



**In re Affairs of the Estate of JMK (Petition 031 of 2023)
[2024] KEHC 10075 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION 031 OF 2023
A MSHILA, J
JULY 26, 2024
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248, LAWS OF KENYA
AND
IN THE MATTER OF JMK AN ELDERLY PERSON
SUFFERING FROM GUARDED PROGNOSIS
AND
IN THE MATTER OF AN APPLICATION BY LWM TO BE APPOINTED
AS GUARDIAN OVER THE AFFAIRS OF THE ESTATE OF MR. JMK**

IN THE MATTER OF

LWM 1ST PETITIONER

OWM 2ND PETITIONER

JUDGMENT

Introduction

1. The Petition was brought by way of Certificate of Urgency under the provisions of Sections 26 and 28 (1) (2) of the *Mental Health Act*, Cap 248 Laws of Kenya and all other enabling provisions of law); and the orders sought by the Petitioners are as follows;
 - i. Spent
 - ii. That this Honourable Court may be pleased to adjudge JMK (‘subject’) to be a person suffering from mental disorder as defined under Section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya;



- iii. This Honourable court be pleased to appoint the Petitioners herein as the guardians of the affairs of the subject, Mr. JMK; in accordance with the *Mental Health Act* with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs of the subject.
 - iv. This Honourable Court be pleased to appoint the Petitioners herein to be the managers of the estate of the subject, Mr. JMK with special permission pursuant to Section 27 (a) of the *Mental Health Act* to charge, sale, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the Subjects Estate.
 - v. The costs of the Petition be provided for.
2. Directions were given that the Chiefs Letter be availed together with the relevant consents; and the subject and his doctor be in attendance at the hearing of the application; at the hearing hereof the Petitioners relied on the Supporting Affidavit made on the 22nd June, 2023 and on the medical evidence adduced by Dr. Jeremiah Gitau; hereunder is a summary of Petitioner’s case;

Petitioners Case

- 3. The Petitioners relied on the grounds on the face of the Petition and the Supporting Affidavit made by both Petitioners, who are the wife and the daughter of the subject; they have also annexed the consents of the children of the subject authorizing them to look after the subject and manage his affairs
- 4. The Petitioners have actual and physical custody of the subject and take care of him; that the subject is also not able to look after himself and is currently bed-ridden and only moves around with the use of a wheelchair and the assistance of an aide; further he has no capacity to manage his property nor manage his financial affairs, comprehend transactions, or protect his interests nor does he have the free will to deal with his property;
- 5. Dr. Jeremiah Gitau a Primary Care Physician who runs a company called Daktari Msafiri Limited and take care and see patients from home; the subject had been in the critical care unit at AAR under the care of Dr Naomi Kerubo Omaroro who had prepared the undated Medical Report which report was prepared and produced into court by the said doctor and is marked as “PEXh.I”; The doctor had started offering home based care and attending the subject from March, 2024; he visited the subject two times in a month and the reviews are conducted at the subjects home;
- 6. Upon examining the subject the Doctors’ assessment was that he had a guarded prognosis which in simple language means that the subject is in a critical condition and is unable to do anything for himself; The subject is unable to communicate, he is not able to eat on his own and is fed with a peg tube; his evidence was supported by an undated medico-legal report on the treatment of the subject.
- 7. The witness formed an opinion that the subject suffers from Dementia; the subject is aged almost Eighty Four (84) years and his underlying condition is likely to worsen over time with little chance of recovery and he declared him to be suffering from a mental disorder;
- 8. The Petitioners are apprehensive that given the subject’s current mental status the estate may be wasted and stands to suffer irreparable loss; their prayer is that the orders sought be granted; that they both be appointed as his legal guardians and also be appointed to manage his estate so as to protect his proprietary interests from alienation.

Issues for Detemination

- 9. After reading the Petitioners averments and hearing the doctors evidence this court has framed only one issue for determination;



- i. Whether the subject has a mental disorder requiring the appointment of a guardian and a manager of his estate;

Analysis

10. The application is premised under the provisions of the *Mental Health Act* which governs the handling of persons suffering from mental disabilities;
11. The Petitioners deposed that the subject was suffering from mental impairment and was not capable of taking charge of his affairs;
12. There is a presumption of law that all persons are sane until proved otherwise; the burden of proof to controvert this presumption was upon the Petitioners to demonstrate that the subject was indeed mentally challenged; the Petitioners relied wholly on the evidence of Dr. Jeremiah Gitau and on the undated annexure produced and marked as “PEXh.1”;
13. At the hearing hereof Dr. Jeremiah Gitau the doctor was in attendance and gave evidence on the treatment of the subject; he relied on the report prepared by Dr. Naomi Kerubo Omaroro which report was produced into court as PEXh.1;
14. The applicable law is found at Section 26 (1) of the *Mental Health Act* which empowers this court to make orders for the management of a person suffering from a mental disorder; and for a guardian of the subject who can either be a close relative or a person the court determines to be suitable;
15. Upon perusal of the annexure prepared by the said Dr. Jeremiah Gitau this court is satisfied with this doctor’s area of specialty of home based critical care; and from his evidence it is apparent that he was not the initial doctor treating the subject for his condition but stepped in after his discharge from Hospital; the court notes that the application is uncontested and that it is supported by satisfactory medical evidence on the subject’s mental health;
16. From the material placed before it and upon examining the subject who was lying on the bed totally unresponsive this court is satisfied that the subject has a mental disorder and is not capable of managing his own affairs; this court is also satisfied that he requires a guardian and a manager to manage the his estate;

Findings and Determination

17. For the foregoing reasons this court makes the following findings and determinations;
 - i. The subject is found to be a person who requires to be managed as he has a mental disorder; this court finds that this is a suitable case for the issuance of the orders sought;
 - ii. Before final judgment is granted the Petitioners are directed to provide an inventory of all known assets of the subject
 - iii. Mention on 1/10/2024 for compliance
 - iv. There shall be no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 26TH DAY OF JULY, 2024.

A. MSHILA

JUDGE



In the presence of:-

Mourice – Court Assistant

Kinuthia -for the Petitioners

