



**CNM & another (Miscellaneous Case E016 of 2024)
[2025] KEHC 2504 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CASE E016 OF 2024**

EM MURIITHI, J

FEBRUARY 21, 2025

IN THE MATTER OF

CNM 1ST PETITIONER

MKM 2ND PETITIONER

JUDGMENT

1. The applicant filed this Petition dated 4th September, 2024 seeking the following orders:
 1. That the Subject AWM be declared to be a person suffering from mental disorder under the *Mental Health Act*, Cap 248 Laws of Kenya.
 2. That the Honourable Court be pleased to appoint the Petitioners as the guardians and managers in respect of AWM and to grant them custody care and management of the subject.
 3. That the Honourable Court be pleased to appoint the Petitioners as the joint managers of the estate of the Subject with powers to run her affairs, including but not limited to operating her bank accounts and her investment portfolios as well as executing legally binding instruments on her behalf.

2. The petitioners deposed to a supporting affidavit with the following averments. They aver that they are adults of sound mind and the Subject herein is their mother who was born in 1951. They are the only surviving immediate family of the Subject as their father and brother are deceased. They aver that their mother started ailing in 2017 and she has now been diagnosed to be suffering from systematic hypertension, hypothyroidism, moderate cognitive dysfunction related to Alzheimer’s disease and cerebral small vessel ischemic disease, lumbar spondylosis with lumbar intervertebral disc bulge and bilateral lower limb radiculopathy. She started with complaints of impaired memory and progressive forgetfulness for a duration of 5 years. She would forget where she had kept items in the house, then it progressed to inability to remember days of the week and currently she is not accurately able to identify her immediate family members. That she has forgotten vital information such as phone numbers of



close relatives that she previously memorized, her Bank Account details, her Bank PIN numbers and the particulars of her various investment portfolios. Lastly, the petitioners depose that they urgently need to be appointed as guardians to their mother and managers of her properties with the authority to execute legally binding instruments on her behalf.

3. The Court had opportunity to hear submissions by Counsel and to examine the 2nd applicant and the subject before the court.

Issues

4. The issues for determination are as follows:
 - i. Whether the subject should be declared as suffering from mental disorder.
 - ii. Whether the petitioners should be appointed as guardian to the subject.
 - iii. Whether the applicants should be appointed managers of the estate of the subject as prayed.

Analysis

5. The petitioners in their Notice of Motion seek to be appointed as guardians and managers of the affairs and estate of AWM as owing to her illness, she can no longer manage her affairs and those of her estate.

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. 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.”
7. Having not appointed a supporter under section 31 of the [Mental Health Act](#), the subject requires a legal guardian to manage her estate during her lifetime.
8. The petitioners depose that their mother started ailing in 2017 and she has now been diagnosed to be suffering from systematic hypertension, hypothyroidism, moderate cognitive dysfunction related to alzheimers disease and cerebral small vessel ischemic disease, lumbar spondylosis with lumbar intervertebral disc bulge and bilateral lower limb radiculopathy. That owing to the deteriorating memory, speech and general cognitive function, she is unable to manage her affairs and properties and will not only need constant care and attention on a permanent basis but a manager of her properties.
9. The Court has noted the medical documentation presented in the petition indicating a diagnosis of cognitive dysfunction associated with Alzheimers disease as well as observed the subject during the voire dire in court. The Court is satisfied on the evidence presented that the subject is a person suffering from a mental disorder.

Whether the petitioners should be appointed as guardian and managers to the subject

10. The petitioners urge the Court to appoint them as legal guardians of the subject for purposes of managing her estate and/or affairs. The petition is unopposed.



11. In Meru PETition No. E013 Of 2023 Zipporah Nkirote Mworira v Robert Matumbi Mworira & Six Others [2023] eKLR, this Court laid out the principles applicable in applications for guardianship under the *Mental Health Act* as follows:

“Principles for the grant of the order of guardianship in this case

1. The power of the Court to make orders in relation to the guardianship of a subject under the *Mental Health Act* and for the management of his property is set out in section 26 as follows:

“PART XII – Judicial Power Over Persons And Estates Of Persons Suffering From Mental Disorder

26. 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.”

2. The primary object of proceedings under the *Mental Health Act* is given under the general statement of the Act in its long title as “An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals; and for connected purposes”.



12. In re Application on Behalf of Peter Ng'ang'a Muturi (Petition E072 of 2024) [2024] KEHC 10407 (KLR) (Family) (23 August 2024) (Judgment) Riechi J held:

“This court has power to appoint guardian and managers of the estate while the court has discretion as to who to appoint. The criteria for selection is based on proximity of the applicant to the subject.”

13. It is also noted that the Court in In re BWG (Mental) [2021] eKLR (Muchemi J.) allowed an application for legal guardian for a subject who suffered from acute dementia and hypertension and held

“I am satisfied that the applicant has established that the subject is unable to manage her affairs both physically and mentally and that she suffers from acute dementia, hypertension and other ailments. Being a daughter of the subject, the applicant is a close relative thus satisfying the requirement of the *Mental Health Act*. She is also mentally, physically and financially able to provide for her mother and to take care of her.”

14. In the present case, the Applicants seek their appointment as joint guardians of the subject's estate urging that they are ready and willing to abide by any orders of this court to ensure accountability in their duties.

15. The court observed the subject during examination and noted that although she gallantly tried to respond to the questions put by the Court -

“The subject was incoherent in her responses. She is not able to tell her relationship between herself and the petitioners. She speaks in English and tells of her family roots at Kibirigwi when asked whether she knows where she is or her environment. She appears to be disconnected to the reality.”

From its observation the court minuted its conclusion on the record that “the subject is obviously in need of care for her daily affairs as well as management of her economic/financial portfolios.”

16. Being satisfied of the close relation of the applicant to the subject as her children and having observed the easy relationship where the applicants were able to manage and guide the subject during her appearance in Court and having noted her own calm and confident although unresponsive mien, the Court is satisfied that the prayers sought in this Petition are deserved and should be granted.

17. The applicants are, of course, subject to the accounting requirements placed on managers under section 33 of the *Mental Health Act* for periodic inventory and account by the persons appointed managers in terms of section 33 of the *Mental Health Act*, which provides as follows:

“33. Manager to furnish inventory and annual accounts

- (1) Every person appointed by the court to be manager of the estate of a person under this Part shall, within six months of the date of his appointment, deliver to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) an inventory of the property belonging to the person of whose estate he has been appointed manager and all such sums of money, goods and effects as he receives on account of the estate, together with a statement of all debts owed by or due to such person, and every



such manager shall furnish to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) annually, within three months of the 31st December, an account of the property in his charge showing the sums received and disbursed on account of the estate during the year and the balance; such inventory, statement and account shall be in the prescribed form.

- (2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the court and to the public Trustee under subsection (1).
- (3) The Public Trustee shall report to the Minister annually on all accounts delivered to him under subsection (2).
- (4) Where any person, by petition to the court, impugns the accuracy of any inventory or statement or of any annual account made under this section, the court may summon the manager and inquire summarily into the matter, and make such order as it thinks proper or the court may refer the petition to a magistrate having jurisdiction in the place where the property belonging to the estate concerned is situated, for inquiry and report, and upon receipt of the magistrate's report the court may make such order as it thinks fit."

Orders

18. Accordingly, for the reasons set out above, the application dated 4th September, 2024 is allowed in terms that:
 1. That the Subject AWM is declared to be a person suffering from mental disorder under the *Mental Health Act*, Cap 248 Laws of Kenya.
 2. That Court appoints the Petitioners as the guardians and managers in respect of AWM and grants them custody care and management of the subject.
 3. That the Court appoints the Petitioners as the joint managers of the estate of the Subject with powers to run her affairs, including but not limited to operating her bank accounts and her investment portfolios as well as executing legally binding instruments on her behalf.
19. In accordance with section 33 of the *Mental Health Act*, the applicants shall as the managers appointed in No. 3 above within six (6) months from today and annually, respectively, render an inventory of assets and an account of dealings therewith to the Court, the Public Trustee and the parties herein, being a full and accurate inventory of assets and account of their dealings with the estate of the subject herein for further orders, as appropriate.
20. Liberty to apply.
Order accordingly.

DATED AND DELIVERED THIS 21ST DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE



Appearances:

Ms. Kimiti for the Applicant.

