



**In re Guardianship of EWM (Miscellaneous Application E195 of 2024)
[2024] KEHC 15205 (KLR) (Civ) (25 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15205 (KLR)

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

MISCELLANEOUS APPLICATION E195 OF 2024

SN RIECHI, J

NOVEMBER 25, 2024

**IN THE MATTER OF AN APPLICATION/PETITION UNDER
SECTIONS 2,26,27,28 OF THE MENTAL HEALTH ACT CAP 248**

IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP OF EWM

IN THE MATTER OF

EMN APPLICANT

JUDGMENT

1. Before this Court is an application dated 16th September 2024 in which the petitioner is seeking orders;
 - i. That the Applicant be appointed as the Legal Guardian of one EWM.
2. The application is premised on the following grounds:
 1. That the Applicant is a biological sister to the subject EWM who is a person living with disability and is in need of assistance and maintenance.
 2. That the Applicant and her siblings intend to file a succession matter with regard to their late father's estate and therefore the office of the public trustee has requested for a Guardianship Order in relation to the said EWM to ensure that there is a person legally appointed to cater for her interests in the succession matter.
 3. That it is therefore in the interest of justice that the Applicant herein be appointed as the Guardian to her sister who is disabled and needy otherwise the subject stand to suffer lack of the most basic needs and maintenance.
3. The application is further supported by the annexed affidavit of the petitioner sworn on even date. The Petitioner briefly stated that she is a biological sister to EWM who is a person living with disability and



was born on 14th July, 1990 as evidenced by attached to the application a copy of her birth certificate marked as EM2. The applicant stated that she has been having the actual custody of her sister due to her disability status as she cannot depend on her own as evidenced by a copy of comprehensive medical report attached to the application.

4. The applicant stated their late mother is the one who used to take care of the said sister but when she passed away in the year 2019, the applicant took over the custody of her sister as evidenced by attached to the application a copy of her a copy of her death certificate. The applicant stated further that their family intends to lodge a succession matter for her parents estate and therefore needs someone appointed to be a guardian for her sister who is disabled. She referred to a copy of their father's death certificate attached to the application.
5. The applicant stated that all her siblings are in agreement that she be appointed as the legal guardian of their sister as evidenced by annexed copy of the consent.
6. This matter was canvassed by way of viva voce evidence on the online platform. The Petitioner testified that the subject is her sister and she is 33 years old. She testified that she is 53 years old and married to RN. She stated both their parents are deceased. They had 8 children namely;
 - i. AN
 - ii. NN
 - iii. EM
 - iv. AM
 - v. MM
 - vi. PM
 - vii. BW
 - viii. EW
7. The Petitioner testified that the subject is not married and she has no children. The petitioner stated the subject is disabled and cannot speak well. She has had that problem since childhood. E stays with her in Muranga where she is married.
8. The Petitioner stated that she wants money of their late mother and she had money in the bank. She testified she want to be appointed guardian of E. She testified that they have discussed and agreed and they have taken her to hospital and there is a medical report in the court file.
9. This petition was supported by siblings of the subjects namely ANM,NNM,AMM,MM.
10. The court was able to observe the subject on the online platform and the court tried to engage the subject. The subject appears unable to have a conversation. I have carefully considered this application, the Affidavit filed in Court as well as the evidence adduced in the matter. Section 26 of the [Mental Health Act](#), Cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs as follows:-

“Order 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 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.” [own emphasis]

11. The Petitioner has sought to be declared as Guardian of subject. To merit the above orders the Petitioner must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the [Mental Health Act](#) and secondly that the Patient is incapable of managing her own affairs.

12. The Petitioner testified that the subject is disabled and cannot speak well. She has had the problem since childhood. The petitioner stated they have taken the subject to the hospital and filed a medical report in court.

13. The Petitioner produced Medical Report dated 26th November 2021 prepared by Mr. Wambuga Njagi, Clinician & Psychologist. In the medical report it stated as follows

“...the subject is physically and mentally challenged from Birth....The subject talks with excessive stammering to the extent that you cannot get what she is saying.”

14. Based on the material availed to this Court, I am satisfied that the Subject suffers from a mental illness under Section 26 of the [Mental Health Act](#). I find merit of this application dated 16th September 2024 and make orders as follows;

1. The court hereby appoint the Petitioner EMN as the Guardian of EWM(subject).The Petitioner is also appointed to manage the subject’s estate.

2. 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.

15. In their duties they must comply with Section 28 and 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.
3. In accordance with the provisions of Section 33 of the *Mental Health Act*, the petitioner will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF NOVEMBER 2024.

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S. N RIECHI
JUDGE

