



REPUBLIC OF KENYA



**In re NWG (Miscellaneous Case E211 of 2021)
[2023] KEHC 212 (KLR) (Family) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 212 (KLR)

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

FAMILY

MISCELLANEOUS CASE E211 OF 2021

MA ODERO, J

JANUARY 20, 2023

**IN THE MATTER OF SECTIONS 26 (1) & (3) OF THE
MENTAL HEALTH ACT (CAP 248) OF THE LAWS OF
KENYA**

AND

**IN THE MATTER OF NWG
(A PERSON SUFFERING FROM DEMENTIA)**

AND

IN THE MATTER OF AN APPLICATION

BY

**JKW, DMW AND SMW TO BE
APPOINTED GUARDIANS FOR THE MANAGEMENT OF
THE AFFAIRS OF THE ESTATE OF THE SAID NWG
(A PERSON SUFFERING FROM SEVERE DEMENTIA)**

RULING

1. Before this court is the petition dated November 1, 2021 by which the petitioners JKW, DMW and SMW seek the following orders:-
 - “(a) That NWG be and is hereby adjudged to be a person suffering from dementia under section 26 of the *Mental Health Act* cap 248, laws of Kenya.
 - (b) That the petitioners be appointed guardians in respect of NWG



- (c) That the petitioners as guardians of NWG be allowed to access and given lawful and valid instructions with respect to all properties and funds held in the name of the subject herein in the general management of the affairs of his estate.
- (d) That the petitioners be granted such further relief as this honourable court may deem fit and just in the circumstances.”
2. The petition was supported by the affidavit of even date sworn by the three (3) applicants. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
3. The applicants told the court that they are all the biological sons of the subject NWG. That the subject is over ninety (90) years old and has been diagnosed with ‘dementia’. The applicants state that the subject suffers memory lapses and is no longer in a position to manage his businesses. They apply to be appointed as legal guardians for the subject and managers of his affairs.
4. PW 4 SNW is the wife of the subject and the mother of the three (3) applicants. She confirmed to the court that her husband is unwell and is unable to manage his own affairs. PW5 states that she is aware of this petition and has no objection to the same.
5. I have considered this petition, the affidavits and reports filed in court as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, cap 248, law 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 follow:-
- “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)
6. The witnesses all stated that the subject suffers from dementia. That he suffers memory lapses and is not able to manage his own affairs.
7. I have carefully perused the medical report dated August 3, 2021 prepared by Dr John N Gatere a Consultant Psychiatrist. The report indicates that upon examination the subject was found to be suffering from “severe dementia”. That this has led to a “global impairment of intellect as manifested



in loss of memory thinking and comprehension”. The doctor concluded that the subject was not in a position to run the affairs of his estate and recommended that a guardian be appointed.

8. I was able to see the subject online. He was an elderly gentlemen who appeared confused and did not comprehend the court proceedings. Based on the medical report and from my own observation, I find that the subject is suffering from a mental disorder as defined by section 26 of the *Mental Health Act*.
9. The applicants who are the sons of the subject have prayed to be appointed as his guardian. PW5 who is the wife of the subject supports the petition. She has filed a written consent.
10. RGM a daughter to the subject also testified in court as PW4. She confirmed that she had no objection to the petition for guardianship filed by her brothers. PW4 also signed a consent.
11. In conclusion, I find merit in this application and hereby allow the same. The court makes the following orders:-
 - (1) The subject NWG is declared to be a person suffering from a mental disorder under section 26 of the *Mental Health Act*.
 - (2) The petitioners JKW, DMW and SMW are hereby appointed as legal guardians for the subject and managers of his estate.

DATED IN NAIROBI THIS 20TH DAY OF JANUARY, 2023.

MAUREEN A. ODERO

JUDGE

