



**In re RAO (The Subject) (Miscellaneous Civil Appeal E091 of 2022)
[2022] KEHC 10955 (KLR) (Family) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 10955 (KLR)

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

FAMILY

MISCELLANEOUS CIVIL APPEAL E091 OF 2022

MA ODERO, J

JULY 29, 2022

IN THE MATTER OF MENTAL HEALTH ACT, CHAPTER 284 THE LAWS OF KENYA

AND

IN THE MATTER OF RAO (THE SUBJECT)

IN THE MATTER OF

SAO 1ST PETITIONER

JAO 2ND PETITIONER

JUDGMENT

1. Before this Court is the Petition dated 27th April 2022 by which the Petitioners seek the orders -

- “ 1. That the Subject RAO be adjudged as a person suffering from mental disorder under the *Mental Health Act* 248 Laws of Kenya.
2. That the Honourable Court be pleased to appoint SAO and JAO as the guardians and managers in respect of RAO and to grant us custody care and management of the subject.
3. That the Honourable court be pleased to appoint SAO and JAO as managers of the estate of the Subject RAO with powers to preserve the assets/properties of the subject.
4. That the Honourable court be pleased to grant SAO and JAO powers to execute legal documents on behalf of the Subject RAO.”

2. The Petition was supported by the Affidavit of even date sworn by both Applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.



3. The Petitioners told the court that the Subject RAO is their biological sister. That the Subject who is now forty (42) years old has suffered development problems for a long time rendering her incapable of managing her own affairs.
4. The Petitioners state that the Subject lives in the family home in Kitengela and has been under the care of their mother. That their mother is now aged and wheelchair bound and is no longer capable of providing proper care for the subject. For this reason, the Petitioners seek to be appointed as the legal guardians of the Subject as well as manager of her affairs.
5. I have carefully considered the Petition filed by the 2nd 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. In order to merit the grant of the orders being sought in this Petition it must be proved that the Subject suffers from a mental incapacity.
9. The Petitioners both state that the Subject who is their elder sister has suffered developmental problems for most of her life. That she is unable to do anything for herself and that it is their aged mother (who herself is now physically disabled) who has been caring for the subject.
10. I have perused the medical report dated 24th March 2022 prepared by Dr Marx Okonji a Consultant Psychiatrist. The said report appears as Annexure ‘SAN- 1’ to the Supporting Affidavit. The report confirms that the Subject has had a long history of psychiatric illness and has been admitted for the same twice. That she has minimal social competency and cannot perform basic activities of daily living for herself.
11. Upon assessment the Psychiatrist found that the Subject suffers from auditory hallucinations and that both her long and short term memory were grossly impaired. The doctor concluded that the Subject has “mild mental handicap with schizoaffective disorder (a form of chronic psychiatric disorder)”.
12. The court was able to see and speak to the Subject on the virtual platform. She was a cheerful mature lady who appeared lucid and easily answered questions put to her by the court. However, it must be noted that the interaction which this court had with the Subject was a fleeting one.
13. Based on the evidence of the Petitioners and their four (4) siblings as well as on the basis of the annexed medical report, I find that the Subject does suffer from mental disability and is not in a position to manage her own affairs.
14. As stated earlier the other siblings of the Subject namely KO, DO and PO also testified in court. They confirmed that the Subject was mentally incapacitated. The siblings all stated that they were aware of and fully supported this Petition. That Petitioners being the sisters to the Subject are best placed to manage her affairs. In conclusion, I find merit in this petition. The same is allowed and this court makes the following orders: -
 1. The Subject RAO is adjudged to be a person suffering from a mental disorder under the Mental Health Act, Cap 248, Laws of Kenya.
 2. SAO and JAO are hereby appointed as guardians of the Subject RAO.
 3. SAO and JAO are hereby appointed as managers of the estate of the Subject RAO with powers to preserve the assets/properties of the Subject and to execute legal documents on her behalf.
 4. No orders on costs.

DATED IN NAIROBI THIS 29TH DAY OF JULY 2022.

.....

MAUREEN A. ODERO

JUDGE

