



**In re Guardianship of NWM (Miscellaneous Case E010 of 2024)  
[2025] KEHC 1484 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CASE E010 OF 2024  
FN MUCHEMI, J  
FEBRUARY 6, 2025  
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF NWM  
  
IN THE MATTER OF  
FM ..... APPLICANT**

**RULING**

**Brief Facts**

1. The application for determination is dated 23<sup>rd</sup> July 2024 seeks for orders of adjudging NWM (the subject) to be suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act* and to appoint the applicant as the subject's legal guardian. The application further seeks for the court to appoint the applicant as the manager of the estate of the subject under Section 28 of the *Mental Health Act* to manage her estate and any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any mood or goods.
2. The applicant is the son of the subject who was diagnosed with dementia/Alzheimer condition on 13<sup>th</sup> October 2020. The applicant avers that he has been taking care of the subject since the year 2016 when she started losing her memory but her condition has worsened over the years. The applicant further avers that the subject solely depends on others for her daily activities and he has hired a help and nurse to see that she is well taken care of as he closely monitors her condition.
3. The applicant states that the subject does not have the mental capacity to sufficiently understand, absorb and retain information and therefore cannot make lucid decisions based on the advice and information given. Furthermore, the subject is unable to manage her estate and administering her properties therefore incapable of dealing with her estate.
4. The applicant states that he and the subject are beneficiaries of the estate of GWM, his grandmother whose estate is pending distribution in Kiambu CM Succession Cause No. 604 of 2023. The applicant prays that the court appoint him as guardian ad litem of the subject to enable him execute the consent



for the distribution of his grandmother's estate in Succession Cause No. 604 of 2023. The applicant also states that the subject is the registered owner of land parcels Ruiru/Ruiru East Block 2/xxxxx and Tigoni/Tigoni Block 1/xxx which need to be managed.

5. The applicant further testified that the succession cause is currently awaiting confirmation of grant which he will pursue upon being granted guardianship in favour of the subject.
6. The application is supported by an affidavit by JNM, a sister of the subject and she states that she is one of the beneficiaries of the estate of GWM deceased, whose estate awaits determination of its devolvement in Kiambu Succession Cause No. 604 of 2023. The deponent states that the subject has been ailing since the year 2016 and was diagnosed with dementia. Due to this condition, the applicant has to depend on other people to manage her personal affairs.
7. The deponent avers that the applicant has been taking care of the subject and has been managing her affairs since 2016. The deponent further avers that the subject solely depends on the applicant and any caregiver hired by the applicant for her daily needs. The deponent thus urges the court to grant the applicant guardianship over the subject and manage the personal affairs of the subject as well as her estate. The deponent further states that Summons for Confirmation of grant in Succession Cause No. 604 of 2023 are yet to be filed as the subject cannot execute documents or make any decisions on the distribution of the estate.

#### **Issues for determination**

8. 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 as well as manager of the Estate of the subject.

#### **The Law**

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

9. 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.
10. 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."
11. 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.
12. According to the medical report by Prof. Erastus Olonde Amayo, a consultant neurologist practising at The Neurology Centre, Nairobi dated 19<sup>th</sup> October 2020, the patient is suffering from dementia/ Alzheimer. The medical report indicated that the subject has progressive cognitive and behavioural changes and thus depends on her family members for all her personal affairs. The medical report further indicated that the subject has lost all her cognitive ability due to memory loss and is not competent to conduct or represent herself in any legal matters.
13. It is apparent from the medical report and the evidence of the petitioner that the subject is suffering from a mental disorder as per Section 2 of the *Mental Health Act*. In my view, the subject suffers from a medical condition contemplated under Section 26 of the Act that renders her incapable of managing herself in several aspects.

**Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject**

14. 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.
15. The applicant has stated that he is the son and only child of the subject. The applicant's aunt swore an affidavit in support of the application stating that she consents to the applicant being appointed the legal guardian of the subject. The applicant further annexed pleadings in Kiambu CM Succession Cause No. E604 of 2023, where the subject and herself are co-administrators of the estate of GWM, deceased. The subject also is a beneficiary of the said estate.
16. There being no objection from any family members of the subject 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 and manager of the subject's estate is well grounded and merited.
17. In my considered view, this application dated 23<sup>rd</sup> July 2024 merited and is hereby allowed in the following terms:-
  - a. That the subject is hereby declared mentally unfit under the *Mental Health Act*.
  - b. That the applicant FM is hereby appointed the guardian ad litem of the subject NWM.
  - c. That the orders are limited to substitution of the co-administrator in Kisumu CM Succession Cause No.604 of 2023.
18. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**



**F. MUCHEMI**  
**JUDGE**

