



**In re ZKA (Family Miscellaneous Application E043 of 2022)
[2023] KEHC 1195 (KLR) (17 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY MISCELLANEOUS APPLICATION E043 OF 2022**

JN ONYIEGO, J

FEBRUARY 17, 2023

**IN THE MATTER OF: THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
IN THE MATTER OF: ZKA (A PERSON SUFFERING FROM MENTAL DISORDER)**

IN THE MATTER OF

SKAA PETITIONER

JUDGMENT

1. By a petition dated 4th November 2022, SKAA in his capacity as the son to the patient herein, moved to this court on 11th November 2022 seeking orders that
 - a. The petitioner be appointed as guardian and manager of ZKA's personal and business affairs.
 - b. The petitioner be given all the powers and authority to deal with all the affairs and assets of ZKA, including any assets acquired after the date hereof, as though he is legally and duly appointed by the said ZKA to so administer and run her affairs and deal with the assets.
 - c. The petitioner be given full authority to make any decisions relating to the affairs of ZKA's though such decisions were taken by ZA
 - d. The petitioner without limiting the foregoing powers and authority be granted specific powers and be given necessary authority to (i) close and open any bank accounts deposits or withdraw any funds therefrom;(ii) do anything and everything that ZKA could do with respect to her interests in any immovable property including executing all instruments as are necessary to carry out the powers hereby given; and (iii) to transfer ,sell or give a gift of or otherwise deal with ZKA's directorship or shareholdings.
 - e. Such order that the court may deem fit and appropriate.
2. The application is anchored on the averments contained in the affidavit in support sworn by the applicant on 4th November 2022 in which he averred that the patient herein is suffering from advanced



Alzheimers which had been confirmed by Dr.mansoor Tayabali as irreversible and therefore affecting her sense of communication. That as a consequence, she is not in apposition to independently make any legal decisions nor manage her personal or business related affairs hence the need to appoint a guardian and manager to administer and manage her affairs and interests in various companies where she is a share- holder and director as well as operating her bank accounts.

3. During the hearing, the applicant (pw3) reiterated the content contained in the affidavit in support of the petition. He simply told the court that his mother aged 91 years old is suffering from dementia hence cannot write nor read. That she does not recognize anybody hence mentally incapacitated. His testimony was corroborated by the testimony of his siblings NA (pw1) and HA (pw4). PW1 Dr. Mansoor told the court that he had attended to the patient and examined her on a number of occasions. According to him, she was suffering from Alzheimers which made it impossible for her to communicate clearly a condition he described as irreversible. He produced his medical report dated 3rd October 2022 as evidence.
4. Upon the court interrogating the patient, she kept murmuring incoherently such that nobody could hear what she was talking about. She appeared helpless sometimes staring at people without uttering a word even when prompted.
5. I have considered the application herein and the evidence by witnesses. This court has been moved under Sections 26,27,28, and 33 of the *mental health Act*.

The court has considered all the material placed before it. Section 26 of the said Act states that:

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
6. The definition in Section 2 of the Act 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.”



7. Based on the said medical report, affidavits on record and oral evidence by the patient's children, it is apparent that the subject is suffering from mental disorder which has incapacitated her mental capacity and or her cognition and consequently the ability to take care of her affairs or herself. In her condition which is even more accelerated by her advanced age, she is incapable of discharging her day to day activities independently and or responsibly.
8. In the circumstances, the court is inclined to make a finding that the subject is a person suffering from a mental disorder within the definition of the *Mental Health Act* and consequently do appoint the Petitioner as the subject's guardian and manager of her estate. For the avoidance of doubt, such managers' general powers will not include the power of alienation, sale or transfer of the subject's immovable assets but will include all the powers necessary for the management of such other assets, and to plead and prosecute and/or defend any action brought by or against the subject in respect of any of the assets forming part of her estate.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 17TH DAY OF FEBRUARY 2023

JN ONYIEGO

JUDGE

