



**In re MIN (Subject) (Miscellaneous Application E260 of 2024)
[2025] KEHC 2155 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION E260 OF 2024**

SN RIECHI, J

FEBRUARY 13, 2025

**IN THE MATTER OF AN APPLICATION/PETITION UNDER
SECTIONS 2,26,27,28 OF THE MENTAL HEALTH ACT CAP 248
IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP
AND MANAGER OF THE ESTATE OF MARY IKAMBA NDWIGA**

IN THE MATTER OF

LWM APPLICANT

JUDGMENT

1. Before this Court is a petition dated 23rd October 2024 in which the petitioner LWM is seeking orders;
 - i. That MIN(the subject hereinafter) be declared persons suffering from a mental disorder under section 26 of the [Mental Health Act](#) Cap 248.
 - ii. That the Petitioner be appointed as Guardian over the affairs of the subject. MIN
 - iii. That the Petitioner be appointed as Guardian over the affairs of the subject with power to sign,access,collect,withdraw,execut Secondly that EGN and EWK be appointed as guardians in respect to the subjee,represent and /or carry out any other act necessary to protect the affairs of the subject.
2. The application is supported by the annexed statement of Petitioner LWM. The Petitioner briefly stated that she is a child of of MIN, "the Subject herein" , as evidenced by a copy of birth Certificate annexed hereto and marked as LWM-1.
3. The petitioner stated that her mother is married to Mr. SWN. The Petitioner has other siblings as follows; RNN ,CWK CAN and RMN as evidenced by copies of their National IDs are annexed hereto and marked as LWM-2.



4. The Petitioner stated MIN has been suffering from a mental illness since 2001 and the same was aggravated by a stroke she suffered in 2020. The petitioner stated the Subject has been battling Multi Infarcts Dementia and deterioration of her cognitive functions which have greatly affected her capacity to care for herself and her affairs. She stated that following the gradual deterioration of her mental capacity, the Subject was taken to hospital for a medical review.
5. The Petitioner averred that , after several hospital visits and several tests, the Subject was diagnosed with Multi Infarcts Dementia and High Blood Pressure. She averred further that this is confirmed by a letter issued by her Consultant Psychiatrist, Dr. Pius A. Kigamwa of Nairobi Hospital dated 7th March 2024. The Petitioner stated, in his professional opinion, Dr. Pius A. Kigamwa states the said condition has destroyed the subject's cognitive functioning leading to loss of memory, disorientation to time, day and date, trouble thinking and to concentrate, poor judgment and decision making, unpredictable behavior, decline in social skills and global inability to cope with ordinary life and has affected her ability to handle her affairs.
6. The petitioner stated further Dr. Kigamwa advised that a manager be appointed to preserve the family estate and indeed manage the Subject's personal affairs in accordance with the established legal.
7. The petitioner deponed that the Subject, before her mental illness, was actively involved in the running of her businesses and owned various movable and immovable property as itemized in the schedule below:

Shares 1. NCBA Bank 5702 shares Copies of the supporting documents are annexed hereto and marked LWM-3. 14.
8. The Petitioner prays to this Honourable Court to appoint her as a guardian and manager of the Subject and her Estate with the powers to manage all the personal and other affairs of the Subject including powers to sign, access, manage, withdraw, sell, charge, transfer, gift, develop, collect, withdraw, execute, represent and to do all such things and take all such actions that are necessary to ensure the proper maintenance of the Subject and the preservation of her Estate
9. This Petition was canvassed by way of viva voce evidence on the online platform.
10. SWN testified that the subject is his wife. He is 88 years old and they married on 26.10.1987. He testified that they have 5 children. The subject is 89 years old and will be 90 on 19.2.2025. She has been unwell for quite some time. She is not able to talk at the moment. She is on treatment. He testified he want Lucy Muchiri to be appointed guardian. He want her to be appointed because he is also old.
11. The Petitioner LWM testified that the subject is her mother. She wants to be appointed as a guardian. She testified the subject needed medical care for 20 years. She testified that her other sisters are in the US. The subject has had hypertension for many years. She has had several strokes. She was operated last year in Mater Hospital. She testified that the subject has been bed ridden and unable to talk. She cannot make any decision. The property she have is jointly owned. They also own shares with her sister in NCBA. The petitioner stated the subject is currently in Alphine Prestine Homes in Korea. The Petitioner stated the her father stays with the subject at Karen but ordinarily lives in Embu.
12. RN,CWK,CAN and RN were present in court during virtual hearing. They stated they support the Petition.
13. This court was able to observe the subject on the online platform. This court sees that the subject is asleep at Aphine Prestine Homes Karen. She is not able to speak.



14. I have carefully considered this petition, the Affidavit filed in Court as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs as follows:-

“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]

15. The Petitioner have sought to be appointed as Guardian and Manager of the subject. To merit the above orders the Petitioner must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the Patient is incapable of managing her own affairs.

16. The Petitioners testified that the subject MIN is suffering from a mental illness since 2001 and the same was aggravated by a stroke she suffered in 2020. The petitioner stated the Subject has been battling Multi Infarcts Dementia and deterioration of her cognitive functions which have greatly affected her capacity to care for herself and her affairs.

17. In support the petitioner has annexed to the petition a medical report dated 7th March 2024 prepared by Dr. Pius Kigamwa ,Consultant Psychiatrist at Aga Khan Hospital and in the medical report he stated as follows;

“....

A diagnosis of Multi Infarcts Dementia which is usually seen in persons chronic hypertension has been made”

18. This court also was able to observe the subject on the online platform and tried to engage the subject. This court noted that the subject is asleep at Alphine Prestine and she cannot speak.

19. Based on the material availed to this Court, I am satisfied that the Subject suffer from a mental illness under Section 26 of the *Mental Health Act*. I find merit of this petition dated 23rd October 2024 and make orders as follows;

1. This court hereby appoints LWM as the Guardian of the subject MIN .
2. This court also appoints LWM as Manager of affairs of the subject MIN’s estate.



3. In accordance with the provisions of Section 33 of the Mental Act, the petitioners will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

DATED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025

S. N. RIECHI

