



**In re EMD (Patient) (Miscellaneous Civil Application E189 of 2022)
[2022] KEHC 13335 (KLR) (Family) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13335 (KLR)

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

FAMILY

MISCELLANEOUS CIVIL APPLICATION E189 OF 2022

MA ODERO, J

SEPTEMBER 30, 2022

IN THE MATTER OF EMD (THE PATIENT)

AND

**IN THE MATTER OF AN APPLICATION BY NRR AND ACR FOR THEIR
APPOINTMENT AS GUARDIANS AND MANAGERS OF THE AFFAIRS OF EMD**

IN THE MATTER OF

NRR 1ST PETITIONER

ACR 2ND PETITIONER

JUDGMENT

1. Before this court is the petition dated September 19, 2022 by which the petitioners seek orders That -
 - a. The petitioners be appointed as the legal guardians to the subject and managers of the subject's estate
 - b. The petitioners be authorized to access, transact, operate, withdraw, and utilize funds from ABSA account No. 203xxxxxxx/xx, ABSA Zidisha Bonus Account No. 203xxxxxxx and ABSA account No. 203xxxxxxx in the name of EMD to cater for the patient's outstanding enormous medical expenses at MP Shah Hospital.
 - c. The Petitioners be authorized to access, transact, operate, withdraw, and utilize funds from ABSA account No. 203xxxxxxx/xx, ABSA Zidisha Bonus Account No. 203xxxxxxx and ABSA account No. 203xxxxxxx in the name of EMD to cater for the patient's transfer to a modestly priced Hospital within the country.



- d. The petitioners be authorized to access, transact, operate, withdraw, and utilize funds from ABSA account No. 203xxxxxxx/xx, ABSA Zidisha Bonus Account No. 203xxxxxxx and ABSA account No. 203xxxxxxx in the name of EMD to cater for the costs of the legal fees of this Petition.
 - e. The petitioners be compelled to render quarterly reports of the affairs of the subject's estate upon being pronounced as the legal managers.
 - f. This honourable court be pleased to direct that all orders that it may give shall lapse automatically once the patient fully recovers from her incapacity and is certified by her doctor as capable of managing her affairs normally.
 - g. This honourable court to make any and such orders as it may deem fit in the interest of justice.
 - h. The cost of this petition in the cause.”
3. The petition was supported by the affidavit of even date sworn by the 1st petitioner NRR. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
 4. The petitioners told the court that they are the closest relatives of the subject EMD, who lives in Nairobi, Kenya. They state that the subject is a 66 year old woman who has worked as a teacher at the [Particulars withheld] School for several years. The subject is a spinster and has no children of her own.
 5. The petitioners state that the subject fell ill on July 19, 2022 and was admitted at MP Shah Hospital. That her condition deteriorated necessitating the admission of the subject in the High Defendancy Unit where she remains admitted to date.
 6. The petitioners told the court that the subject's hospital bill continues to rise exponentially. That the subject suffers cognitive disability and is unable to manage her own affairs. The petitioners who are both pensioners with limited earnings seek to be appointed guardians for the subject and manager of her estate to enable them access the subjects various bank accounts in order to cater for her medical bills.
 7. PW3 DR VISHAL KUMAR PATEL is the Chief Medical Officer at the MP Shah Hospital. He confirms that the Subject suffered a stroke and was admitted at their medical facility in July 2022 to date. The Doctor confirms that the Subjects cognitive functions have been impaired and she is not in a position to manage her own affairs. The doctor confirms that the medical bills for the subject have continued to rise daily.
 8. I have considered this petition, the affidavits and reports filed in court as well as the evidence adduced in the matter. Section 26 of the [Mental Health Act](#), Cap 248, Law 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 follow:-

“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)

9. The subject herein is said to have suffered a stroke and has been admitted in hospital since July 2022. This has affected her capacity to manage her own affairs. I have perused the clinical summary prepared in respect of the subject. I have also perused the confidential medical report dated September 26, 2022 prepared by Dr Judy Kamau, Consultant Psychiatrist. The report indicates that the subject is currently lacking in mental capacity. She is unable to communicate and the prognosis is poor. The subject is clearly not in a position to manage her own affairs.
10. The report of the psychiatrist, coupled with the evidence of the Chief Medical Officer satisfy me that the subject is suffering from a mental incapacity under the terms of section 26 of the *Mental Health Act*.
11. The subject is not married and has no children. The petitioners who are her niece and nephew are the closest relatives who she has living in Kenya. They are best placed to manage the affairs of the subject in order to cater for her medical care.
12. Finally, I find merit in this petition and make the following orders:-
 1. The subject EMD is declared to be a person suffering from a mental disorder under the terms of the *Mental Health Act*, Cap 248, laws of Kenya.
 2. The petitioners NRR and ACR are hereby appointed as the legal guardians for the subject.
 3. The petitioners are hereby appointed as managers of the estate of the subject with authority to access and transact the bank accounts held in the name of the subject.

DATED IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022.

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MAUREEN A. ODERO

JUDGE

