



**Ahmed v Damnan (Miscellaneous Application 13 of 2021)
[2022] KEHC 10897 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 13 OF 2021**

JO NYARANGI, J

MAY 27, 2022

BETWEEN

MUNA ABDIRABO AHMED APPLICANT

AND

YAHYA M.A. DAMNAN RESPONDENT

JUDGMENT

1. By an amended Originating Summons dated 7th March, 2022, Muna Abdirabo Ahmed moved this court pursuant to Sections 26 and 38 of the [Mental Health Act](#) Cap 248 and Order 32 rule 15 of the [Civil procedure](#) rules seeking orders that;
 - a. The court finds that the respondent Yahya M.A Damnan is incapable of protecting his interests with regard to his affairs due to a depressive illness after the conduct of a judicial inquiry;
 - b. That the applicant Muna Abdirabo Ahmed be appointed as the respondent's (Yahya M.A. Damnan's) guardian ad litem
 - c. That the applicant do manage all the affairs of the defendant Yahya M.A Damnan.
2. The application is premised upon grounds stated on the face of it and further amplified by an affidavit sworn on 7th March, 2022 by Muna Abdirabo Ahmed the wife to the patient.
3. It is the petitioner's case that her husband (patient) was diagnosed with having depressive illness which has rendered him incapable of protecting his rights due to mental infirmity hence a person of unsound mind.
4. She averred that as a result of the said illness, he is unable to comprehend and defend himself in the Kadhi's court succession cause No 268/2019 estate of the late Said Bin Awadhi, and Awadhi Bin Haymid Bin Damnan alias Awadh Bin Ahmed Bin Damnan.



5. During the hearing, the applicant literally adopted the content contained in her affidavit in support of the petition. She averred that she has five children with the first born aged 15 years. She relied on two medical reports made by doctor Omar J.Aly dated 13th October, 2021 and another one by Dr CM Mwangome dated 21st March, 2021.
6. According to Dr. Omar, the patient is suffering from depression illness and therefore incapable of handling any legal issues for the moment. On his part, Dr. C.M Mwangome of Cost General Hospital stated that the patient was suffering from high blood pressure which was not properly managed thus developing to cognitive impairment leading to disorientation, getting lost, disinhibition i.e. urinating in public, self-neglect and close supervision during meals. In his opinion, the patient has severe cognitive impairment implying that he cannot follow legal proceedings nor manage his affairs.
7. According to the applicant, her husband's illness has exposed him to misuse and abuse by his brothers who have taken advantage of his mental illness as he cannot do anything on his own.
8. Pw2, Aisha Yahya aged 15 years a daughter to the petitioner and patient corroborated her mother's testimony. Pw3 doctor Charles Mwangome merely produced his medical report thus confirming that the patient is suffering from mental illness which has compromised his ability to manage his day to day activities.
9. When the patient was produced before court, he maintained almost complete silence as he kept staring the court without answering anything hence unable to follow court proceedings.
10. I have considered the application herein and the evidence by various witnesses. The only issue for determination is whether the petitioner has met the requirement for declaring the patient herein as a person suffering from mental disorder.
11. Section 2 of the *Mental Health Act* does describe a person suffering from mental disorder as;

“...a person who has been found to be suffering under this Act and includes a person with mental illness and suffering from mental impairment due to alcohol or substance abuse”
12. This court's authority to issue the orders south is derived from Sections 26, 27 and 28 of the *Mental Health Act*. Section 26 does provide that;
 - (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 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 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 disorder.



13. According to the applicant /petitioner, the patient has been suffering from depression illness which has exposed him to great risks of losing his rights in a pending succession case. That due to his mental illness, he cannot comprehend nor follow court proceedings hence incapable of protecting and defending his rights or interests.
14. Her testimony was further corroborated by her daughter(pw2) and Dr. Mwangome(pw3). Further, the court had the opportunity to interview the patient but it was impossible to extract any response from him.
15. Lack of the requisite cognitive mental function is a deficiency in itself which can expose the victim to manipulation or generally not comprehend his role in society besides the inability to manage one's daily activities responsibly.
16. In view of his established mental condition, I am persuaded to believe that the petitioner has established to the satisfaction of the court that the patient herein is a person suffering from mental disorder in accordance with the *Mental Health Act*. In the circumstances, his interest and that of his estate can be taken care of by the appointment of a guardian as well as a manager to take charge of his welfare and manage his estate.
17. Accordingly, the applicant/petitioner is hereby appointed as a guardian to the subject (patient) as well as a manager of his estate on condition that she shall have no right unless with court's authority to alienate, sale, dispose or transfer any immovable assets of the patient. She shall also have authority to sue, prosecute or defend any suit filed by the estate or against the subject or the estate.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 27TH DAY OF MAY, 2022

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J. N. ONYIEGO

JUDGE

