



**In re PKN (Person Suffering from Mental Disorder) (Miscellaneous Application 67 of 2022) [2022] KEHC 16956 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION 67 OF 2022**

**TM MATHEKA, J**

**DECEMBER 20, 2022**

**IN THE MATTER OF SECTIONS 26(1A), 28(1), 29(2) AND 34(1), (2), (3)  
OF PART 12 OF THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**

**IN THE MATTER OF PETER KANG'ARUA NJOROGE  
(PERSON SUFFERING FROM MENTAL DISORDER)**

**BETWEEN**

**ERK ..... 1<sup>ST</sup> PETITIONER  
JNK ..... 2<sup>ND</sup> PETITIONER  
EMK ..... 3<sup>RD</sup> PETITIONER  
MWK ..... 4<sup>TH</sup> PETITIONER  
SW ..... 5<sup>TH</sup> PETITIONER**

**AND**

**CWK ..... 1<sup>ST</sup> RESPONDENT  
EWK ..... 2<sup>ND</sup> RESPONDENT  
DNK ..... 3<sup>RD</sup> RESPONDENT  
MIK ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. What is before me is the undated Petition filed on 28<sup>th</sup> November 2022. It is brought under sections 26 (1) (a), 28(1), 29(2) and 34 (1) (2), (3) of Part 12 of the Mental Health Act cap 248 of the Laws of Kenya. The subject of the petition is PKN described as person suffering from mental disorder.
2. The petitioners are described as ;



ERK 1st wife  
JNK son  
EMK son  
MWK daughter  
SW daughter  
The respondents  
CWK, daughter  
EWK ,daughter  
DNK ,son  
MIK, son  
TGK ,son  
PW ,wife

3. The petitioner's case is that;

- “ 4. That PKN (herein referred to as the subject) March 20, 2022suffered from ill health leading to stroke on his left side and thereafter affecting his brain and hence his reasoning.
5. That the subject has been undergoing intense treatment and medication in various hospitals including Nakuru Women Hospital and Aga Khan Hospital (Attached are available copies of hospital records; exhibit PKN 2 and PKN3)
6. That the subject's medical condition has immensely deteriorated as he is totally dependent on caregivers for daily living.
7. That presently, the subject is incoherent and suffering from consistent loss of memory.”.

4. That while in hospital the petitioners visited but around April 2022 they noted that the 4<sup>th</sup> respondent had began to create unwarranted restraints against the petitioners. That this culminated in the secret discharge of the subject from the Aga Khan Hospital without informing the petitioners, and since then the respondents have kept the subject in their homes in turns. The petitioners aver

- “ 10. That the respondents have since then barred and/or blocked the petitioners, other children of the subject, grandchildren and great grandchildren from accessing, taking care and/or visiting the subject whatsoever, thus leaving the petitioners and their families immensely distraught and frustrated.”

5. That the subject is currently unable to conduct his own affairs as a rational person, rendering him incapable of handling his own day to day activities, make arrangements, management decisions, supervise or operate his businesses.
6. It is the petitioners' case that the respondents actions of holding the subject in their custody and denying them access is in bad faith. They are apprehensive that the respondents have already accessed the subject's safe, and his documents will manipulate the same and selfishly alienate the subject's vast



properties, rental houses, business incomes, farm produce income, that their motives are ulterior and meant to influence the subject, leading to chaos in the family. The petitioners seek orders;

- a. That the petitioners and their families be given free and protected access to the subject so as to interact, relate and care for the subject.
  - b. That your petitioners are seeking injunctive orders against any of the respondents, their agents or personal representatives from further handling any matter of the subject's estate except for persons meanwhile appointed by this court as recommended in paragraph (c ) below.
  - c. That this honourable court be pleased to appoint the following members from every household, that being (ERK and JNK), (TG And DNK) and (PW) who consist of the subject's two wives and children to act as guardians of the affairs of PKN in accordance with the *Mental Health Act* with powers to sign, enter into deed for family settlement and release on behalf of PKN and to carry out other incidentals and general functions of PKN with leave of this honourable court.
  - d. That the subject PKN be placed at his Nakuru or Nairobi homes only where his wives, children, grandchildren and great grandchildren can visit, relate and assist him.
  - e. That all incomes from; rent collections, farm produce incomes and business incomes of the subject be deposited in the subject's Equity Bank Account Number 031XXXX and the same be managed only by his wives and appointed children as in paragraph (c ) above for the benefit of the subject.
  - f. That the respondents furnish this court and the petitioners with audited accounts of all incomes collected from all the subject's estate since 20<sup>th</sup> March up to date and state their whereabouts and subsequently be deposited to the subject's bank account mentioned in paragraph ( e) above.
  - g. That this court compels the land registrar to forthwith search and establish all the lands properties listed in (Exhibits No. PNK6) and any other known property of the subject and put restraining orders for any dealings in them and until this honorable court otherwise gives direction or after full recovery of the subject himself.
  - h. That the OCS at Pinewood police post (Nakuru) or Parklands police station (Nairobi) gives protection to the visiting petitioner's families while at the subject's home as mentioned in paragraph d. above.
7. The application is opposed vide the affidavit of Daniel Njoroge Kangarua sworn on December 8, 2022 on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents. He confirms that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> petitioners are their biological siblings, but the 5<sup>th</sup> petitioner is not. He also deposes that the 1<sup>st</sup> petitioner is not the legal wife of the subject having divorced in 1975 than the 6<sup>th</sup> respondent is the subject's wife, that the deponent's mother died in 2015. That he and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> petitioner and his siblings were all raised together by his mother in the subject's homestead.
8. According to the respondents the subject suffered from diabetes and high blood pressure in 2017, and that they have no ill motive in keeping the subject, save to take care of his health. That the petitioners



have been visiting the subject since March 2022 and no visitation rights or privileges have been denied. That the subject's memory has improved tremendously and no time has the subject opted to live with any of the petitioners.

9. That the petitioners' interest in the subject increased in March 2022 when he suffered a stroke. The respondents deny that they have any ulterior motives against the subject, stating that what they are doing is taking care of him and using his own resources to take care of him. That the home in Nakuru is a neglected homestead. That the 5<sup>th</sup> petitioner lives in a single room in a hotel yet the subject is now living in the 3<sup>rd</sup> respondent's "palatial home". The respondents contend

"24. That it is totally unfortunate for the petitioners to intentionally mislead this honourable court that they have been denied access to see the subject. The truth of this matter is that previously, the Petitioners have never demonstrated any interest in the subject. The petitioners have been economical with the truth and I honestly do believe that the petitioner's primary objective at this juncture is to access the subject's property and finances which currently is being utilized to cater for the subject's medical needs. Annexed hereto and marked "DNK 4" is a bundle of supporting documents."

10. On December 13, 2022 the petitioners filed a "replying affidavit" to the respondent's response to the petition. The 2<sup>nd</sup> petitioner pointed out that the hierarchy of names in the petition lists the family members in line of seniority.

"That the hierarchy of the names of the parties in this petition represents the oldest running down to the youngest in the family line, thus 1<sup>st</sup> petitioner (First wife), 2<sup>nd</sup> petitioner (first born) in this family running down in that sequence: 1<sup>st</sup> to 5<sup>th</sup> petitioner (first family) and 1<sup>st</sup> to 5<sup>th</sup> respondents (Second family) and the 6<sup>th</sup> respondent (3<sup>rd</sup> Family)."

11. Further the petitioners response mainly points out that the respondents are only holding the subject for the purpose of taking control of his properties and money in the guise of taking care of him. That no hospital bills should arise because the subject has a premium medical cover that his insurance is capable of dealing with. That in any event there is no jurisdiction for them to hold the subject away from the petitioners.
12. The respondents, in a further affidavit, styled as replying affidavit to the affidavit sworn on December 13, 2022 by the petitioners wherein they again reiterate that the 1<sup>st</sup> petitioner was not wife of the subject, and the 6<sup>th</sup> petitioner not a daughter. That the petitioners were bringing in extraneous issues that had nothing to do with the health of the subject. That the petitioners had refused to attend a family meeting called by the elder brother of the subject, and the minutes of the meeting held on December 13, 2022 were annexed to their affidavit. That the subject's insurance policy had a limit of Kshs. 400,000/= . That the orders sought if granted would prejudice the health of the subject, and that the respondents' cordial concern for him was his health.
13. Annexed to this were several photos of the subject in the 4<sup>th</sup> respondents' home.
14. the petitioners also supplied further photos demonstrating that the family was one large family.
15. The petition was heard via oral submissions by the petitioners and the respondents counsel Mr. Munene.
16. The only issue for determination is whether the prayers sought are tenable.



17. A person suffering from mental disorder is defined under section 2 of the *Mental Health Act* as:-

“A person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and a person suffering from mental impairment due to alcohol or substance abuse.”
18. Section 26 provides for the custody, management and guardianship of a person suffering from mental disorder, under section 26(3) the court is expected to carry out an inquiry so as to draw conclusions that will ultimately support the orders made.
19. In this petition, I have the words of some children of the subject against the words of some of the other children of the subject as to the circumstances that led to the current state of affairs.
20. However there is not dispute that the subject is unwell. The issue is the degree of illness and whether it amounts to what the law describes as mental disorder to warrant the orders sought in this petition.
21. It is with this respect that I observe that it is true the petitioners have not filed any medical report with the specific diagnosis of a mental disorder. A person can be so ill but still have their mental faculties around them and not all strokes affect ones mental capacities to amount to mental disorder. On the other hand it is also my observation that the respondents have not been forthright with information with regard to the actual status of the subject’s mental status. among the bundle of documents provided to court is a request for consultation dated May 18, 2022 from the Aga Khan University Hospital , Nairobi, psychiatry clinic and the reasons are inter alia ‘...stroke with personality change/ aggression/insomnia’. The results of that consultation are not attached. The only persons who would have that in their possession or have access to the same are the respondents in whose custody the subject is. Their failure to exhibit that information and to demand the same from the petitioners can not be in good faith.
22. Both sides are in agreement that the subject suffered a stroke. The respondents have not denied that they discharged him from hospital without involving the petitioners . They have not demonstrated how the subject chose to live with the specific respondent he is living with, yet he has a wife, the 6th Respondent, with whom he was living before the other respondents took him out of the hospital. In fact the respondent children have clearly overrun the rights of the 6th respondent who is the spouse of the subject and whose voice is drowned by the parties herein.
23. Hence as far as the definition of a person suffering from a mental disorder is concerned neither the petitioners nor the respondents have placed before this court any documentary evidence to show that the subject suffers from a mental disorder or a condition so debilitating that he cannot make decisions for himself. There is no report from the hospital to show that the subject indeed suffers from a mental disorder to warrant the kind of take over demonstrated by the respondents. None whatsoever. Only that the subject is undergoing treatment and physiotherapy. That in my view is no reason to take over an adult, remove him from his home and cut him off from the rest of his family.
24. If indeed as the respondents state that the subject made the choice to live with one of them , then nothing would have been easier than for them to place him before the court for him to speak for himself. However all this time there has ben no voluntary information that they could present him to court.
25. As a court of justice and a court required to protect the vulnerable members of society I am truly concerned about the petitioners and respondents’ arguments over the estate of the subject. The fact the custody of the subject by any of them is considered by the other a means to manipulate access to the subject’s alleged vast wealth is saddening. This has gone to the extent of the respondents throwing aspersions on the marital status of the 1st petitioner and the paternity of the 5th petitioner.



26. Be that as it may, now that the matter is here, and as conceded by parties, the court is obligated to carry out its inquiry, and to confirm for itself the status of the subject.
27. In the meantime there is no reason at all why the petitioners cannot have full and unrestricted access to the subject.
28. The minutes from the family meeting put together by the respondents and the elder brother of the subject lays out a list of the appointments the subject has in hospital. None of them include an appointment with the psychiatrist.
29. The minutes indicate that the petitioners and respondents even as they describe their own palatial or big houses have neglected their father's home to remain in a state of disrepair to the extent that the wife, their step mother has to plead with them to repair the same. That state of affairs created by the parties herein can be not be the one they now turn around to take advantage of. If indeed they have the means to put up big houses and palatial homes and care for their father as they claim, then they ought to make his own house as habitable and comfortable so that they can all have access to him and allow him to enjoy his old age with his wife and younger children. By removing him from his family they are also denying him the warmth of his own immediate family because he has one. They are behaving in a manner that cannot be described to be in the best interests of the subject as there is no evidence that he was consulted about his being removed from his own home.
30. The parties herein have all intimated that they are in a position to provide round the clock care if necessary and a nurse to take care of him in his home. If indeed they care as much, let them demonstrate it by doing something about his own home.
31. In the meantime, and while the petitioners and respondents take steps to make the home of the subject habitable for him, the subject will be hosted by his brother Philip Waweru Njoroge at his home in Limuru. It is indicated in the minutes of the meeting held by the family on 13th December 2022 that this will allow full access by the whole family. I am in agreement and direct that in order to facilitate this;
32. The respondents will, with immediate effect, take the subject to the residence of his brother PWN.
33. The petitioners and the respondents will agree on a schedule for taking the subject for his remaining and future medical appointments and do so in turns or better still, together. They will pick him up at his brother's residence in Limuru, take him to hospital and return him there, until they make sure his home is comfortable enough for him.
34. They will ensure he has a caregiver at his brother's residence.
35. To aid this court to determine the mental status of the subject the respondents will avail to court the psychiatrist's report made out of the consultation dated May 18, 2022.
36. If none is available the 1<sup>st</sup> petitioner, together with the 3<sup>rd</sup> and 6<sup>th</sup> respondents will present the subject to the psychiatrist at the Aga Khan University Hospital for examination and report for purposes of the *Mental Health Act* to enable the court to determine the issue once and for all.
37. The report be made available to the court on or before the January 17, 2023.
38. The matter will be mentioned on the January 19, 2023
39. Orders accordingly

**DATED, SIGNED AND DELIVERED VIA EMAIL THIS 20TH DAY OF DECEMBER, 2022.**

**MUMBUA T. MATHEKA,**



**JUDGE.**

**C/A Edna**

**For petitioners**

**For respondents**

**Joseph Kang'arua**

