



In re RMMN (a person suffering from a Mental Disorder) (Miscellaneous Application E100 of 2022) [2022] KEHC 12315 (KLR) (Family) (29 July 2022) (Judgment)

Neutral citation: [2022] KEHC 12315 (KLR)

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

MISCELLANEOUS APPLICATION E100 OF 2022

MA ODERO, J

JULY 29, 2022

**IN THE MATTER OF SECTION 26 (1), 27 (1) AND 28 OF THE
MENTAL HEALTH ACT, CHAPTER 284 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP
OF RMMN (A PERSON SUFFERING FROM A MENTAL DISORDER)**

EUTYCHUS NYOIKE 1ST PETITIONER

GLADWELL NYAMBURA2ND PETITIONER

JUDGMENT

1. Before this Court for is the Petition dated 12th May 2022 in which the Petitioners Eutyclus Nyoike and Gladwell Nyambura seek for orders That:-

- a. This Honourable court declare RMMN person suffering from a mental disorder within the meaning of the *Mental Health Act*.
- b. The Honourable court be pleased to issue orders appointing the Petitioners as guardians of the affairs of RMMN and joint managers of the all her properties.
- c. This Honourable court do issue orders authorizing the Petitioners to do all things that the Ward as a proprietor would be entitled to under law. Including but not limited to executing all deeds and instruments, evidencing the title or right to the property, to receive or payment and/or deliver any money or goods, to take over and/or institute any litigation and/or claims relating to the properties.



2. The Petition was supported by an Affidavit dated 11th April 2022 sworn by Eutyclus Nyoike the 1st Petitioner which Affidavit was notarized by a Notary Public in Baltimore, Maryland, USA. The Petition was canvassed by way of oral evidence on the virtual platform.
3. The Petitioners are the children of the Subject RMMN. They told the court that the Subject suffers from dementia and as a result is not able to manage her own affairs. The Subject currently resides with her children in the USA.
4. It was averred that the Subject owned rental properties in Nairobi but due to her deteriorating mental state, she cannot recall where her properties are located and is unable to manage the same.
5. The Petitioners seek to be appointed as the Guardians of the Subject to enable them identify, collect and protect her estate.

Analysis and Determination

6. 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.
7. 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)
8. 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)
9. The Petitioners both told the court that the Subject who is a Kenyan Citizen is suffering from dementia. That this has affected her capacity to manage her own affairs.
 10. I have perused the Medical Report prepared on 28th July 2021 by DR Burnie of the Neuro Diagnostic Centre in Pennsylvania USA. Upon examination, the patient was found to have poor orientation, poor insight and poor judgment. The Subject was diagnosed with “moderate to severe Alzheimers dementia”.
 11. I was able to see and speak to the Subject online. She was an elderly lady who appeared confused. She confirmed that the Petitioners were her children and indicated that she had no objection to their petition.
 12. On the basis of the Medical Report I find that the Subject suffers a Mental Disability under Section 26 of the [Mental Health Act](#). She is not in a position to manage her own affairs. The petitioners who are the children of the Subject, and who are currently providing for her medical care are best placed to be appointed as Guardians and Managers of the Subject affairs.
 13. I find merit in the Petition and I do allow the same. In conclusion, this court makes the following orders –
 1. The Subject RMMN is declared to be a person suffering from a mental disorder within the meaning of the [Mental Health Act](#) Cap 248, Law of Kenya.
 2. The Petitioners Eutyclus Nyoike and Gladwell Nyambura are appointed as joint Guardians for the Subject.
 3. The Petitioners Eutyclus Nyoike and Gladwell Nyambura are appointed as joint managers of the Estate of the Subject.
 4. No orders on costs.

DATED IN NAIROBI THIS 29TH DAY OF JULY, 2022.

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MAUREEN A. ODERO

JUDGE

