



In re GGW (A Person Suffering from Mental Disorder) (Miscellaneous Application E088 of 2022) [2023] KEHC 27279 (KLR) (30 October 2023) (Judgment)

Neutral citation: [2023] KEHC 27279 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAJIADO

MISCELLANEOUS APPLICATION E088 OF 2022

SN MUTUKU, J

OCTOBER 30, 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 G.G. W (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY F.M.N TO BE APPOINTED
GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF G.G.W**

IN THE MATTER OF GUARDIANSHIP OF SUBJECT – G.G.W

FMN.....PETITIONER

IN THE MATTER OF

FMN PETITIONER

JUDGMENT

1. The Petitioner, FMN, filed this Petition dated 23rd May 2022 under sections 26 and 28(1) and (2) of the [Mental Health Act](#) Cap 248 Laws of Kenya, seeking the following orders:
 - i. That the Subject GGW be declared to be a person suffering from mental disorder.
 - ii. That the petitioner be appointed as the guardian of the Subject GGW.
 - iii. That the Court to appoint the petitioner, FMN, as manager of the estate of the subject, GGW.
2. The Petition is supported by an affidavit sworn by the Petitioner in which she has deposed that she is an aunt to the Subject who suffers from severe schizophrenia; that as a result of this mental disorder the Subject is unable to make important decisions for himself; that the mother of the Subject was taking care of him prior to her and that the Petitioner took up the care of the Subject when his mother died.



3. She has deposed that the Subject needs expensive medication and monthly medical checkups; that he needs to access insurance funds at Pioneer Insurance Company to help in his medical care and offset the rising medication bills. She seeks that this court declares that the Subject, GGW, is a person suffering from mental disorder and that she be appointed his guardian and manager of his estate. She stated that she undertakes to manage the Subject's estate faithfully and with accountability.
4. This court directed that the matter proceeds by viva voce evidence. Dr. Eric Njuguna testified as PW1. He told the court that he is a consulting psychiatrist at Chiromo Hospital Group; that the Subject, GGW, has been his patient for a year; that the Subject suffers from a severe form of schizophrenia and that his condition has deteriorated with regards to his ability to think and make personal judgements and ability to take care of himself. In the doctor's opinion, the Subject is not able to attain independent living and he would require continued care in order to survive; that he would also require supervision from a doctor once a month and assistance to take his medication regularly and attend clinics and therefore the Subject will require a care-giver on a daily basis due to the severity of the disease.
5. The doctor testified that he had prepared a medical report dated 24th May, 2023 in respect of the Subject's condition. He produced the Report as PEx. 1.
6. FMN, the Petitioner, testified as PW2. She told the court that she is the Subject's aunt and has been taking care of him since the demise of his mother in January 2020; that she has been supporting him; that she has taken out loans to support him and his needs and that she is able to take responsibility of caring for him with the help of a caregiver. She told the court that the Subject, aged 35 years, is the only child.
7. I have considered this evidence. Section 26 of the *Mental Health Act*, Cap. 248, which provides for order for custody, management and guardianship, states that:
 1. An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by:
 - a. a supporter of the person with mental illness; or
 - b. the representative of the person where the person with mental illness has not appointed a supporter.
 2. An application under subsection (1) shall be submitted together with an affidavit setting out:
 - a. the grounds upon which the application is made;
 - b. the full particulars as to the property and relatives of the person to whom it relates; and
 - c. a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
9. In this case, the Petitioner, who identified herself as the aunt of the Subject did not comply with section 26(2)(b) of the *Mental Health Act*. She has not provided full particulars as to the property and relatives of the Subject. Upon my enquiry during the hearing of this matter, the court was informed that there is a pending succession cause in respect of the death of the Subject's mother. I will make my comments on this at the conclusion of this determination.
10. From the evidence adduced in court it is clear to me that the subject, GGW, is not able to take care of himself and live an independent life. According to Dr. Eric Njuguna, the Subject would require constant care and monthly supervision by a doctor and daily care be a caregiver. I am satisfied with the



evidence adduced in court and the medical report that the Subject needs assistance is his daily living and therefore the Petitioner has persuaded this court that the orders sought in her Petition is merited.

11. Section 27(1) of the [Mental Health Act](#) is elaborate on the orders the court can make. The section provides that:
 1. The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including:
 - a. An order making provision for the maintenance of the person
 - b. An order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and
 - c. An order making provision for the payment of the person's debts.
 2. The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
 3. The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
 4. The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from a mental illness.
9. The purpose of publishing a Notice in Kenya Gazette under subsection (4) is for purposes of allowing any person to lodge an objection to the person appointed as manager of the person suffering from mental illness.
10. The duties of the manager appointed by the court are specified under section 28 of the [Act](#) which provides, inter alia, that:
 - (1) Where a manager is appointed under this Part, the court may, upon considering the nature of the property whether movable or immovable, and subject to subsection (2), make such orders as the court may consider necessary for the management of the estate by the manager.
 - (2) The manager shall not, without the approval of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
 - (b) lease any such property for a term exceeding five years; or
 - (c) invest in any securities other than those authorized under the [Trustee Act](#).
9. I wish to state that this application is brought under the old Act. It fails to capture the amendments introduced to the [Mental Health Act](#) by The Mental Health (Amendment) Act (2022). The amendments have changed many aspects of applications like the one before the court. It is crucial that the Petitioner understands her duties under the Act and understand her duties and responsibilities, specifically sections 28, 29, 30 and 31 of the amended Act. The Petitioner ought to understand that she must act within the law failing which there is a penalty under section 30 and that the court can remove her as the manager of the estate either on its own motion or on application.
10. To enable this court to fully determine this matter, there is need for the Applicant to comply with the law. In exercise of the inherent powers of this court, I direct that the Petitioner do provide the full particulars of the property forming the estate of the Subject and particulars of other family members of



the Subject. To enable the Petitioner to comply with this order, I will allow her 60 days to file a further affidavit introducing the information required in compliance with this court order and to enable this court to conclude this matter.

11. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF OCTOBER 2023.

S. N. MUTUKU

JUDGE

