



**In re JCWW (Subject) (Miscellaneous Application E196 of 2024)
[2024] KEHC 16223 (KLR) (Civ) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16223 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E196 OF 2024

SN RIECHI, J

DECEMBER 19, 2024

IN THE MATTER OF JCWW (SUBJECT)

IN THE MATTER OF

WDWW PETITIONER

JUDGMENT

1. The Petitioner WDWW is biological son of the subject . The petitioner in his petition dated 22nd April, 2024 is seeking orders;
 1. The Petitioner WDWW be appointed as Guardian of JCWW.
 2. That the Petitioner be authorized to manage and access the bank account of JCWW held with the Kenya Commercial Bank Way Branch, Account No. 240XXXX, and to withdraw such amounts from the said bank account as may be sufficient to settle any medical bill as and when required together with catering for the needs of JCWW.
 3. That the petitioner be authorised to manage all the properties, bank accounts motor vehicles and other assets of JCWW.
 4. That there be no orders as to costs.
2. The application is premised on the following grounds;
 - i. That JCWW has been sick since the year 2020 and has been diagnosed with advanced dementia, diabetics and had a minor stroke in 2020 amongst other complications and is therefore unable and incapable of handling his affairs
 - ii. That the Petitioner is subject’s child and has been taking care of the subject since 2020. That the subject shows little initiative as well as poor judgment and requires frequent reminders



about simple facts and is confused on the element of time and place and has become socially withdrawn. The diagnosis is affecting the subjects daily functioning and independence.

- iii. That JCWW requires the assistance of others to perform simple daily activities such as dressing and It is urgent that the Petitioner be appointed as a guardian to manage his affairs in general including access to his bank accounts to enable him draw such funds as may be necessary to settle his medical bill and care giver bills.
 - iv. It is in the interests of justice that the prayers sought herein are granted.
3. The Petition is also supported by petitioner's affidavit sworn on even date. The petitioner reiterated the averments in his grounds of the application. He further briefly deponed that his father has been diagnosed with advanced dementia and has been under my care since 2020 as evidenced by copies medical reports attached to the petition. The petitioner stated that as a result of his condition his father is not able to manage his affairs. He deponed that he would like to be authorized to manage subject's properties, bank accounts, motor vehicles and other assets by collecting, maintaining and doing all that appertaining the same. The applicant attached list of the properties to the application.
 4. This petition was canvassed by viva voce evidence. The Petitioner testified that the subject is his father and he was married to AWW. AWW stays in UK. They separated in 1988 and they have three children namely W, AW and RG.
 6. The petitioner testified the subject stays in Othaya Nyeri. He stays with P and A. They are the caregivers and the petitioner pays them. The petitioner testified that the subject is 81 years old and he has been having dementia for past 5 years. They have taken him to Dr. Eric Njuguna who advised MRI Scan. He testified that he prepared a report showing he has Alzheimer and dementia. He testified that the subject did not remarry since for 33 years ago. The petitioner stated he is 53 years old. The subject has a share of the ancestral land. He has two parcels of land in Karen and Kitengela. The land in Karen has a court case. They have agreed to sale Kitengela plot to cover his medical bills.
 7. AMW testified the subject is her father. She support the petition and she last saw the subject in May 2024.
 8. RCM testified that the subject is her father and she support the petition.
 9. This court also observed the subject virtually and the court tried to engage the subject. The subject stated as follows;

I do not have money and I want to buy food. It is P who is my house boy and I know W. He stays in Nairobi. I stay in Nyeri. Tell W to buy me food I like chapati and meat."
 10. The court has exhaustively considered all the material placed before it, the main issue for determination is whether the court should grant the guardianship and management orders as sought in the application herein.
 11. Section 2 of the *Mental Health Act* Cap 248 provides that:

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



12. The court is empowered to grant orders sought by the application in relation to custody, management and guardianship under Section 26 of the [Mental Health Act](#) Cap 248 which provides:
- (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
 - c. 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.
 - d. Where upon inquiries 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 just 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.”
13. The authority to manage affairs of an estate of a subject is donated under Section 27 of the [Mental Health Act](#) whereas Section 28 of the same Act provides for management of the subject's estate.
14. Before this court there is a medical report dated 21st August 2023 prepared by St. Dominic Savio Counselling center which stated the subject Dementia-major neurocognitive disorder. The Petitioner also produced as evidence a copy MRI scan of the subject’s brain dated 24th June 2023 prepared by Dr. Muysoki/Gathogo Radiologist in which it was stated as follows;
- Conclusion- Diffuse cerebral atrophy with severe leukoaraiosis(FAZEKAS grade 3)
Consider vascular dementia”
15. The subject was present in court during virtual hearing and this court tried to engage him and he stated as follows;
- I do not have money and I want to buy food. It is P who is my house boy and I know W. He stays in Nairobi. I stay in Nyeri. Tell W to buy me food I like chapati and meat.”
16. This court noted that subject was able to communicate coherently. His condition as set out in the medical reports has not adversely affected his cognitive ability and the ability to take care of his affairs. I find that the Subject has the mental capacity to manage and take care of his affairs and estate which in my view does not falls within the definition of Section 2 of the [Mental Health Act](#) Cap 248.
17. From the evidence and medical report, I am not satisfied that the subject suffers from mental illness under section 2 of the [Mental Act](#).
18. For the above reasons, the application petition dated 22nd April,2024 is hereby dismissed.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF
DECEMBER, 2024

S N RIECHI

JUDGE

