



REPUBLIC OF KENYA



**In re MWN (Family Miscellaneous Application E021 of 2024)
[2025] KEHC 1707 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E021 OF 2024
FN MUCHEMI, J
FEBRUARY 6, 2025
IN THE MATTER OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF MWN
IN THE MATTER OF
LWK APPLICANT**

RULING

Brief Facts

1. The application for determination dated 29th October 2024 seeks for orders of adjudging MWN (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 orders of appointment of the applicant as the manager of the estate of the subject under Section 28 of the *Mental Health Act* to manage her estate comprised in LR. No. 13537/xxx(I.R. No. 50xxx/3), LR No. 11407/2xxx (I.R. No. 196xxx), Kiambu/xxxxx/7406, Plot 366 represented by share certificate member No. xxxxx issued by Mwana Mukia Housing Cooperative Society Ltd, Kiambu/xxxxx/1299, Kiambu xxxxx/1311, Mitubiri/Wempa Block x(Kenyatta Farm) 37xxx, Ruiru/Ruiru East Block 3/2xxx, LR No. 10090xxx, Makuyu/Block Block xx 1086 represented by ballot No. 39B6 issued by Gathaite Farmers Cooperative Society, Makuyu/Block Block xx 1092 represented by ballot No. W23 issued by Gathaite Farmers Cooperative Society, Makuyu/Block Block xx 1092 represented by ballot No. W23 issued by Gathaite Farmers Cooperative Society, 4 acres represented by Certificate No. 1xx issued by Gathaite Farmers Cooperative Society, Makuyu/Block Block xx 1096 represented by ballot No. J issued by Gathaite Farmers Cooperative society, Makuyu/Block Block xxx/1248, Mitubiri Nanga Block A9xxx/2199 represented by Share certificate number 1963 issued by Kihiu Mwiri Farmers Company Limited, Mitubiri Nanga Block A9xxx/2199 represented by Share Certificate number 57xxx issued by Kihiu Mwiri Farmers Company Ltd, Mitubiri Nanga Block A9xxx/1655 represented



by Share Certificate number 1963 issued by Kihiu Mwiri Farmers Company Ltd, Account No. 01100xxxxx in Unaitas, Account No. 200008xxxx in HFC Limited, membership number 0095 in Eneza Housing Cooperative Society Ltd and membership number 0095 in Visionary Empowerment Programme Organization. The applicant further seeks to be allowed to dispose by way of sale the properties Kiambu/xxxxx/7406 and LR. No. 100990/9xx(I.R. Number 229157/x) and apply the proceeds towards the upkeep, medical needs and maintenance of the subject, the subject's son DKN, all outgoings required by law to be paid towards the immovable properties of the subject, repair and maintenance needs of any of the subject's properties and completion of the ongoing construction on the property title number Kiambu/xxxxx/1299.

2. The applicant states that she is the daughter of the subject who was diagnosed with dementia in March 2019. The applicant avers that together with LWK, she has been taking care of the subject and has been responsible for her since the year 2019 when she started losing memory and being unable to manage herself. The applicant further states that in May 2024, the subject fell down on her right side sustaining a fracture to her neck of the right femur which necessitated surgery. Additionally, the subject suffers from hypertension and is therefore in need of special medical care.
3. The applicant avers that the subject has several properties and bank accounts to her name but she cannot operate the said accounts for she cannot give coherent instructions or take instructions on basic matters hence the need to appoint the applicant as the manager of her estate and issue an order of guardianship ad litem to manage her affairs. The applicant further states that before the health of the subject deteriorated, she made the applicant a co-signatory to her bank Account Number 200008xxxx in HFC Limited trusting her with managing her affairs and finances. Additionally, the applicant avers that LR No. 13537/xxx(I.R. Number 50xxx/3) and Kiambu xxxxx/1299 have rental premises and rent proceeds which she had entrusted the applicant with collection. The applicant avers that she has used the proceeds to cater for part of the subject's medical and other needs. The applicant states that the property Kiambu/xxxxx/1299 has an incomplete structure. The project requires to be revisited with a view of completing it should funds become available. The applicant further states that some of the other properties of the subject have accrued rates and rents over the years which need to be paid from the proceeds of the assets of the subject in the event that authority to sell them is granted. One of the properties has been encroached on and there is need to institute legal proceedings for eviction of the trespasser.
4. The applicant states that the subject is incapable of managing her affairs and is likely to suffer due to lack of finances for her up-keep. Manipulations and misguided influences by outsiders if allowed to take place could have a negative impact on the subject to her detriment and her estate unless a guardian is appointed to manage the affairs and properties of the subject.
5. The applicant avers that the subject does not have a spouse as her husband, JNM passed away in the year 2007. The subject has three children namely DKN, JMN and DMN who have filed a consent to the petitioner being appointed guardian ad litem of the estate of the subject. The applicant further states that DKN has been diagnosed with mental condition and suffers from spectrum. He is therefore incapable of making decisions for himself. Before the subject fell sick, she provided for her sick and disabled son. There is need that the subject be provided for from the proceeds of sale of the assets of the subject.
6. The applicant further states that if she is allowed to register and incorporate a trust for the benefit of the subject and her children as well as her grandchildren, she will be in a position to preserve the subject's hard earned estate and ensure it is prudently managed for the benefit of her children and grandchildren.



7. The application is supported by the joint affidavit by JMN , DMN and LWK being the sons and daughter in-law of the subject respectively. The family of the subject has consented to the applicant being appointed as manager and guardian ad litem for the subject. It is further deposed that LWK has been limited in engaging in any meaningful employment and thus the applicant has had to pay for her needs as well as for her children’s school fees out of her own resources. The deponent further states that as the applicant has taken on a huge financial burden on behalf of the family and as such, she can be compensated by having her sons’ school fees paid from the resources of the subject’s estate, in the event that this application is successful.

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. The medical report by Dr. J. Gachiri Chakaya, a consultant physician, dated 27th September 2024, the patient is suffering from dementia and hypertension. The medical report indicated that the subject was reported to have memory lapses especially of recent events for the previous two years. The medical report further indicated that the subject is no longer independent in her day to day living.
13. It is apparent from the medical report that the subject is suffering from a mental disorder as per Section 2 of the *Mental Health 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 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 she is the daughter of the subject. The applicant's brothers and sister in-law swore an affidavit and filed a consent supporting the application. It is therefore, right and fitting that the applicant be appointed the legal guardian and manager of the subject. The applicant produced a card from the National Council for persons with Disability in reference to her brother DKN showing that he suffers from mental intellectual and autism spectrum and thus having been dependent on the subject in his personal and other needs. This court had the opportunity to examine the subject in court and noted that the subject could not answer any questions put to her or even comprehend her surroundings.
16. Consequently, and there being no objection from the family members I am of the view that this application is merited.
17. The application dated October 29, 2024 is hereby allowed in the following terms:-
 - a. That the subject MWN is hereby adjudged mentally incapacitated and thus incapable of managing herself.
 - b. That the petitioner LWK is hereby appointed the legal guardian of the subject and shall take care and provide for DKN, the son of the subject.
 - c. That the petitioner is hereby authorised to manage the estate of the subject by paying the requisite rates and land rents as well as other expenses related thereto.
 - d. That the estate of the subject shall be managed prudently and economically for the benefit of the subject and all her children.
 - e. That the petitioner is hereby authorised to dispose the subject's properties namely L.R. Kiambu/xxxxx/7406 and L.T. 10090/XXX (I.R. 229157/x) and utilise the proceeds towards the upkeep, medical needs and maintenance of the subject and provide for needs of the subject's disabled son Duncan Kimani Nganga as well as for the completion of the construction of L.R. Kiambu/xxxxx/299.
18. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6TH DAY OF FEBRUARY 2025.



F. MUCHEMI
JUDGE

