



REPUBLIC OF KENYA



KENYA LAW
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**In re EWN (Miscellaneous Case E025 of 2025)
[2025] KEHC 2611 (KLR) (Family) (10 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2611 (KLR)

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

FAMILY

MISCELLANEOUS CASE E025 OF 2025

CJ KENDAGOR, J

MARCH 10, 2025

**IN THE MATTER OF SECTION 26 AND 28 OF THE
MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF EWN

AND

IN THE MATTER OF AN APPLICATION BY

IN THE MATTER OF

MN PETITIONER

JUDGMENT

1. Before this Court is a Chamber Summons application dated 30th January, 2025, which seeks the following orders: -
 - a. That MN of ID No. 22xxxx27 be appointed as the guardian of EWN;
 - b. That MN of ID No. 22xxxx27 be authorized to manage the estate of EWN under Section 28 of the *Mental Health Act* 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;
 - c. That the costs of the application be provided for.
2. The application is supported by an Affidavit dated 20th January, 2025 sworn by the Petitioner/Applicant. The matter was canvassed by way of viva voce evidence on the online platform in the presence of the subject EWN who was also present on the call. The Petitioner who testified as PW1 told the Court that she is the daughter of the subject EWN and that she will faithfully act in the subject's



- best interest. She further stated that she has discussed with her siblings SGM and CNM who were also present on the call and who stated that they understand the proceedings and consent to the same.
3. A medical report dated 18th December, 2024 by Doctor Muriithi Nyamu, a consultant Physician/ Cardiologist was filed in Court. In the said report the doctor stated that the subject suffers from remote infective stroke, pulmonary embolism, remote left common femoral vein deep vein thrombosis, chronic venous insufficiency with chronic lower limb ulcers and diabetes mellitus and has been on follow up and treatment in the hospital since 2021. The doctor further stated that though the subject has shown some improvement, she still remains aphasic, is wheelchair bound and only minimally ambulates with support and thus still requires lots of care and attention.
 4. A Chief's letter dated 15th January, 2025 has also been filed in Court. In the said Chief's letter, the Assistant Chief, Gaitumbi sub-location stated that the Petitioner MN hails from her area of jurisdiction in Gaitumbi sub-location, Kinoo Location, Kinoo Division, Kikuyu sub-county of Kiambu County and that her office is aware that MN has been the caregiver to the subject EWN. The Chief also confirmed that the subject has been undergoing Physiotherapy treatment and is still under the care of the Petitioner MN.
 5. The Petitioner/Applicant has sought to be appointed guardian of the subject EWN and be authorized to manage her estate under Section 28 of the [Mental Health Act](#) 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.
 6. In her evidence, the Petitioner/Applicant stated that she is the daughter of the subject. She further stated that she has been caring for the subject out of pocket. She is seeking access to her resources which include property in her name and resources in the bank. She told the Court that she has discussed with her siblings.
 7. The Petitioner/Applicant through further documents filed in Court on 30th January, 2025 mentioned that the subject suffered stroke in September, 2021 that left her paralyzed on the right side. She also lost speech, that her mind is okay, but she is unable to communicate clearly, seeing that she has to use gestures with the left (functional) hand. She is also not in a position to write with the left hand and so is not in a position to give clear instructions relating to anything pertaining to her affairs. The Petitioner/Applicant MN took the subject EWN in and has been caring for her since then.
 8. The Court directed that the Subject be presented during the proceedings. I observed her state and, upon examining whether she was aware of the Court proceedings, she merely nodded. She was unable to communicate.
 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. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
 10. Under Section 26(3) of the Act it provides,

“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 persons, including proper provision for his maintenance...”

11. Section 28 of the same Act provides for management of the subject’s estate.
12. I have carefully considered the Chamber Summons application, the Affidavit filed in Court, the medical report, the Chief’s letter as well as the evidence adduced in the matter. Section 26 of the [Mental Health Act](#), Cap 248, Laws of Kenya empowers the Court to 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 any other suitable person.”
13. Medical Report by Dr. Muriithi Nyamu demonstrate that the subject is wheelchair bound and non-verbal and therefore incapable of making independent decisions and conducting her affairs and requires lots of care and attention.
14. From the evidence produced by the Applicant and the Medical Report on record, I am satisfied with the merits of this Application. It is in the subject’s best interest that the Applicant is appointed as her legal guardian and manager of her estate so that she can execute the duties of Administrator in the estate of EWN.
15. In the circumstances the Court is satisfied of the subject’s condition and circumstances and holds as follows:
 - a. EWN is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#).
 - b. MN is hereby appointed under Section 27 of the [Mental Health Act](#) as the Manager of the estate of EWN.
 - c. MN is hereby appointed manager of the estate of FNG under Section 28 of [Mental Health Act](#) to manage her estate including any such description of moveable or immoveable 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, MN shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging EWN.
 - e. In accordance with Section 27(4) of the [Mental Health Act](#) the Petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate EWN.
 - f. As Manager of the Estate of EWN, the Applicant may dispose of the property only with the sanction of the Court.
 - g. Costs to be met out of the Estate of the Subject.
16. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 10TH DAY OF MARCH, 2025.

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C. KENDAGOR



JUDGE

In the presence of:

Court Assistant – Beryl

Ms. Mutegi holding brief for Mr. Kibera Maina, Advocate for Applicant

