



**In re DNW (Subject) (Family Miscellaneous Application  
E004 of 2023) [2023] KEHC 19250 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19250 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
FAMILY MISCELLANEOUS APPLICATION E004 OF 2023  
GL NZIOKA, J  
JUNE 29, 2023  
IN THE MATTER OF DNW (SUBJECT)**

**IN THE MATTER OF**

**MMW ..... APPLICANT**

**RULING**

1. By a notice of motion application dated 30<sup>th</sup> January 2023 brought under the provisions of section 26 and 27 of the *Mental Health Act*, Section 1A, 3, 3A of the *Civil Procedure Act*, order 32 rule 14 of the *Civil Procedure Rules* 2010 and all the enabling provisions of the law, the applicant is seeking for orders;
  - a. This Honourable Court be pleased to appoint the Applicant MMW, as the guardian and next friend of the subject herein, DNW for purposes of filing suit to recover damages for injuries sustained in a road traffic which occurred on 25/12/2021 and which resulted to the subjects' mental impairment.
  - b. This Honourable Court be pleased to appoint Applicant herein, MMW, be appointed as the manager of the Subject's Estate.
  - c. The Costs of this application be provided for
2. The application is based on the grounds thereto and an affidavit of the applicant of the even date. She avers that, she is the mother of the subject DNW. That, he was involved in a traffic road accident on 25<sup>th</sup> December 2021 and sustained severe head injuries which has rendered him disoriented and mentally incapacitated.
3. That a medical report by Dr. W.M Wokabi dated 8<sup>th</sup> December 2022 confirms that, the subject is euphoric in his behaviour and does not engage intelligibly resulting in 100% disability. Further a re-examination by a psychiatrist confirmed that, the subject is mentally handicapped who is unable to engage intelligibly or manage his affairs.



4. That she intends to file a civil suit to recover damages, for pain, suffering and loss of amenities suffered as a result of the subject road traffic accident, hence the application herein.
5. Upon consideration of the application, the court ordered that, the subject be referred for an updated mental assessment and a report be filed to that effect. Subsequently, the applicant filed a supplementary affidavit and annexed thereto a report a mental assessment report of DNW conducted on 13<sup>th</sup> June 2023. I note the report was at Engineer County Hospital. However, earlier the court was told the subject was booked for assessment at Mathari Mental Referral and Teaching Hospital.
6. Be that as it were, the report indicates that, the subject has Euphoric mood, psychomotor agitation relatively restless with poor eye contact and exhibits poor judgment. That, this is likely to affect his interpretation and responds to events. Therefore he needs legal representation.
7. In addition to the aforesaid report, the applicant has availed annexed to the affidavit in support of the application the following documents.
  - a. A letter dated 2<sup>nd</sup> February 2023, written by the Assistant Chief Kiandege sub-location which indicates the subject was involved in a road traffic accident suffered head injury and is currently under the care of the mother.
  - b. A police abstract which shows the subject was involved in a road traffic accident on 25<sup>th</sup> December 2021.
  - c. A discharge summary from North Kinangop Catholic Hospital, which shows, the injuries the subject sustained and treatment given.
  - d. A medical report dated 8<sup>th</sup> December 2022 which the injuries he sustained and the current medical condition. That he is still mentally handicapped.
  - e. A medical report dated 28<sup>th</sup> September 2022, which indicates that, the subject is not fully oriented and exhibits bizarre behaviour
8. Pursuant to the aforesaid, I find that, the applicant has adduced adequate medical documents to prove the subject cannot manage his affairs. However, there is no evidence that the subject has any properties to be managed by the applicant. Therefore pursuant to the provisions of section 26 and 27 of the [Mental Health Act](#), I allow the application herein and appoint the applicant for the sole purpose of instituting the civil suit on behalf of the subject. No other purpose has been proved.
9. Costs in the cause.
10. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 29<sup>TH</sup> DAY OF JUNE 2023**

**GRACE L. NZIOKA**

**JUDGE**

**In the presence of:-**

Mr. Muturi for Mr. Wanjohi for the Applicant

Ms Ogutu- Court Assistant

