



In re MCM (A Person Suffering from Mental Disability) (Miscellaneous Case E138 of 2024) [2024] KEHC 10481 (KLR) (Family) (29 August 2024) (Judgment)

Neutral citation: [2024] KEHC 10481 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS CASE E138 OF 2024

H NAMISI, J

AUGUST 29, 2024

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA

AND

IN THE MATTER OF M.C.M (PERSON SUFFERING FROM MENTAL DISABILITY)

IN THE MATTER OF

MCM SUBJECT

AND

KNM PETITIONER

JUDGMENT

1. The Petition before the Court was brought by KNM, being the sister to the subject, MCM. MCM is a 39-year-old man residing in Donholm with his sister, the Petitioner. The Petition which is brought under sections 26 (1), 27 and 27 of the [Mental Health Act](#), is supported by an Affidavit sworn by the Petitioner, as well as annexures thereto. In the Affidavit, the Petitioner depones that she is the primary care giver to MCM, who suffers from intellectual and convulsive disorder, rendering him incapable of managing his affairs.
2. At the hearing of the Petition, the Petitioner testified that there is no other living sibling or parent to care for MCM. It was her testimony that MCM suffers from convulsions and is forgetful. The convulsions began in 2017 after their mother passed on. The subject has been treated at [Particulars Withheld] Hospital, where he was diagnosed with Intellectual Disability. The subject was examined by Dr. Kamunge and a report dated 8th August 2022 was submitted to the National Council of Persons with Disability (Annexure KNM1).



3. Additionally, the Petitioner presented a letter dated 8th August 2022 from Dr. Kamunge to the [Particulars Withheld] Bank informing the Bank of the subject's condition. The Petitioner also presented a Medical Assessment Report for Persons with Disability from the Ministry of Health.
4. I had an opportunity to speak to the Subject and I am persuaded that this Petition is properly before the Court.
5. Section 26 of the said Act states that:
 - 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
6. I have also considered all the material placed before me. It is apparent that the subject suffers from a mental disorder and that he is incapable of managing his own affairs, although he is not dangerous to himself.
7. The definition in Section 2 of the Act provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
8. In the circumstances, the court makes a finding that the subject is a person suffering from a mental disorder within the definition of the Mental Health Act and hereby appoints the Petitioner as the subject's guardian. Additionally, the court appoints the said Petitioner as general manager of the estate of the subject. For the avoidance of doubt, such manager's general powers will not include the power of alienation, sale or transfer of the subject's immovable assets but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the subject in respect of any of the assets forming part of his estate.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

...Muthuri.....for the Applicant

