



In re RNN (A Person Suffering from Hypoxic Brain Injury) (Miscellaneous Application E113 of 2023) [2023] KEHC 21766 (KLR) (Family) (28 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

MISCELLANEOUS APPLICATION E113 OF 2023

PM NYAUNDI, J

JULY 28, 2023

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

AND

IN THE MATTER OF RNN (A PERSON SUFFERING FROM HYPOXIC BRAIN INJURY)

**IN THE MATTER OF ORDER 32 RULE 3 OF THE CIVIL
PROCEDURE RULES AND ALL APPLICABLE LAWS**

IN THE MATTER OF APPLICATION FOR GUARDIANSHIP OF GWO

**IN THE MATTER OF APPLICATION FOR
GUARDIANSHIP BY AOO OVER THE ESTATE OF GWO**

IN THE MATTER OF

AOO PETITIONER

JUDGMENT

1. The Application was filed by Applicant herein (AOO) under Certificate of urgency, Chamber Summons dated May 25, 2023 under Section 26 and 28 (1) (2) of the *Mental Health Act*, Cap 248 laws of Kenya and her Supporting Affidavit filed on the same day respectively. The Application was also canvassed by viva voce evidence on July 13, 2023.
2. The Applicant is the wife to the subject (GWO), as exhibited by their certificate of marriage where they solemnized their union on January 30, 2020. They have eight (8) children who are all adults. The Applicant stated that they live in Buruburu, the Applicant sought that she be appointed legal guardian of GWO as he is critically ill.



3. The subject herein (GWO) is suffering from severe Hypoxic brain injury and therefore cannot perform basic self-care coupled with complete memory loss and disorientation and his rights are protected under the *Mental Health Act* Chapter 248 laws of Kenya.
4. It's her statement, they have spent most of their money including her savings to take care of her sick husband and has now ran out of funds, the hospital bill is currently totals at Kshs 5,265,022.60 (five million two hundred and sixty five thousand and twenty two and sixty cents.)
5. She further stated that the subject has been lying at Mater Misericordiae Hospital at South B Estate Nairobi as from December 22, 2022 to date as he is yet to be discharged since he has outstanding bill as they had deposited the subject's title deed as security
6. The Applicant averred that they learnt there are funds in the subject's Co-operative Bank Account Number 011xxxx100 which can be used to offset the hospital bill thus seeking an order to access the bank account of the subject so that they can manage subject's affairs and even care for his treatment.
7. The Applicant depones that property known as Kajiado/Kitengela/11603/Kajiado District (County) be used in the interim as security at the hospital to enable the release of the subject, aid in his medication and administration of basic care by a caregiver.
8. It's the Applicant's prayer that the matter be expeditiously sought as the subject will continue suffering immensely as there are no more funds to assist in his care and further facilitate his discharge from the hospital care at Mater Misericordiae Hospital Nairobi.
9. This is supported by Dr Maumuna Iqbal where he testified in Court online that he works at Mater Misericordiae Hospital as a Resident Physician Trainee. He also stated that he knew the subject GWO whom he has been under their care since December. He further stated that the subject is unable to talk communicate and is feeding by tube as he is incapacitated at the moment. In his assessment, the subject is not able to manage his affairs since he is not responsive, therefore recommended that a Guardian be appointed.
10. Subsequently, there is also a Report dated May 4, 2023. The Doctor Musau Christopher, stated in his report that the subject herein has been managed for Hypoxic brain injury, diabetes and hypertension. The subject is currently having weakness of all four limbs, unable to talk and move.
11. In conclusion the Doctor Musau diagnosed the Subject with Hypoxic Brain Injury.

Determination

12. From the foregoing, the issue(s) that are to be determined by the Court are: -
 1. Whether the Subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 2. Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.
13. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
14. Section 28 (1) of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep. The



Applicant will require to access funds from the subject's bank account Equity Bank of Kenya and funds from Sanlam for the purpose of maintaining the subject to the best possible medical condition. Under Section 26(3) of the Act it provides,

“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 persons, including proper provision for his maintenance...”

15. From the evidence produced by the Applicant, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition envisaged under Section 26 of the [Mental Health Act](#).

Disposition

16. In light of the above, the Court holds that: -
- i. GWO (the Subject) is hereby adjudged to be suffering from mental disorder pursuant to Section 26 of the [Mental Health Act](#), Cap 248 Laws of Kenya.
 - ii. AOO is hereby appointed the legal guardians to GWO.
 - iii. AOO is hereby appointed manager of the estate of GWO under Section 28 of [Mental Health Act](#) to manage her 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.
 - iv. AOO to access funds from the subject's Co-operative Bank Account Number 011XXXXX100.
 - v. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging GWO.
 - vi. In accordance with Section 27(4) of the [Mental Health Act, 2022](#) the Petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of his appointment as the manager of the estate GWO.
 - vii. As Manager of the Estate of GWO the Applicant may dispose of the property only with the sanction of the court.
 - viii. The matter will be mentioned before court on December 6, 2023 to confirm compliance.
 - ix. Costs to be met out of the Estate of the Subject.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 28TH DAY OF JULY, 2023.

P M NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

