



In re NM; Being an Ad Litem Application for Guardianship (Family Miscellaneous Civil Case E020 of 2024) [2025] KEHC 530 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 530 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

FAMILY MISCELLANEOUS CIVIL CASE E020 OF 2024

FN MUCHEMI, J

JANUARY 23, 2025

IN THE MATTER OF NM; BEING AN AD LITEM APPLICATION FOR GUARDIANSHIP

IN THE MATTER OF

SKM APPLICANT

RULING

1. The application for determination is dated 15th October 2024 seeking for the orders of guardian ad litem to issue to the applicant on behalf of N.M. (the subject).
2. The applicant testified that he is the son of the subject who is mentally incapacitated. The applicant states that the subject is the plaintiff in Thika Environment and Land Court. Case No. 393 of 2017. The applicant further states that the mental health of the subject has deteriorated so much that she cannot comprehend facts in time and place. As such, she cannot conduct her case before the court or give any meaningful evidence.
3. The applicant further testified that he took the subject to Mama Lucy Kibaki Hospital where she was examined by Dr Edwin Momanyi and she was diagnosed with hypertension and senile dementia. The applicant further testified that the subject suffers from poor memory and forgetfulness.
4. The applicant thus prays that that he be granted letters of administration ad litem for guardianship to enable him be substituted as the plaintiff in the subject’s place and proceed with the hearing of the case.
5. The application is supported by affidavits by SNM, JKM, VWK and PWM, daughters and sons of the subject who state that their mother’s health and memory systems have deteriorated so much that she cannot comprehend in time and memory. The deponents state that the subject is aged 105 years and needs guardianship to manage her affairs personally and legally. The deponents aver that as a family, they are in agreement that their brother, the applicant be appointed legal guardian of the subject.



Issues for determination

6. 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.

7. 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.
8. 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.”
9. 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.
10. According to the medical report by Dr. Edwin Momanyi, a senior medical officer practising at Mama Lucy Kibaki Hospital, dated 14th December 2023, the patient is suffering from hypertension/senile dementia. The medical report indicated that the subject has poor memory and forgetfulness and her thought process is impaired. The medical report further indicated that the subject is unable to make rational and sound decisions on her own and she cannot remember occurrences that happened in the past.



11. 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 applicant should be appointed as guardian to the subject.

12. Section 26 of the Act gives court the power to make orders 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.
13. The applicant has stated that he is a son of the subject. The applicant's siblings swore affidavit and testified that they are in agreement that the applicant should be appointed the legal guardian of the subject. The applicant further annexed pleadings in ELC Case No. 3** of 2017 Thika, where the subject is the plaintiff whereby she seeks a declaration that she is the legal owner of all the parcels of land known as RUIRU/MUGUTHA 1/2251 and 1/2252 and a permanent injunction restraining the defendants therein from interfering with her ownership and physical possession of the said parcels of land. It is deposed that the suit properties risk being grabbed by 3rd parties as the subject is unable to follow the proceedings due to her deteriorating mental condition. The applicant and his siblings stated that the subject requested them to take over the matter in her place.
14. The application is brought under Order 32 Rule 15 of the Civil Procedure Rules which provides for appointment of a guardian ad litem for minors and mentally unsound adults for representation in suits pending in court.
15. There being no objection from the siblings of the applicant and 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. Thus the application dated 15th October 2024 is allowed In the following terms:-
 - a. That the Applicant SKM is hereby appointed guardian ad litem of the subject NM.
 - b. That these orders are limited to substituting the plaintiff NM in Thika ELC No. 3** of 2017.
16. It is hereby so ordered.

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

**F. MCHEMI
JUDGE**

