



REPUBLIC OF KENYA



In re Appointment of Guardian Ad Litem for MWN (Miscellaneous Application E242 of 2023) [2024] KEHC 15299 (KLR) (Family) (29 November 2024) (Judgment)

Neutral citation: [2024] KEHC 15299 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS APPLICATION E242 OF 2023

PM NYAUNDI, J

NOVEMBER 29, 2024

AN APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM FOR MWN

JUDGMENT

1. Vide Originating Summons dated 30th October 2023, the applicant herein FWNK, presented under the *Judicature Act*, Cap 8 and the High Court (Practice and Procedure Rules) Part 1 Rule 3, the applicant seeks the following orders-
 1. That MWN is the account holder of Account Number 20001xxxxx, HFC Bank, Buru Buru Branch
 2. That the said MWN has been suffering from a condition known as Organic disease of the brain and in the circumstance, she has low capacity to comprehend issues, has poor memory and lacks sound judgment and reasoning.
 3. That any person suffering from the said condition is considered as being of unsound mind or mental infirmity and in the circumstance, she lacks the capacity to access her bank account.
 4. That this application has been made without any unreasonable delay.
2. The Application proceeded by way of viva voce. PW1, FWNK is a daughter to the subject. The subject suffers from mental illness. She is unable to manage her affairs. She has been diagnosed to be suffering from dementia. The other family members have nominated her to be the Guardian of the subject. She has siblings called; VNG, GN and JN. Her father is called AN.
3. PW2, AN, he is the husband to the Subject. He confirmed that the subject suffers from dementia and that he supported the Application by his daughter, FN.
4. PW3, VNG, she is a sister to the applicant. She understands the Application and supports the appointment of the applicant as Guardian to the subject.



5. PW4, JNN, he is a brother to the Petitioner and a son to the Subject. He supports the appointment of the Petitioner as Guardian.
6. PW5, GN he is a son to the subject. He supports the appointment of the Petitioner as Guardian of the Subject.
7. The Court interviewed the subject and observed that she was disoriented. Evidence. She was not able to recognise the Petitioner who was with her and her husband.
8. Report dated 16th June 2023 by Dr. Fredrick R. Owili stated-

The above named Kenyan lady is a person with a condition characterized by progressive or persistent loss of intellectual functioning, especially with impairment of memory, abstract thinking and often with personality change resulting from organic disease of the brain. She is therefore not fit to operate her account with your facility. She might therefore require court of (sic) protection to help with transactions.

Determination

9. 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.
10. I have considered the evidence adduced in Court and I am persuaded that the Petitioner/ Applicant is best placed to provide adequate care to the subject and ensure her wellbeing.
11. It is in the subject's best interest that the Applicant is appointed as her personal representative to ensure that funds are available for her upkeep and further medical attention in the future.
12. In the circumstances the Application dated 13th June, 2024 is allowed and with the following orders:
 - a. MWN is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
 - b. FWN is hereby appointed under section 27 of the [Mental Health Act](#) as the Guardian of MWN



- c. FWN is hereby appointed manager of the estate of MWN 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 FWN shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging MWN.
- 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 MWN
- f. As Manager of the Estate of MWN the Applicant may dispose of the property only with the sanction of the court.
- g. The matter will be mentioned before court 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

