



In re PNN (A Person Suffering from Mental Disorder) (Miscellaneous Application E155 of 2023) [2023] KEHC 24898 (KLR) (Family) (27 October 2023) (Judgment)

Neutral citation: [2023] KEHC 24898 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E155 OF 2023
PM NYAUNDI, J
OCTOBER 27, 2023
IN THE MATTER OF SECTIONS 26 (1) (A) & (B), 28 (1) &
(2) OF THE MENTAL HEALTH ACT CAP 248 LAWS OF
KENYA
AND
IN THE MATTER OF PNN (SUBJECT) A PERSON SUFFERING FROM MENTAL
DISORDER
AND
IN THE MATTER OF AN APPLICATION FOR LEGAL
GUARDIANSHIP
IN THE MATTER OF
ENN PETITIONER

JUDGMENT

1. The Applicant herein (ENN) a business man is the biological son of the subject PNN who has filed Petition dated 21st July, 2023 seeking to be appointed legal guardian and manager over the affairs of PNN on account that his father is ill health.
2. The subject herein (PNN) is 70 years old and is having a memory loss (senile dementia), the Applicant seeks to have him adjudged as a person with mental disorder under the *Mental Health Act* Chapter 248 laws of Kenya.
3. He has been having this problem for a period of two years and in addition has a history of fracture on the right hip making him unable to work.



4. The Petitioner has been staying with his sick father since 2018 when he became seriously sick.
5. Consequently, the subject is incapable of protecting his interests due to old age, has poor cognitive functions and ill health rendering him fully dependent on others regarding his property, medical and legal affairs hence the necessity to appoint guardian ad litem.
6. The Petitioner further stated that the subject herein was sued in a land matter being Nairobi ELC Number 119 of 2019 which is scheduled for defence hearing on 25th October, 2023.
7. It is also the Petitioner's statement that the doctors advise was that due to the subject's condition, he is incapable of protecting his interests due to loss of memory thus the subject executed a power of attorney in the favour of Petitioner giving him authority to discharge various responsibilities on the behalf of subject.
8. The current medical report presented by the Petitioner from Dr. Orange E.M Consultant Radiologist at German Medical Center Nairobi dated 23rd April, 2022 indicates that upon examination the subject was diagnosed with memory loss and fracture on the right hip.
9. That the said PNN has been treated in hospitals for numerous conditions and it was confirmed that he is suffering from a mental incapacity under section 28 (6) of the *mental Health Act*.
10. That since the subject lost his memory, he has poor cognitive functions rendering him fully dependent on others regarding his property, medical and legal affairs.
11. The petitioner avers that he has been taking care of the subject by facilitating provision of basic needs, regular medical attention through home care based medical treatment with the help of visiting doctors.
12. That unless the application herein is heard as the earliest possible opportunity the subject stands to suffer immense injustice as well as prejudice.
13. The wife to the Subject is also critically ill and was therefore unable to give her consent. The Court observed that both subject and his wife are non-communicative.
14. The Petitioner also submitted a letter from the local chief confirming the status of the family.

Determination

15. 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 for purposes of prosecuting an ongoing land matter being Nairobi ELC Number 119 of 2019.
16. 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 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
17. Section 28 (1) 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. The Petitioner/ Applicant will require to access funds from the subject's bank account Equity Bank of Kenya and funds



from Sanlam for the purpose of maintaining the subject to the best possible medical condition. 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...”

18. From the evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition envisaged under Section 26 of the *Mental Health Act*.
19. In light of the above, the Court holds that: -
 - i. PNN (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. ENN is hereby appointed the legal guardian to PNN.
 - iii. ENN hereby appointed manager of the estate of PNN under Section 28 of *Mental Health Act* to manage his 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. Pursuant to this appointment the Petitioner shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging PNN.
 - v. 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 his appointment as the manager of the estate of ENN.
 - vi. As Manager of the Estate of PNN the Petitioner may dispose of the property only with the sanction of the court.
 - vii. The matter will be mentioned before court on 18th January, 2024 to confirm compliance.

No order as to costs

It is so ordered

DELIVERED DATED SIGNED ON THE VIRTUAL PLATFORM IN NAIROBI ON 27TH OCTOBER, 2023.

P. NYAUNDI

JUDGE

In the presence of:

Boaz Agutu for Petitioner

