



**In re EKK & ANEK (Miscellaneous Application E293 of 2024)  
[2025] KEHC 1789 (KLR) (Civ) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1789 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPLICATION E293 OF 2024**

**SN RIECHI, J**

**FEBRUARY 6, 2025**

**IN THE MATTER OF AN APPLICATION/PETITION UNDER  
SECTIONS 2,26,27,28 OF THE MENTAL HEALTH ACT CAP 248**

**BETWEEN**

**EGNK ..... 1<sup>ST</sup> APPLICANT  
EWK ..... 2<sup>ND</sup> APPLICANT  
PWK ..... 3<sup>RD</sup> APPLICANT  
NWK ..... 4<sup>TH</sup> APPLICANT**

**AND**

**EKK ..... 1<sup>ST</sup> RESPONDENT  
ANEK ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Before this Court is a petition dated 9<sup>th</sup> December 2024 in which the petitioners EGNK and EWK are seeking orders that EKK and ANNK be declared persons suffering from a mental disorder under section 26 of the *Mental Health Act* Cap 248. Secondly that EGN and EWK be appointed as guardians in respect to the subjects' Estate or Properties. The application is supported by the annexed statement of EGNK.
2. The Petitioner briefly stated that they are siblings and children to EKK and ANEK the respondents herein as evidenced and marked EGNK-1 copies of their identity cards attached to the petition. The petitioner deponed that the Respondents herein have been suffering from dementia as evidenced and marked as "EGNK-2" copies of the Respondents' Medical reports. The petitioner deponed further



- that for a considerable period the subjects have been suffering from dementia (a condition that causes memory loss).
3. The petitioner deponed further that as siblings they love the respondents and they have been expressing that love by always taking care of the subjects' needs including shelter food clothing medical needs and caregiver. She stated that it has got to a point where are they no longer able to get their medication on time due to financial constraints and tough economic times.
  4. The Petitioner averred that both the Respondents have bank accounts that have money. She averred that the Respondents are in great need of medical attention and therefore petitioners require money to cater for their medical needs as they are scheduled for checkup every three weeks.
  5. The Petitioner averred further that they are the Respondents' children and therefore have a legal and moral duty to take care of them. It is the petitioners' case that the respondents have various assets liabilities and responsibilities which require to be taken care of and which in their current condition they are incapable of doing so. The petitioners averred that this application is made in good faith and if the orders sought herein are granted by this honorable court, the same will go a long way to give the respondents a stable life and consequently culminate in the necessary constant medical attention for the Respondents.
  6. This Petition was canvassed by way of viva voce evidence on the online platform. The Petitioner EGNK testified that she knows E and he is her father. He is 79 years old. They want to be given permission to operate his account in KCB. He used to operate the account. He had savings and pension from Ministry of Works. She testified that she stays in Nairobi and her father stays in Kiambu on the way to Ruaka. She testified that the subject had already shared his property and sub-divided his land which now is not in his name. His only asset is the Bank account. The Petitioner testified that they have been attended to by Dr. Ngare and admitted at Coptic Hospital. He is diabetic, blood pressure, dementia. She testified that they have employed a nurse who stays with him.
  7. For AN (Second Subject) the Petitioner testified that she is diabetic, blood pressure and severe dementia. The petitioner testified that they have taken her for treatment to Dr. Ngare KNH. They have filed medical report. They subjects have four children namely; PW, EW, EN and NW. She testified that she wants herself and EWK to be appointed administrator.
  8. EWK, NWK and PWK were present in court and they testified that they support the petition.
  9. The 1<sup>st</sup> Subject EKK testified as follows;

“Today I am better than Yesterday. Yesterday I had. I took pain killers. I am 78 years old. I was a craftsman. I was working with Ministry of Works. I retired. I am lucky I sleep and wake up. I worked in Nairobi. My wife is called ANK. She was not working as household. K is the eldest. He takes care of me. We have 5 children; K, W, E. Today I want to get someone to assist me go abroad. I want to Amenza. My daughter PW. I want to go where there is money. I will not force her. If she wants she can take me with my wife.
  10. This Court notes that the subject appears weak but coherent.
  11. The 2<sup>nd</sup> Subject ANEK testified as follows;

“I am fine. I do not know but I am old. I have children. I want to go abroad.”

This court notes that the subject is incoherent in her speech. “Naomi assisted me, She is a teacher.”



12. 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]

13. The Petitioners have sought to be declared as Guardians and Managers of the subjects. To merit the above orders the Petitioners 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.

14. The Petitioners testified that the subject EK is diabetic, has blood pressure and dementia. They took the subject to Dr. Ngare and he was admitted at Coptic Hospital.

15. In support the petitioners have annexed to the petition a medical report dated 27<sup>th</sup> November 2014 prepared by Dr. Stanley Ngare, Consultant Physician and Endocrinologist at Kenyatta National Hospital in the medical report he stated as follows;

“ ....

Diagnosis: Type 2 Diabetes Mellitus

Hypertension

Dementia

....Due to dementia worsening he is unable to carry out any function of normal living independently.

His memory is very poor and he is unable to carry out any executive judgements.”



16. On the 2<sup>nd</sup> subject AN Dr. Ngare in the medical report dated 6<sup>th</sup> December 2024 stated as follows;

“ ....

Diagnosis: Type 2 Diabetes Mellitus

Hypertension

Dementia

....Due to dementia worsening he is unable to carry out any function of normal living independently.

His memory is very poor and he is unable to carry out any executive judgements.”

17. This court also was able to observe the two subjects on the online platform and tried to engage the subjects. This court noted that the 1<sup>st</sup> subject EKK appears weak but coherent. In speech the 2<sup>nd</sup> subject ANK this court noted that the subject is incoherent in her speech

18. Based on the material availed to this Court, I am satisfied that the Subjects suffer from a mental illness under Section 26 of the [Mental Health Act](#). I find merit of this petition dated 9<sup>th</sup> December 2024 and make orders as follows;

1. The court hereby appoints EGNK and EWK as the Guardians of the subjects EKK and ANEK.
2. This court also appoints EGNK and EWK Managers of affairs of EKK and ANEK 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 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

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**S. N. RIECHI**

