



**In re ZM (a Person Suffering from Mental Disorder) (Petition E256 of 2022)
[2023] KEHC 2571 (KLR) (Family) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2571 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

PETITION E256 OF 2022

PM NYAUNDI, J

MARCH 29, 2023

IN THE MATTER OF THE MENTAL HEALTH ACT (CHAPTER 248 LAWS OF KENYA)

AND

IN THE MATTER OF ZM (A PERSON SUFFERING FROM MENTAL DISORDER)

**IN THE MATTER OF AN APPLICATION BY RM AND REM TO BE
APPOINTED AS GUARDIANS OVER THE AFFAIRS OF THE ESTATE OF ZM**

IN THE MATTER OF

RM 1ST PETITIONER

RM 2ND PETITIONER

JUDGMENT

1. Vide Petition dated November 30, 2022, the petitioners seek the following orders that:
 - a. That ZM be and is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act*
 - b. That RM and REM be and are hereby appointed as the Guardians of ZM
 - c. That RM and REM be and are hereby appointed Managers of the Estate of ZM under Section 28 of the *Mental Health Act* to manage his estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 - d. That RM and REM be appointed to manage the subject’s bank accounts and access the said accounts for the purposes of obtaining funds for the subjects maintenance, medical expenses,



maintenance of subjects properties through the subjects Bank Account, Standard Chartered, Westlands Branch

- e. That RM and REM be and are hereby appointed as Managers of the Estate of the Subject, ZM , with special permission pursuant to Section 27(a) of the *Mental Health Act* to charge, sale, gift, surrender, transfer, exchange or otherwise deal with any moveable or immovable property comprised in the subjects estate.
 - f. That Costs of the Petition be provided for.
2. The Petition is supported by the Affidavits of the 1st and 2nd Petitioners sworn on the November 29, 2022 and November 28, 2022 respectively. The Petitioners are the Children of the Subject.
 3. PW1— REM The 2nd petitioner testified that he is the son of the Subject. It has been confirmed that their father does not have the mental capacity to conduct his affairs independently. The orders sought will enable them secure for the father the treatment and care he requires. The father is currently under the care of 2 professional nurses and they require to be paid for their services.
 4. PW2- RM The 1st Petitioner is the daughter of the subject. She concurred with the testimony of her brother. The father has been diagnosed to have Alzheimer's. The father has property that can meet the costs needed for his care and treatment. She and the 2nd Petitioner are the only children of the subject. Their mother died in 2016. The orders sought will also enable them take care of their father's properties.
 5. PW3-Stanley Munyao is one of the Caretakers. He confirmed that he is engaged to take care of the Subject. He provides for his basic requirements including, cleaning, cooking, and helping him generally.
 6. The Court had an opportunity to examine the subject ZM . He appeared to follow the proceedings. He confirmed that the Petitioners are his children. He was able to engage the court and answer the questions put to him. He is supportive of this application made by the children.
 7. Medical report by Dr. Juzar Hooker dated October 11, 2022, indicates the following diagnosis of the Subject's condition; Alzheimer's disease, vascular dementia, cervical sponyototic mylopathy, C4/5 severe cervical spinal stenosis, C5/6 and C6/7 cervical cord compression, previous 2 level cervical spine compression, Hypertension, scabies treated, prostatism- high PSA.
 8. The Doctor recommends legal Guardianship arrangement as in the opinion of the Doctor, the subject '....is unable to discharge his own affairs, sign documents, operate bank accounts, and or ably look after his financial or business affairs and would be deemed to lack testamentary capacity at this point'.
 9. From the affidavit evidence I garner that the subject is aged 68 years. He has a history of health complications. The family first noticed all was not well in 2019 when the subject was unable on his own to drive to places that he had frequented often. Another incident was when he drove himself to Mtito Andei past curfew hours and was found to be disoriented. Finally, in 2021 he entered into a tenancy agreement for one of his properties whose terms were manifestly unfavourable.
 10. His condition has continued to deteriorate.
 11. The Petitioners are spending approximately Kshs 250, 000 per month to facilitate and cater for the subjects' treatment, care, and maintenance.



12. Section 26 of the *Mental Health Act*, 2022 Cap 248 Laws of Kenya provides for the circumstances under which a court may make orders for the care and Administration of property of persons with mental illness.
13. I have carefully considered this Petition, the Affidavits and reports filed in court. I am satisfied that the Subject is a person suffering from a mental disorder and is incapable of managing his own affairs.
14. Accordingly, the Petition is allowed and
 - a. RM and REM are appointed as Guardians/ Representatives to ZM alias KZMM alias KZMM
 - b. RM and REM are appointed Managers of the Estate of ZM alias KZMM alias KZMM under Section 27 of the *Mental Health Act*, 2022 to manage his estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 - c. RM and REM are appointed to manage the subject's bank accounts and access the said accounts for the purposes of obtaining funds for the subject's maintenance, medical expenses, maintenance of subjects properties through the subjects Bank Account, Standard Chartered, Westlands Branch Account No 0101704577200
 - d. RM and REM be and are hereby appointed as Managers of the Estate of the Subject, ZM alias KZMM alias KZMM, with special permission pursuant to Section 27(a) of the *Mental Health Act* to charge, sale, gift, surrender, transfer, exchange or otherwise deal with any moveable or immovable property comprised in the subjects estate.
 - e. Pursuant to this appointment RM and REM shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging ZM alias KZMM alias KZMM
 - f. As Manager of the Estate of ZM alias KZMM alias KZMM, RM and REM may dispose of the property only with the sanction of the court.
 - g. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Petitioners shall cause the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate of ZM alias KZMM alias KZMM .
 - h. The matter will be mentioned before court on November 16, 2023 to confirm compliance.
15. Costs to be borne by the estate of the Subject.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MARCH, 2023.

P M NYAUNDI

JUDGE

In the presence of:

Ms Koome AdvocateAdvocates for the Petitioners

Karani Court Assistant

