



REPUBLIC OF KENYA



In re EKN(a person suffering from severe stroke) (Miscellaneous Application E063 of 2022) [2023] KEHC 3239 (KLR) (Family) (26 January 2023) (Judgment)

Neutral citation: [2023] KEHC 3239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E063 OF 2022
EKO OGOLA, J
JANUARY 26, 2023**

JUDGMENT

1. Before this Court is a Petition dated February 17, 2022 by which the Applicant CNM seeks the following orders:-
 - a) EKN be and is hereby adjudged as suffering Mental Health and requires assistance, care, and support for his wellbeing;
 - b) That CNK is hereby appointed guardian ad litem of the patient herein EKN;
 - c) That the Petitioner/guardian be and is hereby authorized to access and operate the patient's bank account as follows:-
 - i. Bank Account Name: EKN
Bank & Branch: National Bank Harambee Avenue
Account No. XXXX
Bank Balance: unknown
 - ii. Bank Account Name: EKN
Bank: Co-operative Bank of Kenya
Account No. :XXXX
Account Balance: Unknown
 - d) That the Petitioner be and is hereby authorized to sell the following properties belonging to EKN:



- i. LR No XXXX (IR No XXXX). Situated in Kajiado County measuring approximately Twenty (20) acres. Estimated value Kshs. 100,000,000
 - ii. Title No Kiambaa/Kihara/XXXX. Measuring approximately 0.XXXX situated in Kiambu County, which is the joint name of EKN and the Petitioner. The estimated value of Kshs 10,000,000
 - e) That the Petitioner herein CKN be and is hereby authorized to administer the finances of the Patient's estate for his care and wellbeing.
2. The Petition is supported by an Affidavit sworn by the Petitioner. The petitioner and EKN were married under the African Customary law on August 30, 1975. They later obtained a Certificate of Marriage. EKN trained as a veterinary doctor and has worked in several senior positions in government and his last position before his retirement was as a lecturer in the Veterinary department at [particulars Withheld] University. According to the Petitioner, EKN lived a healthy life until December 28, 2020 when he suffered a massive stroke that left him incapable of reading, writing, speaking coherently, feeding or clothing himself or generally managing his wellbeing.
 3. This ailment has caused hefty medical bills and as of January 2022, the Petitioner and her three children had already spent a total Kshs 6,762,626/= in hospital fees and more than Kshs 1,000,000/= in special diet, travelling, and home care. Due to this, the Petitioner and her children's financial resources are completely depleted.
 4. It is the Petitioner's case that EKN has bank accounts and land which if she had the authority to sell and/or utilize would assist to meet EKN's medical expenses.
 5. The Petitioner and EKN have been blessed with three children who have consented to the Petitioner being appointed as Guardian Ad litem to EKN.
 6. The Petition was canvassed by way of viva voce evidence on the online platform. PW1 was the Petitioner. She reiterated the contents of the petition. PW2 was PMK, the first-born daughter of EKN, PW3 was RMK, the son and second born to EKN, PW-4 was TMK the last-born child and son of EKN. They all consent to their mother CKN being appointed guardian ad litem with authority to administer the finances and estate of EKN.

Determination

7. I have carefully considered this Petition, the Affidavits and Reports filed in Court as well as the evidence adduced in the matter. Section 25 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 a mental disorder.”
8. The Petitioner has sought to be declared as Guardian and Manager of the Patient. 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 his own affairs. The Petitioner testified that the Patient was diagnosed with massive stroke. A Medical Report dated January 12, 2022 prepared by Dr Jilna Raja of Dr Warshow/ Dr Sheikh & Associates from Aga Khan University Hospital noted that EKN suffered a massive stroke, and he is continuing treatment. The doctor stated that his medical condition has adversely affected his physical and mental health thus hindering his decision-making and conduct of his affairs.
9. Section 26 of the *Mental Health Act* provides as follows
- “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 relative or any other suitable person”.
10. EKN’s children PMK, RMK and TMK are in agreement with this Petition for Guardianship.
11. Based on the material availed to this Court I am satisfied that the Subject suffers from a mental illness under the terms of the *Mental Health Act*. I am satisfied with the merit of this Petition and I hereby allow the Petition dated February 17, 2022 as prayed. The Petitioner CKN is appointed as Guardian and Manager for EKN.
12. In the discharge of her duties as the Guardian and Manager of the EKN, the petitioner shall be governed by the Provisions of Section 27 of the *Mental Health Act* Cap 248 Laws of Kenya.

Orders shall issue accordingly.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Ngonyo for the Petitioner



Gisiele Muthoni Court Assistant.

