



**In re ECI (Miscellaneous Civil Application E143 of 2023)
[2023] KEHC 24872 (KLR) (Family) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24872 (KLR)

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

MISCELLANEOUS CIVIL APPLICATION E143 OF 2023

PM NYAUNDI, J

OCTOBER 27, 2023

**IN THE MATTER OF AN APPLICATION/ PETITION UNDER
SECTION 2,26,27 & 28 OF THE MENTAL HEALTH ACT CAP 248 AND**

**IN THE MATTER OF ECI (A PERSON SUFFERING FROM
MENTAL DISORDER, LEWY BODY DEMENTIA)**

AND

**IN THE MATTER OF AN APPLICATION BY CGWI TO BE APPOINTED AS GUARDIAN
OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF THE SAID ECI**

IN THE MATTER OF

CGWI PETITIONER

JUDGMENT

1. Before this court is a petition dated July 4, 2023 by which the petitioner CGWI seeks the following orders: -
 - a. That the subject ECI be adjudged to be person suffering from mental disorder as defined in the *Mental Health Act*, Cap 248 Laws of Kenya.
 - b. That CGWI be appointed as the Manager of the Estate and all the affairs of ECI.
 - c. That CGWI be appointed Guardian of the subject ECI.
 - d. That the appointment of the Petitioner as the guardian of the subject, ECI do operate as authority to receive and manage her pension payments.
 - e. CGWI as guardian of ECI do operate as authority to operate her bank accounts numbers 110XXX091,122xxxx576 KCB Bank and 418xxxx00 0xx6 7xx5 UNxxU.



- f. That the cost of this petition be borne by the estate of the Subject, ECI.
2. The Petition was supported by an affidavit dated July 4, 2023 sworn by the Petitioner. The matter was canvassed by way of *viva voce* evidence on the online platform. The Petitioner who testified and told the Court that she is the daughter of the Subject Patient. The subject is aged 73 years old.
 3. The Petitioner stated that she was seeking to be appointed as Guardian of her mother's affairs and manager of her estate. She told the court that the patient has been unwell since 2016 and that she is single mother, currently under the care of Dr.Sayed K. Ali at Aga Khan Hospital, Nairobi.
 4. The subject is not able to manage her own affairs and perform activities of daily living such as bathing, grooming, toileting and even feeding herself. She is not in position to take care of herself. She is struggling more and more to communicate. She forgets things all the time and needs constant reminders.
 5. That the subject suffers from a progressive degenerative disorder of her central nervous system most likely Lewy Body Dementia that is not curable, she has shown a decline in her memory, language skills and cognition with frequent hallucinations and confusion episodes. She is also diabetic and hypertensive. She has annexed to her Supporting Affidavit, a copy of the medical report of the patient dated 1April 4, 2023 by Dr Sayed K. Ali (Annexure 'CGWI-4' medical report dated April 14, 2023.
 6. The order of guardianship will enable the Petitioner handle the Subject's affairs including operating her bank accounts and pension payments.
 7. DMM one of the children of the subject attended court and confirmed that she had no objection to the Petitioner being granted guardianship of their mother. The other sibling, CGW has refused to give her consent without any justifiable reason despite the necessity of this petition having been explained to her.
 8. I have carefully considered this Petition, the Affidavit filed in Court as well as the evidence adduced in the matter. Section 26 of the [Mental Health Act](#), cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs as follows: -

“Order for custody, management, and guardianship

- (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.
- (2) 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.
- (3) 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 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 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.” [Own emphasis]

9. The Petitioner has sought to be declared as Guardian and Manager of the Patient. To merit the above orders the Petitioner must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the Patient is incapable of managing his own affairs. The Petitioner testified that the Patient was diagnosed with dementia. She testified that the patient started to present symptoms of decreasing memory, general slowing and cognitive decline with impaired calculation, delayed recall and reduced verbal fluency making him unable to independently take care of his personal affairs.
10. Medical Reports dated April 14, 2023 prepared by Dr. Sayed K.Ali a Neurologist based at Aga Khan University Hospital in 2023 were produced as an exhibit. The Doctors diagnosed the subject with Lewy Body Dementia. The report stated inter alia that:-

“The above patient (ECI) has been under my care at Aga Khan University Hospital, Nairobi and has progressive degenerative disorder of her central nervous system most likely Lewy Body Dementia that is not curable.

She has shown a decline in her memory, language skills and cognition with frequent hallucinations and confusion episodes.

Opinion: It is in her best interest that a legal guardian be appointed to ensure that she is well taken care of both medically and socially both now and in the future.
11. The Subject’s daughter DMM is in agreement with this Petition for Guardianship and has signed consent to the petition and confirmed her consent to the court. The other sibling CGW has refused to give her consent neither did she appear during the hearing of this petition. The Petitioner has always cared for her.
12. The subject was present in Court, the Court interviewed her, she supports the Application.
13. Based on the material availed to this Court I am satisfied that the Subject suffers from a mental illness under the terms of the *Mental Health Act*, 2022. I am satisfied with the merit of this Petition and order as follows;
 - i. ECI (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. CGWI is hereby appointed the legal guardian to ECI.
 - iii. CGWI is hereby appointed manager of the estate of ECI under section 28 of *Mental Health Act* to manage her estate including any such description of moveable or immoveable 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. That the appointment of the Petitioner as the guardian of the subject, ECI do operate as authority to receive and manage her pension payments.
 - v. CGWI as guardian of ECI do operate as authority to operate her bank accounts numbers 110xxxx091,122xxxx576 KCB Bank and 418xxxx00 0xx6 7xx5 UNxxU.
 - vi. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging ECI.



- vii. 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 her appointment as the manager of the estate of ECI.
- viii. As Manager of the Estate of ECI the Petitioner may dispose of the property only with the sanction of the court.
- ix. The matter will be mentioned before the court on January 18, 2024 to confirm compliance.
- x. Costs to be met out of the Estate of the Subject.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 27th DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

In the Presence of:

Muuu holding brief for Ms. Mbaabu for Applicant

Sylvia Court Assistance

