



**In re Application on Behalf of PNM (Petition E072 of 2024)
[2024] KEHC 10407 (KLR) (Family) (23 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PETITION E072 OF 2024
SN RIECHI, J
AUGUST 23, 2024
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248
IN THE MATTER OF AN APPLICATION ON BEHALF OF PNM**

IN THE MATTER OF

**CWM 1ST APPLICANT
CMN 2ND APPLICANT**

JUDGMENT

- 1 The Petitioner CWM is the wife of the subject PNM. They married in 1970 and they have 4 children: - PW, CG, R and CMN. The petitioner is 78 years old and so is the subject. She testified that the subject became unwell in 2018 and in 2019 he was diagnosed with Alzheimer’s and Dementia. He has become forgetful and does not recognize even her or the children. He is being attended to by Dr. Sokhi at Aga Khan Hospital Nairobi. She testified that the subject has properties in Karen, Kisumu, Nyandarua, Upper Hill and Ongata Rongai. As a result of the illness the subject is not able to take care of his daily activities and hence the filing of this petition for appointment of guardian and manager of his estate. She prays that she CWM and CMN be appointed joint guardians and managers of the subject and his estate.
- 2 The petition is supported by the Children of the Subject: - CMN, PWM, CGM and RWN. They all gave evidence and confirm the condition of the subject and their support to the petition.
- 3 On 15th May 2024 Dr. Dilraj Singh Sokhi a consultant Neurologist at Aga Khan Hospital testified that the subject has been within his care for 5 years. He diagnosed the subject as suffering from Alzheimer’s disease. In his opinion the subject is not able to manage his own affairs. He produced the 2 medical reports in respect of the subject.



4 In the medical report dated 17th July 2019 he indicates:0

“Mr. M maintained he did not have any medical problems and usually refused to come for a review in clinic so was not keen to stay much longer. We managed to perform a Montreal Cognitive assessment and he scored 7/30, which shows significant global cognitive dysfunction. Shortly after his appointment he was admitted acutely with pneumonia during which we managed to get an MRI of his brain and this confirmed that he has got temporal lobe atrophy in keeping with Alzheimer’s disease. He was treated for a typical pneumonia process and I also commenced quetiapine for his behavior and he was calmer when discharged 3 days later.”

In a further report dated 21st March 2024 the doctor stated:-

Further to my report of 2019 (attached) I am writing to confirm that I have continued to see Mr. M in the neurology clinic with his family, the last review being December 2023. As expected, he has continued to deteriorate with his cognitive and behavioral functions despite maximal medical therapy and the family have instituted carers to manager him.

He continues to have lack of cognitive and mental capacity to make his own decisions and my advice to the family remains as per my 2019 letter.”

5 Section 2 of the [Mental Health Act](#) 2022 defines Mental illness as:-

person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes:

- (a) a person diagnosed with alcohol or substance use disorder; and
- (b) a person with suicidal ideation or behavior.”

6 From the evidence of the doctor, the subject is suffering from Alzheimer disease. Alzheimer is a brain disorder that slowly destroys memory and the thinking skills and eventually the ability to carry out tasks. The symptoms include forgetting recent events, forgetting people or objects, poor judgment or difficulty in decision making. This may lead to disorientation in time and place. These symptoms continue worsening with time leading to loss of cognitive functions.

7 In respect of the subject, Dr. Sokhi confirms that there was deterioration in the symptom and subject ability to not only make decision but also taking care of himself. This court saw the subject on the virtual platform and he seemed aggressive and incoherent. Considering the evidence I am satisfied and so find that he subject PNM is a person who is suffering from a mental illness.

8 Section 26 of the [Mental Health Act](#) provides for the care, guardianship and management of the subject’s estate. It provides:-

Section 26

1. An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by:
 - (a) a supporter of the person with mental illness; or
 - (b) the representative of the person where the person with mental illness has not appointed a supporter.



2. An application under subsection (1) shall be submitted together with affidavit setting out:
 - a. the grounds upon which the application is made;
 - b. the full particulars as to the property and relatives of the person to whom it relates; and
 - c. a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
3. A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the:
 - a. person in respect of whom the application is made; or
 - (b) where an application is made by a supporter to the representative of the person with mental illness. (4) Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of Ae court, notice of the application should be given.

9 This court has power to appoint guardian and managers of the estate while the court has discretion as to who to appoint. The criteria for selection is based on proximity of the applicant to the subject.

10 In this case the petitioner is the wife of the subject. She proposes that she be appointed jointly with their son as guardians and managers. I am satisfied of the family relationship proximity to the subject and find that they are already taking care of the subject. I therefore appoint CWM and CMN jointly as guardians and managers of the estate of PNM a person with mental illness.

11 The duties of the managers are as stipulated in Section 27 of the Act as:-

- 27.(1) The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including—
 - (a) an order making provision for the maintenance of the person;
 - (b) an order making provision for the maintenance of members of the person’s immediate family who are dependent upon the person; and
 - (c) an order making provision for the payment of the person’s debts.
- (2) The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
- (3) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
- (4) The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.
- (5) Within fourteen days of the Gazette Notice under subsection (4), any person may lodge an objection to the person appointed as manager.

In their duties they must 28 with Section 29 of the Act.



- (1) Where a manager is appointed under this Part, the court may, upon considering the nature of the property whether movable or immovable, and subject to subsection (2), make such orders as the court may consider necessary for the management of the estate by the manager.
- (2) The manager shall not, without the approval of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
 - (b) lease any such property for a term exceeding five years; or
 - (c) invest in any securities other than those authorized under the *Trustee Act*.
- (3) A manager shall not invest any funds or property belonging to the estate managed under this section—
 - (a) in any company or undertaking in which the manager has an interest; or
 - (b) in the purchase of immovable property under the authority of section 4 (1) (d) of the *Trustee Act* without prior consent of the court.
- (4) A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.
- (5) Every conveyance or other instrument made pursuant to an order of the court under this Part shall be valid.

“29. Inventory of property

1. A person appointed to be a manager of the estate of a person with mental illness under this Part shall, in the prescribed form, within six months of the date of appointment, deliver to the court and to the Public Trustee an inventory of—
 - a. the property belonging to the person in respect of whose estate the manager has been appointed;
 - (b) all sums of money, goods and effects the manager receives on account of the estate; and
 - (c) a statement of debts owed by or due to such person with mental illness.
- (2) Upon payment of such fee as may prescribed, the supporter, the representative of a person with mental illness or any interested person may inspect and obtain a copy of any inventory, statement or account delivered to the court and to the Public Trustee pursuant to subsection (1).
- (3) The Public Trustee shall report annually to the Cabinet Secretary and the Board on all accounts under subsection (1).
- (4) Where a person, by petition to the court, disputes the accuracy of any inventory or statement of any annual account made under this section, the court may summon the manager, inquire summarily into the matter and make such orders as it considers appropriate.”



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF AUGUST
2024

S N RIECHI

JUDGE

