



REPUBLIC OF KENYA



**In re Estate of SEL (Petition E089 of 2022)  
[2022] KEHC 12254 (KLR) (Family) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12254 (KLR)

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

**FAMILY**

**PETITION E089 OF 2022**

**MA ODERO, J**

**JULY 29, 2022**

**IN THE MATTER OF THE ESTATE OF MENTAL  
HEALTH ACT, CAP 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SEL**

**IN THE MATTER OF**

**LL ..... PETITIONER**

**JUDGMENT**

1. Before this Court is the Petition dated 19<sup>th</sup> April 2022 by which the Petitioner LL seeks the following orders:-

- a. That SEL be adjudged to be a person suffering a mental disorder under Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya.
- b. That the Petitioner be appointed as the Manager Of SEL estate which includes: any such description of movable or immovable property; money; debts; legacies; power to execute or sign all deeds and instruments relating to or evidencing the title or right to any property or giving a rise to receive any money or goods and to proceed to take over and/or institute any litigation and/or claims; also including any property as had originally been in the possession or under the control of any other person but also any other property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.”



2. The Petition was supported by the Affidavit of even date sworn by the Petitioner. The matter was canvassed by way of oral evidence on the virtual platform.
3. The Petitioner LL told the court that the Subject SEL is her father. She stated that the subject suffered a mental breakdown for which he is currently under treatment. That as a result the Subject is not in a position to manage his own affairs.
4. Pw 2 FAL is the wife of the subject and mother of the Petitioner. She confirms that the subject is unwell and requires assistance to manage his affairs.

### **Analysis and Determination**

5. I have carefully considered the Petition filed by the 2<sup>nd</sup> Petitioner, the Replying Affidavit on record as well as the written submissions filed by both parties. In order for a Petition seeking management of an estate to be granted it must be proved that the patient (Subject) is suffering from a mental disorder which renders him/her incapable of managing his/her own affairs.
6. Section 26 of the *Mental Health Act* 248 Laws of Kenya provides for the circumstances under which a court may make orders for the Guardianship of a Subject (patient) 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. In the case of *In Re N.M.K.* (2017) eKLR, the Court considered what should be borne in mind when an application is made under Section 26 and 27 of Cap 248 and as follows”-
    - “ 14. In considering an application brought under sections 26 and 27 of the *Mental Health Act*, the Court is guided by three main factors:
      - a. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;



- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
- c. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”

15. The overriding principles in applying all these factors is that the welfare and best interest of the Subject must be the overall guiding principle. (own emphasis)

- 8. The Petitioner told the court that the Subject who is her father is suffering from psychiatric illness and is not in a position to manage his own affairs. This fact is confirmed by PW2 who is the wife of the Subject who resides with him.
- 9. I have perused the medical report dated 17<sup>th</sup> March 2022 prepared by Dr Peter Mativo a Consultant Physician at the Aga Khan University Hospital. The said report is annexed to the supporting Affidavit dated 19<sup>th</sup> April 2022.
- 10. The medical report indicates that the Subject suffered a stroke in 2012. Upon examination, he was found to be suffering ‘paranoia and restlessness’. The Subject was agitated and unable to follow commands. He was referred for admission to the Psychiatric Unit at Avenue Hospital.
- 11. I was able to see the Subject online. He was an elderly gentleman. The Subject confirmed to the court that he is under treatment. He stated that he was unable to manage his affairs and stated that he required the assistance of his daughter (the Petitioner). The Subject appeared tired, listless and had slurred speech.
- 12. From the medical report and the courts own interaction with the Subject it is clear that he is suffering from a mental disability as contemplated by Section 26 of the *Mental Health Act*.
- 13. The Petitioner has sought to be appointed as Guardian of the Subject and Manager of his estate. The Subject’s wife told the court that she supports the Petition. The Subject himself indicated that he trusted the Petitioner to manage his affairs.
- 14. The other children of the Subject HNL and KKL both of who reside at abroad also testified in this matter. They confirmed that their father suffers from cognitive issues. The Subjects sons indicated that they were both aware of and supported this petition filed by their sister. Accordingly, I find merit in this Petition. The same is allowed and the court makes the following orders: -
  - (1) The Subject SEL is declared to be a person suffering from a mental disorder as defined in the *Mental Health Act*, Cap 248, Laws of Kenya.
  - (2) LL be and is hereby appointed as Guardian for the Subject.
  - (3) The Petitioner LL is appointed as manager of the estate of the Subject SEL.
  - (4) No orders on costs.

**DATED IN NAIROBI THIS 29<sup>TH</sup> DAY OF JULY, 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

