



**In re NN alias MNN (Mentally Challenged Person) (Family Miscellaneous Civil Case E013 of 2024) [2024] KEHC 16034 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16034 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY MISCELLANEOUS CIVIL CASE E013 OF 2024**

**FN MUCHEMI, J**

**DECEMBER 19, 2024**

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

**AND**

**IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF N.N. ALIAS M.N.N (MENTALLY CHALLENGED PERSON)**

**IN THE MATTER OF**

**JWK ..... 1<sup>ST</sup> APPLICANT**

**NWK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**Brief Facts**

1. By a Petition dated 21<sup>st</sup> August 2024 the petitioners invoked Sections 26, 27 and 28 of the [Mental Health Act](#), Cap 248 Laws of Kenya and sought the following prayers:-
  - a. That the subject N.N. alias M.N.N be declared to be suffering from a mental disorder as defined in the [mental Health Act](#).
  - b. This Honourable court be pleased to appoint the petitioners herein as guardians of the subjectf N.N alias M.N.N.
  - c. This Honourable Court be pleased to authorize the petitioners to access and control N.N. alias M.N.N’s Bank Account No. 087016268xxxxx held at Equity Bank Limited Juja Branch.
2. The matter proceeded by way of viva voce evidence.



3. PW1, JWK testified that she is a daughter of the subject. The witness testified that she lives in Malindi where she carries on her business. PW1 further testified that the subject lives in Ruiru with a caregiver and who had left employment during the hearing of this petition. She further testified that currently the subject lives with her daughter- in-law the 2<sup>nd</sup> petitioner herein and whose home is about ½ km away from the subject's.
4. The witness further testified that her two brothers, DN and NN who were present in court during the hearing live in the subject's home compound and they take care of her when there is no caregiver.
5. PW1 testified that the subject has a bank account at equity Bank Juja Branch Account No. 087016268xxxxx in which the subject deposited proceeds from the sale of her land before she fell sick. The witness stated that she seeks orders of appointment as guardian of the subject so as to take care of her and manage the said bank account for purposes of providing for the subject's personal needs, general upkeep and ensuring that her medical expenses are taken care of.
6. PW1 further testified that the subject's memory loss began in the year 2022 and her condition has deteriorated to the extent that she cannot take care of herself. The witness asked the court to appoint her and the 2<sup>nd</sup> petitioner as guardians of the subject and manager of the subject's account.
7. PW2, NWK testified that she is the daughter in law of the subject and that her husband passed on sometime back. The witness testified that her home is ¼ km away from the subject's home and she checks up on the subject once a week as the subject has a caregiver. In the absence of the caregiver, the witness stated that she will go to the subject's house regularly to ensure she gives her the necessary care. The witness further testified that her niece checks up on the subject every other hour as she is married in the neighbourhood.
8. In support of the petitioners' case, SKN filed an Affidavit dated 25<sup>th</sup> October 2024 where the deponent stated that she is the subject's daughter-in-law married to the subject's son one FNN who is deceased.
9. The deponent stated that she knew the subject very well and confirmed that she suffers from a mental disorder which has rendered her incapable of managing her own affairs independently and responsibly. The deponent further stated that due to the subject's age and deteriorating mental health, she is in need of medical care that will require funding from her bank account. There's need for the petitioners to be appointed to manage the account.

### **Issues for determination**

10. The main issues for determination are as follows:-
  - a. Whether the subject should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248.
  - b. Whether the petitioners should be appointed as guardian to the subject as well as managers of her Estate.

### **The Law**

#### **Whether the subject 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 from the Medical superintendent from Thika Level 5 hospital dated 18<sup>th</sup> August 2023, the subject is suffering from Alzheimer’s disease. The medical report indicated that the subject has a history of gradual memory loss and forgetfulness diagnosed five (5) years ago. The medical superintendent concluded that despite being on treatment, the subject’s memory has been declining and she therefore requires life treatment.

15. It is apparent from the medical report that the patient is suffering from a mental disorder as prescribed under Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act. As such, the subject is incapable of managing herself and her own affairs including finances.

**Whether the petitioners should be appointed as guardian to the subject as well as a managers of the Estate of the subject.**

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 petitioners are daughter and daughter-in-law of the subject which was confirmed by other family members. The petitioners aver that the subject has nine (9) children and they annexed their consent for the petitioners’ appointment as guardians. The petitioners further annexed a letter from the chief dated 20<sup>th</sup> August 2024 stating that the subject suffers from a mental disorder and she cannot take care of herself. An affidavit by the subject’s daughter-in-law SKN supported the application to appoint the petitioners as co-guardians of the subject.



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 opinion that the petitioners have established their case to the standards required that they ought to be appointed guardians of the subject as well as managers of her bank account to fund her financial needs, food and clothing.
19. Consequently, I find the joint petition successful and hereby grant it in the following terms:-  
That the petitioners JWK and NWK are hereby appointed guardians of the subject and managers of the subject's Equity bank account No.0870168xxxx Juja only for purpose of the subject's maintenance and medical needs.
20. There will be no order as to costs.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**F. MUCHEMI**

**JUDGE**

