



In re JMW (A Person Suffering from a Mental Disorder) (Petition E162 of 2022) [2023] KEHC 21615 (KLR) (18 August 2023) (Judgment)

Neutral citation: [2023] KEHC 21615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E162 OF 2022
A MSHILA, J
AUGUST 18, 2023
IN THE MATTER OF SECTIONS 2, 26, 27 AND 28 OF THE
MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA
AND
IN THE MATTER OF J.M.W - A PERSON SUFFERING FROM
A MENTAL DISORDER
AND
IN THE MATTER OF AN APPLICATION BY N.W. TO BE
APPOINTED AS GUARDIAN OVER THE AFFAIRS OF THE
ESTATE OF J.M.W.
IN THE MATTER OF
NW APPLICANT**

JUDGMENT

Introduction

- 1. Before the court for determination is the notice of motion dated September 19, 2022 brought by way of a certificate of urgency under the provisions of sections 26 and 28(1) and (2) of the [Mental Health Act](#) seeking the following orders:
 - a. Spent.
 - b. That the subject of these proceedings be adjudged to be a person suffering from a mental disorder under section 26 of the [Mental Health Act](#) cap 248 Laws of Kenya.
 - c. That the applicant be appointed guardian *ad litem* of the said subject.



- d. That the applicant be appointed guardian *ad litem* to the subject for purposes of lodging pleadings/proceedings on his behalf to claim damages arising from personal injuries suffered in a road traffic accident that occurred on December 17, 2019 between himself and motor vehicle Kxx xxxxD as the subject is unable to take care of his affairs owing to his mental incapacity.
 - e. The costs of this application be provided for.
2. The application was supported by a supporting affidavit sworn by NW the applicant herein made on September 19, 2022 and further affidavit made on the June 15, 2023 in which she deposed that the subject is her brother has been diagnosed with a psychiatric disorder and has been receiving psychiatric care at Mathari National Teaching and Referral Hospital and Kiandutu Health Centre to date.
 3. That due to his condition the subject is not able to make rational decisions on his own or understanding formal documents and taking care of his affairs; as a result of the mental condition the subject is unable to take care of himself and is thus fully dependent on the sister and his elderly mother. She urged the court to grant her guardianship over the subject for better management of his affairs.
 4. At the hearing of the petition the doctor who was attending to the subject testified on the subjects incapacity and medical treatment and produced the medical report marked as PExh.1; the surviving mother and siblings of the subject consented to the petitioner/applicant being appointed guardian and manager of the subject's affairs. The consent dated June 5, 2023 is annexed to the application.
 5. The application was unopposed

Issues For Determination

6. Having perused the petition, the application and upon hearing the expert evidence this court finds that the only issue framed for determination is whether the orders sought are merited.

Analysis

7. Section 2 of the [Mental Health Act](#) cap 248 provides that: -

“A person suffering from a mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
8. Further on the issue relating to custody, management and guardianship is provided under section 26 of the [Mental Health Act](#) cap 248 which provides:

“(1) The court may make orders:

 - a. For the management of the estate of any person suffering from mental disorder, and
 - b. For the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person
 - c. Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
 - d. Where upon inquiries 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 just for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.”

9. The petitioner has adduced medical evidence that the subject is suffering from schizophrenia and insomnia and is unable to take care of his affairs. This condition has been confirmed by Patrick Munyua a Registered Clinical Officer from Kiandutu Health Centre.
10. The petitioner submits the subject is her brother and her siblings have consented to her being granted the orders of interim guardianship and manager of the estate of the subject as per the consent attached to the petition.
11. Upon observing the subject at the hearing hereof, it is evident the subject appeared coherent due to medication and was able to express himself and that he was able to comprehend or respond to simple greetings and instructions; going by the doctors evidence the subjects current mental stability was managed by daily use of drugs otherwise the subject is unable to make any rational decision and needs assistance.
12. This court is satisfied that granting the petitioner the orders sought would be in the best interest of the subject whom this court finds to be a person who requires to be managed as he has a mental disorder; this court is satisfied that this is a suitable case for the issuance of the orders sought as the subject is found to be a person who needs his affairs to be managed and in need of medical and personal care.

Findings and Determination

13. For the foregoing reasons this court makes the following findings and determinations;
 - i. The application is found to have merit and it is hereby allowed.
 - ii. The subject herein JMW is hereby adjudged to be a person suffering from a mental disorder pursuant to section 26 of the *Mental Health Act*;
 - iii. This court hereby appoints petitioner NW to be the legal guardian of the subject JMW.
 - iv. The petitioner shall act as the guardian *ad litem* for purposes of lodging pleadings/proceedings on the subjects behalf to claim damages arising from personal injuries sustained in a road traffic accident that occurred on the December 17, 2019.
 - v. This order shall not include distribution of his estate and the petitioner shall in particular do the following:-
 - a. Manage the subject’s health care;
 - b. Execute and sign documents on behalf of the subject related to the intended court case;
 - c. Receive monies and proceeds from the court case;
 - d. Utilize these proceeds to cater for the subject’s medical expenses and maintenance;



- e. To render to family members and other beneficiaries regular yearly accounts on the status of the estate of the subject.
- vi. This being a family matter there shall be no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18TH DAY OF AUGUST, 2023.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Wanjiru – for the Applicant

