



**In re Appointment of A Guardian/Trustee in Respect of CAM (Miscellaneous Application E153 of 2022) [2022] KEHC 15976 (KLR) (Family) (18 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E153 OF 2022**

**MA ODERO, J**

**NOVEMBER 18, 2022**

**IN THE MATTER OF AN APPLICATION UNDER THE MENTAL HEALTH ACT  
FOR THE APPOINTMENT OF A GUARDIAN/TRUSTEE IN RESPECT OF CAM**

**BETWEEN**

**ECA ..... 1<sup>ST</sup> PETITIONER**

**SJKA ..... 2<sup>ND</sup> PETITIONER**

**DAMA ..... 3<sup>RD</sup> PETITIONER**

**AND**

**CAM ..... PATIENT**

**JUDGMENT**

1. Before this court is the petition dated July 28, 2022 by which the petitioners ECA, SJKA and DAMA seek the following orders-

1. Spent
2. That the petitioners herein be and are hereby appointed as joint guardians/trustees *ad litem* of the patient
3. That the petitioners be and hereby granted custody and/or control of the patient's known properties and assets namely:-
  - a. Kakamega Cheptulu/xxx
  - b. Standard Chartered Bank Account No [particulars withheld]
  - c. Konza Plot numbers xxx & xxx



- d. Apartments C1 and B2, [particulars withheld], Lavington
  - e. Motor Vehicle [particulars withheld]
  - f. Motor vehicle [particulars withheld]
  - g. East African Breweries Shares
  - h. NCBA shares
  - i. Post Bank Account xxxx
  - j. Any other property in the patient's name that may become known to the petitioners
4. That the petitioners be and are hereby granted control and authority to act over all pending court cases where the patient is a party to or holds an interest
  5. That this honourable court hereby grants an order directing branch managers to issue the petitioners herein with copies of bank statements starting from June 1, 2021 to date, on all banks that the patient operates an account
  6. That the petitioners be and are hereby permitted to utilize funds from any of the patient's bank accounts, rental income or any proceeds from his estate towards his maintenance
  7. That the petitioners be at liberty to apply for such further orders as may deem fit.'
2. The petition is supported by the affidavit of even date sworn by the petitioners. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
  3. The petitioners are the wife and children of the subject CAM. They testified that the subject was involved in an accident which caused head trauma. As a result his cognitive abilities have been affected that the subject is not able to do anything for himself and require full time care.
  4. The petitioners told the court that the subject now suffers from mental disorder, he is no longer in a position to manage his own affairs. They pray to be appointed as legal guardians for the petitioner.
  5. '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 obtain the orders being sought it must be proved that the subject suffers from a mental disorder. I have perused the medical report dated July 5, 2022 filed by Dr CK Musau consultant neurosurgeon (annexture CMA (E)).
7. The report confirms that the subject suffered a head trauma. The doctor goes on to state in his report that the subjects cognitive function has never returned to normal. That both his memory and personality have been severely affected. The doctor states the subject is prone to be aggressive is unable to engage in meaningful conversation and 'his sense of sensible judgment is impaired.' Finally, the doctor opined that the subject is not likely to recover.
8. I was able to see the subject online. He was an elderly gentleman sitting in an armchair. The subject did not respond when spoken to but was instead mumbling to himself. It was clear that he was not aware of his surroundings.
9. Based on the medical report and my own observation, I find that the subject is suffering from a mental disorder as defined by section 26 of the *Mental Health Act*. The subject is obviously not in a position to manage his own affairs and as such requires a legal guardian
10. The other children of the Subject namely:-WPABLAJAKEAPAPAS  
All testified before the court. They all confirmed that they were aware of and supported the petition.
11. Finally, I find that the petition has merit. The same is allowed and this court makes the following orders:-
  1. The subject CAM is declared to be suffering from a mental disorder defined by the *Mental Health Act*, Cap 248, Laws of Kenya
  2. The petitioners ECA, SJKA and DAMA are hereby appointed as the legal guardians for the subject and managers of his estate
  3. No orders on costs.

**DATED IN NAIROBI THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2022.**

.....  
**MAUREEN A ODERO**

**JUDGE**

