



REPUBLIC OF KENYA



KENYA LAW
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**In re JMW (Miscellaneous Application E013 of 2022)
[2023] KEHC 18282 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS APPLICATION E013 OF 2022**

F GIKONYO, J

MAY 31, 2023

**IN THE MATTER OF SECTION 26, 27, 28(1) & (2) AND 32
OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

AND

**IN THE MATTER OF SECTION 3, 3A AND 63(E) OF THE CIVIL PROCEDURE ACT CAP
21 LAWS OF KENYA AND ORDER 32 RULE 15 OF CIVIL PROCEDURE RULES, 2010.**

AND

IN THE MATTER OF JMW

AND

**IN THE MATTER OF AN APPLICATION BY RWK FOR APPOINTMENT AS
GUARDIAN AND MANAGER OF THE AFFAIRS OF THE ESTATE OF JMW**

AND

**IN THE MATTER OF AN APPLICATION BY RWK FOR APPOINTMENT AS
GUARDIAN FOR PURPOSES OF PURSUING COMPENSATION FOR JMW**

IN THE MATTER OF

RWK PETITIONER

RULING

1. On December 13, 2022, (hereinafter “the petitioner”) moved this court by way of a petition pursuant to the [Mental Health Act](#) Cap 248 seeking orders as follows;
 - a. A determination/declaration that JMW the subject herein, has degenerated into a person suffering from mental health infirmity exacerbated by failing physical health and requires guardianship for the management of his affairs and estate.



- b. That be and is hereby appointed as guardian of the affairs of JMW with powers to sign, access, withdraw, execute, institute, prosecute and/or defend any action brought by or against the subject and carry out any act incidental to the affairs of the subject.
 - c. That be and is hereby appointed as Manager of the estate of the subject, JMW, with special permission pursuant to Section 27 of the [Mental Health Act](#) to charge, sell, surrender, exchange or otherwise deal with any movable or immovable property comprised in the subject's estate.
 - d. The costs of this petition be in the cause.
 - e. This honourable court be pleased to make such further orders as it may consider just.
2. Contemporaneously filed with the petition application is a Notice of motion of even date seeking orders as hereunder;
 - a. Spent.
 - b. That this honourable court do make orders for the appointment of guardianship for JMW to the applicant with powers to sign, access, withdraw, execute, institute, prosecute and /or defend any action brought by or against the subject and carry out any act incidental to the affairs of the subject.
 - c. That this honourable court do make orders for the management of the estate of JMW to the applicant with special permission pursuant to section 27 of the [Mental Health Act](#) to charge, sell, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the subject's estate.
 - d. That this honourable court further orders that the guardian and manager shall have such general and special powers for the management of the estate of the subject.
 - e. That the costs of this application be provided for.
3. The petitioner is a wife to the subject. According to the petitioner, the subject herein is aged 34 years and has exhibited inability to mentally and physically transact any business or take care of himself. That the incapacitation resulted from a road traffic accident which occurred on December 19, 2020 along Narok- Maai Mahiu road at Duka Moja. That the subject is confined to a wheel chair, under 24-hour home nursing care and unable to speak hence the need to appoint a manager and guardian to manage his estates and affairs.

Directions of the court.

4. When the matter came before this court under certificate of urgency on December 13, 2022, this court certified the matter urgent, scheduled the hearing of the application for January 17, 2023(in camera) and directed that in the meanwhile, the applicant to file an inventory of all assets of the subject within 21 days thereof.
5. Further on January 17, 2023, this court issued temporary authority to the petitioner to file suit for compensation of the subject arising out of the accident herein.



Analysis and determination

Appropriate forum for hearing

6. Upon perusal of the petition and application dated December 13, 2022, the court noted that, despite the unlimited jurisdiction of the High Court in article 165(3) of the Constitution, a question of territorial jurisdiction or the appropriate place of hearing of this matter was quite apparent.
7. See also section 15 of the CPA on institution of civil suits.
8. Given the nature of the petition, an intense and truth-finding inquiry in applications under the Mental Health Act is usually necessary before a court makes an order for guardianship and management of the assets and affairs of the subject. The reason is to avoid violation of the rights of the subject including the constitutional and statutory presumption that an adult person has the capacity to run own affairs. Abuse of these provisions of the Mental Health Act is also not strange.
9. The petitioner and the subject reside at Ruiru, Kiambu County. A meaningful inquiry under the Mental Health Act would involve the close relatives of the subject. It also entails inviting the subject in court to provide the court with better understanding and evaluation of the situation and circumstances of the subject.
10. I can imagine the possible hardship the petitioner, the subject or his close relatives will suffer if their attendance in court will be at Narok.
11. Pursuant to Order 47 rule 6 (2) of the Civil Procedure rules, a court on its own motion or on the application of any party to a suit and for good cause shown, can order that the case be tried in a particular place to be appointed by the court. See Daniel Kimani Moseka v Japheth Arthur Mwangi Kiurire (2012) e KLR.
12. The High Court in its residual powers finds this case to be fit for transmission to the High Court sitting at Kiambu where the petitioner, the subject and potential witnesses reside for hearing and disposal. I suspect the petition may have been filed at Narok because the accident which caused his ‘incapacity’ occurred along Maai-Mahiu road. But, the accident is not the subject matter of the guardianship proceedings.

Conclusion and orders

13. In the upshot, the Deputy Registrar is hereby directed to forward the file herein from Narok High Court registry to Kiambu High Court registry for hearing and determination.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 31ST DAY OF MAY, 2023

F. GIKONYO M.

JUDGE

In the presence of:

1. Mr. Makori– CA
2. Mugwe for Petitioners

