



CJH (To be Appointed Guardian over the Affairs and Manager of the Estate of the said Heebels w/v VOS Ortrun) & another (Miscellaneous Application E245 of 2024) [2024] KEHC 15287 (KLR) (Family) (29 November 2024) (Judgment)

Neutral citation: [2024] KEHC 15287 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E245 OF 2024

PM NYAUNDI, J

NOVEMBER 29, 2024

**IN THE MATTER OF SECTION 26 AND 27 OF THE
MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**

AND

**IN THE MATTER OF HEEBELS W/V VOS ORTRUN
(PERSON SUFFERING FROM MENTAL DISABILITY)**

IN THE MATTER OF

**CJH(TO BE APPOINTED GUARDIAN OVER THE AFFAIRS AND
MANAGER OF THE ESTATE OF THE SAID HEEBELS W/V VOS
ORTRUN) 1ST PETITIONER
IEF 2ND PETITIONER**

JUDGMENT

1. The Applicant filed Application dated 23rd October, 2024 and presented under Sections 1A, 1B, 3, 3A of the Civil Procedure Act and Sections 26, 27, 28, 29 and 30 of the Mental Health Act, Cap 248 Laws of Kenya, seeking that she be appointed as a Legal Guardian for H w/v VO the Application is supported by her Affidavit as well as that of 2nd Petitioner Affidavit.
2. The Petitioner stated that the subject is suffering from mental health. It was noted in the year 2024 that her condition deteriorated on account of her old age (94 years) and the she suffers from senile dementia which has prevented her from discharging her affairs and protecting her interests.
3. CJH (1st Petitioner herein) stated that she lives in Tigoni where she is a neighbor and a long-term friend of the subject for 30 years. She has presented the application to enable her manage the affairs of the



subject. The Subject's hands are immobilized, she cannot for instance access her bank accounts as she is unable to sign cheques.

4. IEF (2nd Petitioner herein) is the subject's only daughter who is a British Citizen and currently domiciled and working for gain in France. She acknowledged that her mother (subject herein) is unable to manage her affairs on account of her illness. She supports the 1st Petitioner being granted an Order of Guardianship over the affairs of the subject and management of the subject's estate as she has not been in Kenya in over 25 years and is not presently able or willing to come back to Kenya to take care of her.
5. It's the 1st Petitioner's averment that on two separate occasions, the subject refused to be admitted to the Aga Khan University Hospital despite her being extremely ill and requiring urgent medical intervention. She further stated that the subject's mental capacity was assessed and documented by Dr. Hetal Shah.
6. Upon assessment by the Dr. Shah, the report indicated that the subject exhibited significant difficulties in cognitive functions regarding her health wellbeing and finances.
7. Further, the medical report indicated that the subject could not understand, retain, weigh up, and communicate decisions regarding her affairs. She is also physically impaired in terms of motor skills and unable to sign documents.
8. She further averred that the subject requires specialized care and assistance and care to perform routine or normal day to day functions and is now under the care and custody of her alongside the 2nd Petitioner, where they foot the subject's daily expenses and medical expenses which add up to approximately Kshs.382,395.00 per month.
9. The Court interviewed the subject and observed that the Subject was confined to the bed.
10. The 1st Petitioner, stated that being appointed as legal guardian and manager of the estate of the subject will have authority to handle the subject's affairs including payment of her continued medical and home nursing care, maintenance and daily upkeep and manage the subject's estate.
11. The Application is supported by the reports of Dr. Jilna Raja dated 15th February, 2024 and Dr. Hetal Nilesh Shah dated 21st October, 2024. The reports confirmed that the subject was diagnosed with senile Dementia.
12. The Doctor surmises the Subject's condition as follows-

The subject exhibited significant difficulties in cognitive functions especially with matters regarding her finances. The subject could not understand, retain, weigh up and communicate decisions regarding her finances and how she manages them. As a result, the subject is unable to comprehend the information presented to her or to appreciate the consequences of her decisions regarding her finances. Furthermore, the subject is also physically impaired in terms of fine motor skills and is unable to write which hinders her from signing any documents or cheque books. She has neurological deficits. Therefore, recommending that the subject's care be made with consideration for her best interests.

Determination

13. The provisions of the [Mental Health Act](#) ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The [Mental Health Act](#), at Section 26 provides 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.
14. I have considered the evidence adduced in Court by the 1st Petitioner in support of the application for appointment as personal representative and I am persuaded that she is best placed to provide adequate care to the subject and ensure his wellbeing. I have also noted her signed consent dated 23rd October, 2024, as well as medical evidence from doctors all of which confirm that the Subject is not in a position to independently manage her affairs.
15. It is in the subject's best interest that the Applicant is appointed as his personal representative to ensure that funds are available for his upkeep and further medical attention in the future.
16. In the circumstances the Application dated 23rd October, 2024 is allowed and with the following orders:
- a. H w/v VO is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
 - b. CJH is hereby appointed under section 27 of the [Mental Health Act](#) as the Guardian of H w/v VO.
 - c. CJH is hereby appointed manager of the estate of H w/v VO under Section 28 of [Mental Health Act](#) to manage her estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 - d. Pursuant to this appointment CJH shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging H w/v VO.
 - e. In accordance with Section 27(4) of the [Mental Health Act](#), 2022 the Applicant shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate H w/v VO.
 - f. As Manager of the Estate of H w/v VO the Applicant may dispose of the property only with the sanction of the court.
 - g. The matter will be mentioned before court on Mention on 13th March, 2025 to confirm compliance.
 - h. Costs to be met out of the Estate of the Subject.



SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29th DAY OF NOVEMBER, 2024.

P. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Ngethe Advocate for Petitioner

