



**In Re Estate of TNM (Miscellaneous Application E055 of 2021)
[2022] KEHC 11940 (KLR) (Family) (22 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11940 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E055 OF 2021
MA ODERO, J
JULY 22, 2022
PETITION FOR THE APPOINTMENT OF A GUARDIAN
AND MANAGER FOR THE ESTATE OF TNM (SUBJECT)**

IN THE MATTER OF

WKM PETITIONER

JUDGMENT

1. Before this Court is the Petition dated 4th March 2021 in which the Petitioner seeks for orders that:
 - “a. Your Petitioner WKM be appointed guardian of the said TNM to serve her financial interests with banks.
 - b. Your Petitioner WKM be appointed as guardian of the subject and manager of the estate of the subject TNM who is suffering from a mental disorder and mentally degenerating with general power save the court may think.
 - c. There be no order as to costs.”
2. The Petition was supported by the Affidavit of event date sworn by the Petitioner. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
3. The Petitioner who is a retired Advocate told the court that the Subject was his wife with whom he had borne for (4) children. Annexed to the Petition is a copy of the couple’s marriage certificate serial Number 6XXX indicating that they got married to each other on 6th June 1970.
4. The Petitioner told the court that the subject has been diagnosed with Alzheimers disease rendering her incapable of managing her own affairs. He now seeks to be appointed as Guardian for the subject and manager of her Affairs.



Analysis and Determination

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. The Petitioner and his children who also testified in court all stated that the subject suffers a mental disability. That she is unable to do anything for herself and is not in a position to manage her affairs.
9. I have perused the medical Report dated 8th September 2020 prepared by Dr Silvanus Wabwire a Consultant Physician Neurologist. The report indicates that the Subject has been suffering cognitive decline for the past ten (10) years. That an MRI scan revealed features of 'Alzheimers dementia'. The Doctor indicated that the subject relies fully on others for activities of daily living and that she has no capacity to make any meaningful decisions.
10. I was able to see the subject online. She is an elderly lady who appeared to be in good health but declined to respond when I spoke to her.
11. Based on the evidence availed to court and the medical report I find that the subject suffers from mental incapacity.
12. The Petitioner is the husband of the subject who resides with her and ensures that she receives the requisite care. The children of the subject MM, MM, NM and WM all testified in the matter. They all stated that they were aware of and supported this Petition filed by their Father.
13. I am satisfied that the subject requires a Guardian to manage her affairs. Accordingly, I do allow this Petition and make the following orders:-
 1. The subject TNM is declared to be a person suffering from mental incapacity under the *Mental Health Act* Cap 248, Laws of Kenya.
 2. The Petitioner WKM is appointed as Guardian for the subject.
 3. The Petitioner WKM is appointed as manager of the estate of the Subject TNM.
4. No orders on costs.

DATED IN NAIROBI THIS 22ND DAY OF JULY, 2022.

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MAUREEN A. ODERO
JUDGE

