



**Eunice Nyambura; Eunice Nyambura Njue (Interested Party) (Petition E037 of 2022)  
[2022] KEHC 13561 (KLR) (Family) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
PETITION E037 OF 2022  
MA ODERO, J  
SEPTEMBER 30, 2022  
IN THE MATTER OF THE MENTAL HEALTH ACT  
AND  
IN THE MATTER OF PNJ ( A PERSON SUFFERING FROM MENTAL DISORDER)  
AND  
IN THE MATTER OF AN APPLICATION BY EUNICE  
NYAMBURA NJUE TO BE APPOINTED AS A GUARDIAN OVER THE AFFAIRS AND  
MANAGEMENT OF THE ESTATE OF THE SAID PNJ  
BY**

**IN THE MATTER OF  
EUNICE NYAMBURA NJUE ..... PETITIONER  
AND  
EUNICE NYAMBURA NJUE ..... INTERESTED PARTY**

**JUDGMENT**

1. Before this court is the petition dated June 17, 2022 by which the petitioner Eunice Nyambura Njue prays for the following orders:-
  - “ 1. That this honourable court be pleased to appoint he petitioner as guardian of the affairs of PNJ in accordance with the *Mental Health Act* with power to sign and file court documents on behalf of the interested party (Subject) and to carry out other incidental functions of PNJ.”



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 told the court that she was the wife of the petitioner and that they had three (3) children together. She has annexed to the petition a letter dated May 18, 2022 written by the Chief Roysambu Location confirming what the petitioner has told the court (annexture ENJ 3(a) and copies of birth certificates of their children.
4. The petitioner averred that the subject was involved in a serious traffic accident along Thika Road on August 7, 2020. The subject who was riding a motor had an accident with a motor vehicle Registration KCB xxxH Toyota Belta. Annexed to the petition is the police abstract dated August 10, 2021 ('ENJ4') confirming the occurrence of that accident.
5. The petitioner told the court that as a result of the accident the subject sustained very serious injuries which rendered him bedridden and totally dependent on her for everything. That the subject sustained injuries to the skull leading to memory loss.
6. As a result of his injuries the subject is no longer able to manage his own affairs. The petitioner now seeks to be appointed as the guardian for the subject to enable her manage his affairs and sign legal documents on his behalf.
7. I have carefully considered this petition, the affidavits and reports filed in court as well as the evidence adduced in the matter. Section 26 of the *Mental 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]
8. The evidence of the petitioner regarding the condition of the subject is corroborated by their son LN who also testified in this matter. He confirmed that his father was involved in a traffic accident which has rendered him now bedridden and disabled. PW2 confirms that the Subject is unable to do anything for himself and has poor memory.



9. I have perused the medical report dated April 27, 2022 prepared by Dr GK Mwaura (annexture 'ENJ5'). The report confirms that the subject was involved in an accident as a result of which he sustained fractures, was rendered bedridden, was paralyzed and suffered loss of memory. I have also perused the P3 form (ENJ'4') issued by Kasarani Police Station as well as the subject discharge summary dated September 3, 2020 from Kenyatta National Hospital.
10. The above medical documents reveal that the subject suffered serious and life threatening injuries as a result of this accident. I was able to see the subject online. He was not able to communicate with the court. He remained mute when spoken to and was just shaking his head.
11. I am satisfied that the subject suffers from a mental disorder which makes it impossible for him to manage his own affairs. It is necessary that a guardian be appointed for the subject. The petitioner is the wife to the subject is best placed to be appointed as his guardian. The couples adult son has given his consent to this petition.
12. In conclusion I do allow this petitioner and make the following orders:-
  - (1) The patient PNJ is declared to be a person suffering from a mental disorder under the *Mental Health Act*, Cap 26 Laws of Kenya.
  - (2) The petitioner Eunice Nyambura Njue is hereby appointed as the legal guardian of the subject.
  - (3) The petitioner is authorized to manage the estate of the subject and to file suit on his behalf.

**DATED IN NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

