



**In re DOG (Miscellaneous Application E200 of 2021)
[2022] KEHC 12206 (KLR) (Family) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E200 OF 2021
MA ODERO, J
JULY 29, 2022**

IN THE MATTER OF

LAO	1ST EXPARTE
JAO	2ND EXPARTE
LT	3RD EXPARTE
MAO	4TH EXPARTE
RAO	5TH EXPARTE
BAO	6TH EXPARTE
POO	7TH EXPARTE
COO	8TH EXPARTE

JUDGMENT

1. Before this court is an application dated October 27, 2021 where the applicants seek the following orders:-

- “1. spent
- 2. That the honorable court do allocate a date on priority basis for the production of DOO for the purposes of judicial examination or inquiry to establish whether by reason of unsoundness of mind or mental infirmity, he is incapable of protecting his interests



3. That the honorable court be pleased to make a declaration that DOO is of unsound mind or mental infirmity and as such he is incapable of protecting his interests
 4. That pursuant to Order 3 hereinabove, the Honorable Court be pleased to appoint MAO as the Guardian Ad Litem of DOO and manage all his affairs.
 5. That MAO be and is hereby authorized to operate the subject DOO bank account held at Post Bank, Oyugis Branch, Account Number xxxxxxxxxxxxxx
 6. That costs be in the cause.”
2. The Application was supported by an affidavit dated October 27, 2021 sworn by the applicant MAO.
 3. The applicant through the virtual platform told the court that she is the daughter of the subject who was born in 1930. She is seeking to be appointed as Guardian of her father’s affairs due to his old age. She stated that she is the only child of the subject who lives in Kenya. The subject is a widower who lives in Homabay County with a helper. That the patient suffers Dementia and is not in a position to manage his own affairs.
 4. The applicant told court that the subject is not able to comprehend, he does not recognize her and he does not communicate well.
 5. PW2 LAO, PW3 LT and PW4 RAO who are daughters of the Subject told court that they were aware of the Application and had no objection to their sister MA being appointed as the Legal guardian of the subject.

Analysis and Determination

6. 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 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 mental disorder.” [Own emphasis]

7. The applicant has sought to be declared as Guardian and Manager of the Subject and his affairs. 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 her own affairs. The Petitioner testified that the Patient has been diagnosed with Dementia. That he is not able to recognize people and he cannot communicate well.
8. The applicant states that Subject requires funds for the purposes of maintaining him to the best possible medical condition as well as ensuring provision of nutrition and ensuring his wellbeing. She states further that she requires access to the subject’s pension funds saved in the subject’s bank accounts for his maintenance as well as the authority to assist the subject manage and safeguard his assets to his benefit. That the subject has numerous properties and bank accounts which he is unable to manage on his own, and that some of his properties are subject to interference by third parties through unlawful means.
9. A Medical Report dated June 19, 2019 prepared by Dr. Mutala Consultant Radiologist of Mediheal Hospital Parklands (Annexure ‘LAO-1’) The Doctor diagnosed him with Progressive memory loss over last four (4) years. I have also perused the Medical Report in respect of the Subject prepared by DR R.N. Kangethe a Consultant Psychiatrist. The doctor found that the Subject suffers from ‘paranoid delusions’ and diagnosed him with Schizophrenia, which is a chronic mental disorder. She recommended that a guardian/manager be appointed for the Subject.
10. The court was able to see the Subject online. The subject was an elderly gentleman who did not respond when spoken to. He was seated outside a house with his daughter. He did not appear to grasp what was going on around him.
11. The Subject’s children are in agreement with this Application for Guardianship. The Subject’s other children have signed a consent to the Petition and confirmed their consent to the court. The Subject currently lives with a helper in his home and the MAO is the only child of the subject who is in Kenya.
12. 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*. I am satisfied of the merit of this Petition and I hereby make the following orders:-
 1. The Subject DOO is declared to be a person suffering from a mental disorder under section 26 of the *Mental Health Act*, cap 248 Laws of Kenya.
 2. The Petitioner MAO is appointed as Guardian of the Subject and Manager of his Estate.
 3. No orders on costs.

DATED IN NAIROBI THIS 29TH DAY OF JULY 2022.

.....

MAUREEN A. ODERO

JUDGE

