



REPUBLIC OF KENYA



KENYA LAW
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**In re GNN (A Person Suffering from Mental Disorder) (Petition
E028 of 2021) [2023] KEHC 21834 (KLR) (25 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E028 OF 2021**

A MSHILA, J

AUGUST 25, 2023

RULING

1. Before court is the application dated February 28, 2023 and brought under sections 27(1), 28(1) and (2) and 32 of the *Mental Health Act*, chapter 248 of the Laws of Kenya, sections 1A, 3A and 63(e) of the *Civil Procedure Act* and order 51 rule 1 of the *Civil Procedure Rules*, 2010. The applicants sought for orders that;-
 - a. Spent
 - b. This Honourable Court be pleased to grant special permission to the Guardians/Managers/Applicants to convey the proprietary interest of the subject in the following properties that she held as a Tenant in common with her late husband LGN.
 - i. The property comprised in Title Number Kiambaa/ruaka/XXXX
 - ii. The property comprised in Title Number Kiambaa/ruaka/XXXX
 - iii. The Property comprised in Title Number Kiambaa/mucatha/XXXX
 - iv. All that piece of land situated in East of Limuru Township in Kiambu District being Land Reference Number XXXX particulars of which are contained in Certificate of Title registered as number IR. XXXX/1 and the subdivisions thereof being LR. No. XXXX/114, LR. No. XXXX/115, LR. No. XXXX/116, LR. No. XXXX/117, LR. No. XXXX/118, LR. No. XXXX/119, LR. No. XXXX/120, LR. No. XXXX/121 and LR. No. XXXX/122.
2. The application is premised on the grounds that the subject herein G.N.N. was through a court order issued on 6th December, 2021 adjudged to be a person suffering from a mental disorder and the Applicants herein were appointed as the guardians of the subject and managers of her estate to manage her healthcare and affairs of her estate. That the subject and LGN (deceased) were registered as tenants in common of the above-mentioned properties as such the Applicants pray for grant of an order to execute all conveyances in relation to the property of the subject.



3. JWK and DARG the Guardians/Managers and Applicants herein swore the supporting affidavit. They deposed that the subject herein G.N.N. was adjudged to be a person suffering from a mental disorder on 25th November, 2021, and the Applicants herein were appointed as the guardians of the subject and managers of her estate to manage her healthcare and affairs of her estate. That the subject and LGN (deceased) were registered as tenants in common of the above mentioned properties as such the Applicants pray for grant of an order to execute all conveyances in relation to the property of the subject. They deposed that a grant was confirmed for the estate of LGN and all his properties were to be shared equally amongst his beneficiaries being the subject and her four children where the Applicants were to hold the subject's share in trust for the subject.
4. The Applicants further deposed that a petition for grant of letters of administration intestate for the estate of LGN their father who died on 15th October, 2008 was issued on 16th July, 2013 and the grant was confirmed on 12th October, 2015. That some properties listed therein were jointly owned by the deceased and the subject herein as such the need to seek for special permission to be able to deal with the deceased's properties jointly owned together with the subject. That they sought the permission to enable them conclude their father's succession cause as well as take care of the palliative care costs for the subject which have increased significantly.
5. ANNG and AMG beneficiaries of the deceased's estate and the subject's children also deposed affidavits consenting to the orders sought in the application herein.
6. The application was disposed of by way of written submissions. The Applicants submit that palliative care of the subject has become very costly as such they are desirous of utilizing some of the deceased's properties to raise additional funds to care for the subject but the said properties are held in tenancy in common between the deceased and the subject. The court was urged to grant special permission to deal with the subject's properties to enable them continue taking care of their ailing mother. The doctor's report produced stated that the subject's condition has deteriorated significantly over the past years. Reliance was placed on among other cases the case *In re S.N.K.* [2015] eKLR.

Analysis

7. Under section 27 of the *Mental Health Act*, a manager appointed in respect of the estate shall not, without the special permission of the court:-
 - a. mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
 - b. lease any such property for a term not exceeding five (5) years; or
 - c. invest in any securities other than those authorised by section 4 of the *Trustee Act* (cap 167).Further, the manager may not invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the *Trustee Act* without the prior consent of the Court.
8. At paragraph 682 of the *Halsbury's Laws of England*, 4th Edition Volume 30(2) it is stated that the management of the patient's property is intended for the:-
 - a. maintenance of or other benefit of the patient;
 - b. maintenance or other benefit of members of the patient's family;



- c. making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or
 - d. otherwise for administering the patients affairs.
9. The subject herein was adjudged to be a person suffering from a mental disorder and JWK and DARG were appointed guardians and managers of the estate of GNN to manage her healthcare and to access and operate all bank accounts and SACCO accounts in the name of GNN vide this court's ruling delivered on November 25, 2021.
10. The applicants herein sought for special permission to convey the proprietary interests of the subject in properties that the subject holds as a tenant in common with her late husband LGN.
11. The applicants aver that the costs incurred in the palliative care of the subject have become very costly as such they intend to raise more funds by disposing the properties in their father's estate but the same are held in tenancy in common with the subject hence the need for special permission from this court.
12. The doctor's report dated 13/02/2023 indicates that the subject's health is deteriorating as she now needs constant care of her PEG tube placed to help with nutrition as she is unable to eat due to her advanced dementia.
13. The Applicants contend that they do not wish to deal with the property solely registered under the subject's name but only the properties subject of a certificate of confirmation of grant issued in their father's estate dated 7th October, 2015 being:-
- a. The property comprised in Title Number Kiambaa/ruaka/XXXX
 - b. The property comprised in Title Number Kiambaa/ruaka/XXXX
 - c. The Property comprised in Title Number Kiambaa/mucatha/XXXX
 - d. All Thatpiece of land situated in East of Limuru Township in Kiambu District and being Land Reference Number XXXX/35 particulars of which are contained in Certificate of title registered as number IR. XXXX/1 and the subdivisions thereof being LR. No. XXXX/114, LR. No. XXXX/115, LR. No. XXXX/116, LR. No. XXXX/117, LR. No. XXXX/118, LR. No. XXXX/119, LR. No. XXXX/120, LR. No. XXXX/121 and LR. No. XXXX/122 as they are also keen in concluding the succession cause in respect of their father's estate.
14. From the analysis of the pleadings herein, the court is satisfied that the Applicants who are the children of the subject have been taking good care of their mother since her illness and is satisfied that their main intention in seeking special permission is to execute all conveyances in relation to parcels of land co-owned by G.N.N. as the managers of the estate and the guardians of the said G.N.N and to vest the proprietary interests in the above mentioned properties upon the subject.

Findings and Determination

15. This court finds the application has merit and it is hereby allowed.
16. This court hereby grants special permission to the Guardians/Managers/Applicants to execute all the conveyances to vest the proprietary interest to the subject in the following properties that she held as a Tenant in common with her late husband LGN.
- i. The property comprised in Title Number Kiambaa/ruaka/XXXX
 - ii. The property comprised in Title Number Kiambaa/ruaka/XXXX



iii. The Property comprised in Title Number Kiambaa/Mucatha/XXXX

iv. ALL THAT piece of land situated in East of Limuru Township in Kiambu District and being Land Reference Number XXXX/35 particulars of which are contained in Certificate of Title registered as number IR. XXXX/1 and the subdivisions thereof being LR. No. XXXX/114, LR. No. XXXX/115, LR. No. XXXX/116, LR. No. XXXX/117, LR. No. XXXX/118, LR. No. XXXX/119, LR. No. XXXX/120, LR. No. 4726/121 and LR. No. XXXX/122.

Orders Accordingly

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 25TH DAY OF AUGUST, 2023

A.MSHILA

JUDGE

In the presence of;

Mwenda – Court Assistant

Macharia Ngaru – for Applicants

