



In re RNK (Mentally Challenged Person) (Miscellaneous Case E015 of 2024) [2024] KEHC 14967 (KLR) (28 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CASE E015 OF 2024
FN MUCHEMI, J
NOVEMBER 28, 2024**

**IN THE MATTER OF SECTION 26 & 28 OF THE
MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA**

AND

IN THE MATTER OF RNK (MENTALLY CHALLENGED PERSON)

AND

IN THE MATTER OF

PWK PETITIONER

AND

RNK SUBJECT

JUDGMENT

Brief Facts

1. By a Petition dated 2nd September 2024 the petitioner invoked Sections 26, 27 and 28 of the [Mental Health Act](#), Cap 248 Laws of Kenya and sought the following prayers:-
 - a. This Honourable court be pleased to appoint the petitioner as Guardian of R.N.K (the patient).
 - b. This Honourable Court be pleased to authorize the petitioner to access and control R.N.K 's estate comprised of bank account namely Standard Chartered Bank Account No. 0100345xxxxxx.
2. The petitioner is a son of the subject who is 92 years old and a widow who lost her husband in the year 2000. The petitioner states that sometimes in the year 2022, the subject began suffering bouts of



memory loss, restlessness, tremors and wondering away making it difficult for her to take care of herself and has been under the constant watch of her children.

3. The petitioner avers that he and his sisters have taken the patient for treatment severally and therapy in different hospitals and caregivers but her condition has deteriorated due to age and compounded memory loss.
4. The petitioner states that the patient is currently under constant care and watch of the petitioner and other care givers as she cannot survive alone and due to her condition, she cannot make any transaction or make any decision concerning her affairs. Furthermore, the patient cannot operate any of her properties as she cannot give coherent instructions and is therefore in need of guardianship ad litem to manage her affairs.
5. The petitioner states that the patient is a farmer who has tea bushes and the proceeds of the same are deposited into her account at Standard Chartered Bank but due to her condition she cannot access the funds therein to cater for her own upkeep and to sustain the farm hence the need for an order for guardianship to enable him access the monies in the bank to cater for the patient's sustenance and manage the tea farm.
6. The petitioner avers that his only interest is to protect the patient and have her enjoy quality life which shall be well catered for using her farm proceeds including provision of medication and care befitting her situation.
7. The petitioner further testified that the patient has seven (7) living children and the family has consented to him being appointed guardian and authorised to operate her bank account Standard Chartered Bank A/c No. 0100345xxxxxx.
8. The petitioner's sisters one Esther Muthoni Kamau and Margaret Njoki Kamau swore an affidavit on 16th September 2024 in support of the current application. It is deposed that the two daughters are both agreeable to the petitioner been appointed guardian and manager of the estate of their mother, the patient as she is suffering from mental illness and memory loss.
9. Esther Muthoni Kamau further testified and stated that she lives 20 kms away from the petitioner and visits her mother once every month.

Issues for determination

10. The main issues for determination are as follows:-
 - a. Whether the patient should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 - b. Whether the petitioner should be appointed as guardian to the patient as well as manager of the Estate of the patient.

The Law

Whether the patient should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.

11. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.



12. Section 2 of the Act defines “person suffering from mental disorder” as follows:-

“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”

13. Section 26 provides for custody, management and guardianship

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 of the guardian of any such person.

3. Where upon 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. According to the medical report by Dr. Sheila Mwangi, a psychiatrist practicing at Igegania Level 4 Hospital, dated 22nd August 2024, the patient is suffering from dementia and hearing impairment and poor cognitive and poor judgement. The medical report indicated that the patient was presented with a history of memory loss, poor self-care, wandering away, restlessness and tremors. The doctor concluded that the patient suffered from dementia and hearing impairment.

15. It is apparent from the medical report that the patient is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing his own affairs.

Whether the petitioner should be appointed as guardian to the patient as well as a manager of the Estate of the patient

16. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.

17. The petitioner states that he is a son of the subject whose husband died in the year 2000. The petitioner annexed a letter from the chief dated 21/8/2024 confirming that the subject is totally incapacitated. The petitioner further annexed an affidavit by his two sisters one Esther Muthoni Kamau and Margaret Muthoni Kamau who support his application to be appointed guardian over the patient.

18. In this regard, there is no evidence or document on record challenging the granting of prayers sought in the petition. I am thus of the considered opinion that the petitioner has satisfied the court that he is deserving of the orders sought in his petition dated 2nd September 2024.



19. I find the Petition successful and allow it in the following terms:-

- a. That the petitioner Paul Wanyoike Kamau is hereby appointed guardian of the subject Ruth Njeri Kamau.
- b. That the Petitioner is hereby appointed manager of the estate of the subject in particular the subject's bank account at Standard Bank No. 0100345xxxxxx.
- c. The petitioner shall account to his siblings Esther Muthoni Kamau and Margaret Njoki Kamau the withdrawals and appropriation of the funds from the subject's bank account.

20. There shall be no order as to costs.

21. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 28TH DAY OF NOVEMBER 2024.

F. MUCHEMI

JUDGE

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