



**In re MM (Miscellaneous Application E012 of 2023)  
[2023] KEHC 23148 (KLR) (25 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 23148 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
MISCELLANEOUS APPLICATION E012 OF 2023**

**MW MUIGAI, J  
AUGUST 25, 2023**

**IN THE MATTER OF**

**GNM ..... PETITIONER**

**RULING**

1. The petitioner /applicant, GNM under Certificate of Urgency filed Petition on 21/8/2023 under section 26(1) and 29 of the *Mental Health Act* cap 248 and as the Subject's son as evidenced by Birth Certificate No 8XXXXX3, he sought to be appointed Legal Guardian of (his father) and to manage his estate.
2. The subject,MM ID NO 33XXXXX2 aged 114 years old now, due to declining health caused by old age now suffers from mental incapacity that hinders decision making and conduct of his affairs and ensuring his wellbeing.
3. The Applicant, GNM presented the subject's medical report dated 27/01/2022 from Officer in Charge of Muthetheni Health Centre Margaret Ngira who wrote that after examination of the subject,MM she found he is /was not able to communicate or express himself due to degeneration of thought and mental process caused by old age.
4. The medical report confirms that the subject now aged 114 years old due to declining health caused by old age now suffers from mental incapacity that hinders decision making and coherence in communication. He is currently not able to lead an independent life that prevents him from performing any basic chores, feeding, cleaning and organizing his affairs.
5. MM, the subject herein is the Plaintiff in ELC Machakos Chief Magistrate's Court 78 of 2019 (formerly ELC 193 of 2016 Nairobi) and due to his medical/health condition lacks ability to prosecute /defend and/ or effectively communicate his claim without the aid/assistance of his family.



6. The other siblings do not have any objection to the Petitioner GNM being the Legal Guardian of the subject herein and have filed their consents in support of the Petitioner's petition vide Further Affidavit filed on 24/8/2023.
7. The subject at the moment is not of sound mind to take care of himself as well as legal matters which requires his personal execution and participation. He owns the following assets that comprise his estate;
  - a. LR Muthetheni /Ngamba/684
  - b. LR Muthetheni/Ngamba/645
  - c. LR Muthetheni/Ngamba/285
  - d. Plot No 9 measuring 40x100ft situated in Ithini market in Muthetheni Location.
8. The Applicant GNM deposed that Subject's family consists of the following members who have consented to the Applicant's appointment as Legal Guardian to the subject and Legal Manager of his estate;
  - a. Loko MM – ID No 29XXXXX7
  - b. MFNM ID No 55XXXXX5
  - c. PMM ID No 72XXXXX4
  - d. IKM ID No 101XXXXX7
  - e. HMM ID No 116XXXXX6
  - f. EMM ID No 218XXXXX4

### **Determination**

9. 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.
10. 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 of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by close relatives or any other suitable persons.
11. Section 28 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.

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...”

12. From the evidence produced by the Applicant, the Medical Report on record and written consents of siblings, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under Section 26 of the *Mental Health Act*.
13. Relying on the Medical Report, this Court is satisfied from medical report dated 27/01/2022 that the subject is unable to communicate or express himself due to declining health from advanced age.
14. Therefore, in the interest of justice, the Applicant ought to be his legal guardian to ensure care, support and conduct of his affairs, assist in decision making on the subject’s behalf and manage her estate for the subject’s wellbeing.

**Disposition:**

15. In light of the above, the Court holds that: -
  1. MM (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the *Mental Health Act*, cap 248 Laws of Kenya.
  2. GNM is hereby appointed the Legal Guardian to MM
  3. GNM is hereby appointed Legal Manager of the estate of MM under section 28 of *Mental Health Act* to manage his 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.
  4. GNM to manage the subject’s immovable properties and/or settle liabilities with regard to suit properties;
  5. GNM to manage and utilize the Subject’s estate to ensure he is well taken care of, provision of necessities; fixed abode, food and clothing and medical care and assistance.
  6. GNM shall represent the Subject MM, as Plaintiff in ELC Machakos Chief Magistrate’s Court 78 of 2019 (formerly ELC 193 of 2016 Nairobi)

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 25<sup>TH</sup> AUGUST, 2023 (VIRTUAL/PHYSICAL CONFERENCE).**

**M.W. MUIGAI**

**JUDGE**

In the presence of:

Kwamboka present for Petitioner

