



REPUBLIC OF KENYA



**In re Estate of SAH (Miscellaneous Application 112 of 2022)  
[2022] KEHC 14927 (KLR) (Family) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14927 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION 112 OF 2022  
MA ODERO, J  
OCTOBER 28, 2022  
IN THE MATTER OF MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA  
AND  
IN THE MATTER OF AN APPLICATION BY HASHIM SALEH  
ALI TO BE APPOINTED AS GUARDIAN OVER THE AFFAIRS  
AND MANAGER OF THE ESTATE OF SWALEH ALI HUSSEIN**

**JUDGMENT**

1. Before this Court is the Petition dated May 31, 2022 by which the Petitioner seeks the following orders:
  - a) That the petitioner be appointed the guardian of the said SAH.
  - b) That the petitioner be appointed the manager of the estate of SAH.
  - c) That the petitioner be and is hereby given the power to access, make inquiry, take control of and/or deal with the properties of the said SAH.
  - d) That the legal care, control and custody of the said Swaleh Ali Husseinbe and is hereby granted to the Petitioner
  - e) That the court be pleased to make any other orders as it deems just in these circumstances.”
2. The Petition which was brought under the *Mental Health Act*, Cap 248, Laws of Kenya 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 the subject SAH is his uncle. That the Subject who is a mature man has never married and has no child.



4. The Petitioner told the court that the subject has suffered from a psychiatric illness for a long time. It was stated that the Subject often disappears. That he relies on family members to care for him. That he is aggressive and non-communicative. The Petitioner prays to be appointed as the Guardian for the Petitioner and manager of his affairs.
5. 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)
6. In order to merit the orders being sought it must be proved that the Subject suffers from a mental illness. I have perused the medical report dated May 12, 2022 prepared by Dr Ian Kanyanya a Consultant Psychiatrist (Annexure ‘SAH1’). The report indicates that the Subject developed ‘schizophrenia’ as a young man. The patient was not able to engage in meaningful communication with the doctor.
  7. The doctor recommended that the Subject be placed on medication in order to manage his condition. The doctor opined that the Subject was not in a position to make any sound decisions either for himself or for others.
  8. I was able to see the Subject online. He was a mature man. Although the Subject was able to answer basic questions, he had to be prompted by his relatives. The Subject appeared confused and was mumbling to himself. It was clear to the court that the subject was not mentally stable.
  9. Based on the Medical Report produced in court and the observations of the court I find that the subject does suffer from mental disability.



10. The Subject is not able to take care of himself. The relatives have to keep an eye on him to prevent him wandering away and getting lost. He relies on others for all his needs. The Subject obviously cannot manage his own affairs and requires a Guardian.
11. The Subject has never married and has no children. The Petitioner who is the Subject's nephew is best placed to be appointed as his Guardian. In conclusion, I allow this Petition and make the following orders.
  - (1) The Subject SAH is declared to be a person suffering from mental infirmity under the terms of Section 26 of the *Mental Health Act*.
  - (2) The Petitioner HSA is appointed as Guardian of the Subject and Managers of his affairs.

**DATED IN NAIROBI THIS 28TH DAY OF OCTOBER 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

