



In re EWK (Subject) (Family Miscellaneous Civil Case E019 of 2024) [2025] KEHC 540 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E019 OF 2024
FN MUCHEMI, J
JANUARY 23, 2025
IN THE MATTER OF AN APPLICATION UNDER THE
MENTAL HEALTH ACT AND GUARDIANSHIP ACT.
IN THE MATTER OF E.W.K.**

IN THE MATTER OF

**JMK 1ST APPLICANT
JNK 2ND APPLICANT**

RULING

Brief Facts

1. The application for determination is dated 19th September 2024 seeking for the orders of guardian ad litem to issue to the applicant on behalf of E.W.K (the subject) limited to filing and defending suits against her.
2. The applicants are the sons of the subject who has been suffering from a mental condition known as dementia and depression since the year 2020 and has been undergoing treatment at the Mathari Teaching and Referral Hospital. The applicants aver that their father died on 28th October 2020 and since his demise, the subject became sick and she was referred to Mathari Teaching and Referral Hospital where she has been receiving treatment.
3. The applicants state that it came to their attention that the subject has been sued as a 2nd defendant and their father as the 1st defendant in Thika Environment and Land Court ELC Case No. 247 of 2017 which has been proceeding in her absence due to her condition and judgment was delivered on 30th April 2024. The applicants aver that they intend to file an application to substitute her and their father as well as set aside and challenge the judgment.



4. The applicants aver that their siblings have all consented to them being appointed as the legal guardians and undertake to manage her estate in accordance with the law.

Issues for determination

5. The main issues for determination are as follows:-
 - a. Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 - b. Whether the applicant should be appointed as guardian to the subject.

The Law Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.

6. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.
7. Section 2 of the Act defines “person suffering from mental disorder” as follows:-

“person suffering from mental disorder” means 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 person suffering from mental impairment due to alcohol or substance abuse.”
8. Section 26 provides 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 of the guardian of any such person.
 3. Where upon 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.
9. According to the medical report by Dr. Mucheru Wangombe, a consultant psychiatrist practicing at Mathari National Teaching and Referral Hospital, dated 5th November 2024, the patient has previously been reviewed at that facility on 13/08/2024, 20/08/2024, 13/09/2024 and 4/11/2024. The medical report indicated that the subject could not be able to follow court proceedings and cannot give evidence in court or give evidence in court as required under the law.



10. It is apparent from the medical report that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing her own affairs.

Whether the applicants should be appointed as guardians to the subject.

11. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
12. The applicants have stated that they are the sons of the subject. They have annexed a consent by their siblings in support of their application for appointment as guardians. The applicants further annexed the limited grant of letters of administration ad litem in respect of their deceased father, Paul Kariuki Chege who is the 1st defendant in Thika ELC Case No. 247 of 2017. The court further examined the applicant in court and she stated that someone claimed that she sold her land although she cannot recall where the case was filed. She further stated that she did not recall when she last went to court but stated that she had not given her evidence in court.
13. There being no objection from the siblings of the applicant and the course of the application being well supported as required under the law, it is my considered view that the prayer for appointment of guardian ad litem is well grounded and merited.
14. I find that this application dated 19th September 2024 is merited and is hereby allowed in the following terms:-
 - a. That the subject EWK is hereby adjudged to be mentally incapacitated.
 - b. That the applicants JMK and JNK are hereby appointed as guardians ad litem of the subject.
 - c. That these orders are limited to substituting the subject as the second defendant in Thika ELC No.247 of 2017 in place of the subject EWK.
15. There shall be no order as to costs.
16. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 23RD DAY OF JANUARY 2025.

F. MUCHEMI

JUDGE

