



**In re JK (a Person Suffering from Mental Disorder) (Miscellaneous Application E148 of 2022) [2023] KEHC 17401 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17401 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS APPLICATION E148 OF 2022**  
**MA ODERO, J**  
**APRIL 28, 2023**  
**IN THE MATTER OF SECTION 26, 27 AND 28 OF THE**  
**MENTAL HEALTH ACT, CHAPTER 248 LAWS OF**  
**KENYA**  
**AND**  
**IN THE MATTER OF JK**  
**(A PERSON SUFFERING FROM MENTAL DISORDER)**  
**AND**  
**IN THE MATTER OF A PETITION BY BK FOR APPOINTMENT OF GUARDIAN FOR**  
**JK BEING APPOINTED**  
**IN THE MATTER OF**  
**BK ..... PETITIONER**

**JUDGMENT**

1. Before this court is the petition dated July 25, 2022 filed by BK seeking the following:-
  1. That the petitioner be appointed as the guardian and manager of the estate and affairs of the subject.
  2. That the petitioner be authorized to access, transact, operate, withdraw and utilize funds held in African Banking Corporation bank account No xxxx, Eldoret Branch, in the name of the subject to cater for the immediate expenses and the care of the subject.
  3. That the cost of this petition be borne by the estate of the subject.



2. The petition is supported by the affidavit of even date sworn by the petitioner. The matter was canvassed by way of *vive voce* evidence in the virtual platform
3. The petitioner told the court that the subject JK is her husband. That the two got married under Giriama Customary Law.
4. The petitioner states that in March 2022 the subject fell ill complaining of severe headache. He later collapsed at work and was rushed to Eldoret Hospital where he was admitted in the intensive care unit.
5. That the subject was diagnosed with a blood clot in the brain and was operated on. He was later transferred to Moi Teaching and Referral Hospital.
6. The petitioner states that following this medical incident the subject became blind and now suffers memory lapses and delusions. That he is unable to do anything for himself and requires 24 hour care. The petitioner seeks to be appointed as the legal guardian of the subject.

### **Analysis and Determination**

7. Section 26 of the [Mental Health Act](#), cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of a patient (subject) 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. 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.” [own emphasis]
8. I have considered the petition before the court, the evidence on record as well as the documents annexed to the petition. In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental incapacity rendering him incapable of managing his own affairs.
9. The petitioner has narrated to the court the history of how her husband fell ill in March 2022. PW2 KK is the mother of the subject. She confirms that her son fell ill and is now unable to do anything for himself.



10. I have perused the medical report dated September 30, 2022 prepared by Dr Rono a consultant Neurosurgeon. The report indicates that the subject can only walk with support. That he was unable to see and suffered from memory lapses and hallucinations. The doctor noted that the subject is totally reliant on his care giver for all activities of daily living.
11. I was able to see the subject online. He was an elderly frail gentleman lying prone on a bed. The subject did not respond when spoken to. It was clear that he did not comprehend what was going on around him.
12. Based on the medical report, the evidence of the witnesses and from my own observation it is clear that the subject is suffering from a mental disorder in terms of section 26. He is clearly not in a position to manage his own affairs and requires a legal guardian.
13. The petitioner who is the wife of the subject is the person best placed to be appointed as his guardian. PW2 who is the subject's mother confirmed that she was aware of this petition and supports the same.
14. Finally I find merit in this petition. I therefore make the following orders:-
  - 1) The subject JK be and is hereby declared to be a person suffering from a mental disorder under the terms of section 26 of the *Mental Health Act* cap 240 laws of Kenya.
  - 2) The petitioner BK is appointed as the legal guardian of the subject and manager of his affairs.
  - 3) The petitioner is authorized to access, transact and operate the account held at African Banking Corporation Account No xxxx Eldoret Branch.

**DATED IN NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

