



REPUBLIC OF KENYA



**In re SKM (Subject) (Miscellaneous Application E071 of 2024)  
[2025] KEHC 3640 (KLR) (Family) (17 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3640 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E071 OF 2024  
PM NYAUNDI, J  
MARCH 17, 2025  
IN THE MATTER OF SKM  
AND  
IN THE MATTER OF MENTAL HEALTH ACT, CHAPTER 248 OF THE LAWS OF KENYA  
AND  
IN THE MATTER OF THE RIGHTS OF OLDER MEMBERS  
OF SOCIETY UNDER ARTICLE 57 OF THE CONSTITUTION**

**JUDGMENT**

1. Vide application dated 8<sup>th</sup> April 2024, the Applicants herein Mrs. ZWK and GGK , seeks the following orders-
  1. That the Court to declare MR. SKM as a person suffering from mental disorder as defined in the [Mental Health Act](#), Cap. 248 of the Laws of Kenya.
  2. That the Court to appoint MRS. ZWK AND GGK , (the Petitioners herein), the guardians of the subject, the said MR. SKM .
  3. That the Court to appoint MRS. ZWK AND GGK , to be the Managers of the estate of the said MR. SKM .
  4. That the costs of this application be borne by the estate of the said MR. SKM .
2. The Application proceeded by way of viva voce. The Petitioners are the wife and daughter of the subject herein. The subject is 78 years old suffering from mental illness. He has been diagnosed to be suffering from Alzheimer’s disease, a form of dementia that has caused his progressive memory loss, impaired thinking, disorientation and changes in personality and mood. He is unable to manage his affairs. The other family members have nominated them to be the Guardians of the subject.



3. According to subject's wife PW1, ZWK , they live in Kiambu and they have three (3) children namely; JWK , GGK and MMK .
4. PW2, JWK , is a daughter to the Subject. She confirmed that the subject suffers from dementia and that she supported the Application by the Petitioners.
5. PW3, GGK , is a daughter to the subject. She is a Co-Petitioner thus she understands and supports the Application.
6. PW4, MMK he is a son to the subject. He supports the Petition.
7. The Court interviewed the subject and observed that he was disoriented. The subject not aware that he was in Court. It is evident that he is unable to identify the family that is with him.
8. The Petitioners stated that the subject managed his affairs and discharged his duties until around 2009 when dementia set in. It took from him the capacity to look after himself. He needs the service of a caregiver all the time to meet the basic needs of an individual. His family has employed two caregivers to assist him for 24 hours every day. The Petitioners also stated that the subject has no capacity to manage his property namely L.R No. 209/5810 situated in Ngara.
9. It's Petitioners averment that the subject needs a representative to be appointed to protect and represent subject's interest in his properties particular in case that is in Nairobi ELC Court No. E 080 of 2024 Paul Silvanus Masia Vs Wainanina Real Estates Ltd and SKM .
10. Report dated 21<sup>st</sup> March, 2024 by Dr. Dr. J.N. Muiuru stated-  
The above named person has been on medical follow-up at our facility he was diagnosed with dementia which is a worsening condition with loss of memory and cognitive function. Currently there is no known medical care for the above mentioned condition, his communication has been compromised and so he is not able to make sound decision.

### **Determination**

11. The provisions of the *Mental Health Act* ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The *Mental Health Act*, at Section 26 provides that:
  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.

12. I have considered the evidence adduced in Court and I am persuaded that the Petitioners/ Applicants are best placed to provide adequate care to the subject and ensure his wellbeing.
13. It is in the subject's best interest that the Applicants are appointed as his personal representative to ensure that funds are available for his upkeep and further medical attention in the future.
14. In the circumstances the Application dated 8<sup>th</sup> April, 2024 is allowed and with the following orders:
  - a. SKM is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
  - b. ZWK AND GGK are hereby appointed under section 27 of the *Mental Health Act* as the Guardian of SKM
  - c. ZWK AND GGK are hereby appointed manager of the estate of SKM under Section 28 of *Mental Health Act* to manage his estate including 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 money or goods.
  - d. Pursuant to this appointment ZWK AND GGK shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging SKM .
  - e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Applicants shall cause within 30 days the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate of SKM .
  - f. As Managers of the Estate of SKM the Applicants may dispose of the property only with the sanction of the Court.
  - g. The matter will be mentioned before court on 11<sup>th</sup> June, 2025 to confirm compliance.
  - h. Costs to be met out of the Estate of the Subject.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>th</sup> DAY OF MARCH, 2025.**

**P. NYAUNDI**

**JUDGE**

In the presence of:

Kanja Court Assistant

Ms. Kinuthia for Petitioners

