from TSC.
13. Ann Wachuka Wachira the 2<sup>Nd</sup> Petitioner she support the Petition. Grace Waguthi Wachira also support the Petition.
14. The court was able to observe the subject on the online platform and the court tried to engage the subject. The subject appears disoriented .
15. 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]
16. 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.
17. The Petitioners stated that the subject has been ailing for a long period and he currently suffer from Senile Dementia and he is incapable of managing his affairs. The petitioners produced Medical Report dated 15/01/2021 from Hope Medical Clinic in the report it is stated inter alia that:-
- “Presenting problem: Non Cooperative.Dementia,Mood Swing,confused.....”
18. 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 29<sup>th</sup> May 2023 and make orders as follows;
1. The court hereby appoint jointly;
- a. Rose Wangui Wachira
- b. Anne Wachuka Wachira
- as the Guardians and Managers of affairs of the subject’s estate.

**DATED AT NAIROBI THIS 31ST JULY, 2024.**

**S. N. RIECHI**

**JUDGE**

