



REPUBLIC OF KENYA



KENYA LAW
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**In re EWG (Miscellaneous Case E099 of 2024)
[2024] KEHC 16105 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CASE E099 OF 2024**

MA ODERO, J

DECEMBER 20, 2024

IN THE MATER OF EWG

IN THE MATTER OF

VNK 1ST APPLICANT

JMK 2ND APPLICANT

JUDGMENT

1. Before this Court is the application dated 12th November 2024 by which the Applicants VNK and JMK seek the following orders:-

- “ 1. Spent
2. That this honourable court be pleased to appoint VNK ID No. 2066xxxx and JMK ID No. 2402xxxx as guardian ad-litem for EWG .
3. That upon issuance of prayer (1) above, the applicants be granted leave to operate account number 0080101537345 Equity Bank Ltd Othaya Branch belonging to EWG since she is currently incapable of writing or speaking and is in need of urgent medical attention.
4. Cost to be in the cause.”

2. The application which was premised upon Section 26(1) A and B of the *Mental Health Act*, Cap 248, Laws of Kenya Order 51 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of law was supported by the Affidavit of even date sworn by the Applicants.

3. The matter was canvassed by way of Vive Voce evidence on the virtual platform.

4. The Applicants told the court that they are both the biological children of EWG (the subject herein). They state that the subject suffered a stroke in the year 2021 and that she is also suffering from dementia.



That as a result the subject is unable to manage her own affairs. The subject currently lives with the 1st Applicant in her home in Ruiru, Kiambu County.

5. The Applicants pray to be appointed as legal guardians for the subject and managers of her estate.

Analysis And Determination

6. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of patient (subject) 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. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent 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]
7. I have considered the application before this court, the evidence adduced by the witnesses as well as the documents annexed to the Petition. In order to warrant the appointment of a legal guardian, it must be shown that the subject suffers from a mental disorder which renders him/her incapable of managing his/her own affairs.
 8. I have perused the medical report dated 1st October 2024 prepared by Dr. Violet A Okech Consultant Psychiatrist attached to the Kenyatta National Hospital in Nairobi. The report indicates that the subject is an elderly lady in fair condition but was found to be incoherent and rambling in speech often talking to herself.
 9. The Report further confirmed that the subject has suffered a hypertensive stroke in the year 2021 and that she suffers from moderately severe dementia. The subject was noted to be incontinent, unable to feed herself and spends most of her day sleeping. The doctor opined that the subject “is mentally and physically INCAPABLE of managing her estate and is INCAPABLE of handling her financial and legal affairs.”
 10. I was able to see the subject via the online platform. She was an elderly lady lying prone on a sofa. She was mumbling to herself incessantly and did not answer any questions put to her. It was quite obvious to this Court that the subject suffers from a mental disability.



11. The other child of the subject namely CK as well as the subject's husband SKG both testified in the matter. They confirmed that they were aware of and had no objection to this current application. Indeed PW5 told the court that the family had held a meeting and nominated the two applicants to file this application for legal guardianship.

12. "In the case of *Re N. M. K.* (2017) eKLR the court in considering what should be borne in mind when making an order for Guardianship stated as follows:-

"In considering an application brought under Section 26 and 27 of the *Mental Health Act* the court is guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle." [own emphasis]

13. Finally I find merit in this application. Accordingly this court makes the following orders:-

1. The subject EWG is declared to be a person suffering from a mental disorder within the terms of Section 26 of the *Mental Health Act* Cap 248, Laws of Kenya.
 2. The Applicants VNK and JMK are hereby appointed as joint legal guardians for the subject and managers of the subject's estate.
 3. The Applicants as legal Guardians are authorized to operate the subject's Bank Account No. 0080101537345, held in the name of EWG at Equity Bank Othaya Branch.
- (4) No orders on costs.

DATED IN NYERI THIS 20TH DAY OF DECEMBER 2024

MAUREEN A. ODERO

JUDGE

