



**In re SNN (Miscellaneous Application E024 of 2024)
[2024] KEHC 10282 (KLR) (Family) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10282 (KLR)

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

MISCELLANEOUS APPLICATION E024 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 AN APPLICATION FOR ORDERS OF GUARDIANSHIP OF SNN

IN THE MATTER OF

BGM PETITIONER

JUDGMENT

1. Before this Court is an application dated 12th May 2024 in which the petitioners seek orders;
 - i. That SNN be declared a person with disability as defined under the Persons with Disability Act.
 - ii. That BGM be appointed as Guardian of SNN
 - iii. That the Guardian be authorised to manage and access the bank accounts of SNN held with the Mwalimu Sacco Account NO. 3010xxxxxxx, Equity Bank Account NO. 1110xxxxxxx, National Bank Account NO. 01243xxxxxxx and Cooperative Bank Account and to withdraw such amounts from the said bank account as may be sufficient to settle the current ongoing medical bill of the Kenyatta University Teaching, Referral & Research Hospital together with her daily hospice care
 - iv. That the Guardian be authorised to manage all the properties, bank accounts motor vehicles and other assets of SNN.
 - v. That there be no orders as to costs.



2. The application is supported by the annexed statements of the petitioner and supported by statement of VMM.
3. The Petitioner briefly stated that the subject was her mother and around 2023 she experienced major stroke which led to her being incapacitated and was referred to Kenyatta University Hospital.
4. The Petitioner stated she was admitted and also taken to ICU after experiencing severe neural complications and breathing problem.
5. The Petitioner stated that from the stroke the subject experienced Neural damage that affected her brain functionality and also her lungs whereby she has difficulty in breathing and is at the moment bedridden and unable to do anything without assistance.
6. The Petitioner stated that it is urgent that the Petitioner be appointed as guardian to manage her affairs including access to her bank accounts and management of her other assets and in particular to be able to access her bank accounts Mwalimu Sacco Account No.3010xxxxxxx, Equity Bank Account No. 1110xxxxxxx, National Bank Account No. 01243xxxxxxx and Cooperative Bank Account to enable them draw such funds as may be necessary to continue with the 24hr Nurse care. This matter was
7. The matter was canvassed by way of viva voce evidence on the online platform. The Petitioner testified that the subject is her mother and she is 58 years old. She is married to JM. He is 73 years old. She stated that she pray for guardianship to access her accounts. RKM testified that the subject is her husband. Their money would be used for her expenses and also pay the care giver. The Petitioner stated the subject was a teacher at Kirenje girls. She had stroke which affected her brain. The subject cannot speak. The subject has 3 children namely BGM, SVM and AW.
8. The Petition is supported by SVM and AW.
9. The court was able to observe the subject on the online platform and the court tried to engage the subject. The subject was in her house. She is unable to speak.
10. 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]

11. The Petitioner have sought to be declared as Guardian and Manager 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.
12. The Petitioner testified that the subject has suffered stroke and this has affected her brain function and she has not attained full functionality and she is unable to walk and talk nor comprehend her surroundings. The petitioner stated the subject was admitted to Kenyatta University Hospital for treatment. The Petitioner produced Medical Report dated 30th November 2023 from Aga Kenyatta University Teaching,Refferal & Research Hospital prepared by Dr.Victor Njom,Director Clinical Services.
13. 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 appilication dated 12th May 2024 and make orders as follows;
 1. The court hereby appoint BGM as the Guardian and Manager of affairs of the subject’s estate.
 2. The Petitioner BGM is hereby authorized to access the bank accounts of SNN(subject) held with the Mwalimu Sacco Account No. 3010xxxxxxx, Equity Bank Account No. 1110xxxxxxx, National Bank Account No. 01243xxxxxxx and Cooperative Bank Account and to withdraw such amounts from the said bank accounts as may be sufficient to settle the current ongoing medical bill of the Kenyatta University Teaching, Refferal & Research Hospital together with her daily hospice care

DATED at NAIROBI this 31st July, 2024.

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S. N. RIECHI

JUDGE

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