



In re SNK (A Person Suffering from a Mental Disorder) (Miscellaneous Application E005 of 2024) [2025] KEHC 4590 (KLR) (10 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4590 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS APPLICATION E005 OF 2024
GL NZIOKA, J
MARCH 10, 2025
IN THE MATTER OF SECTIONS 26,27,28 AND 29 OF
THE MENTAL HEALTH ACT CAP 248, LAWS OF KENYA
AND
IN THE MATTER OF SNK (A PERSON SUFFERING FROM A MENTAL DISORDER
IN THE MATTER OF
SW PETITIONER

RULING

1. By a notice of motion application dated 3rd June 2024, the applicant is seeking for the following orders: -
 - a. Spent.
 - b. That pending the hearing and determination of this petition the Honourable court be pleased to immediately appoint the petitioner as the guardian of the affairs of SNK in accordance with the *Mental Health Act*.
 - c. That pending the hearing and determination of the petition for guardianship, the applicant/petitioner be allowed to access and withdraw funds held in KCB Bank A/C number 110301xxxx.
 - d. That in the alternative to order No C) the applicant be allowed to withdraw and manage a sum of Kenya Shillings Three Hundred Thousand (Kshs 300,000/=) from bank account No 110301XXXX for purposes of paying for the scheduled surgery and for his continued upkeep.
 - e. That the costs of this petition be borne by the Estate.
 - f. The court grants any other orders that meet the end of justice.



2. The application is based on the provisions of; section 1A ,1B ,3A the *Civil Procedure Act*, Order 32 Rule 15, Order 51 Rule 1 *Civil Procedure Rules 2010*, section 26, 27, 28 and 29 of the *Mental Health Act* and all other enabling provisions of the law.
3. The application is further based on the ground thereto and an affidavit of the even date sworn by the applicant. She avers that she is the legal wife of SNK (herein “the subject”) as evidenced by the marriage certificate. That her husband is 67 years old and holds an identification card No 087XXXX . Further, they have been blessed with the following children; AKN aged 29 years and SMN aged 26 years. That her children have consented to the grant of prays in the application as evidenced by the consent attached to the affidavit and marked as “SW3”.
4. That in the year 2020, the subject was diagnosed with diabetes and has been undergoing treatment for among other ailments, stroke, a cerebrovascular disease characterized by dumbness, numbness and incomprehension rendering him incapable of making any decision. That he was booked for a surgery on 18th June 2024 and his family was unable to settle the medical fees at the hospital, and yet he has funds in his bank account 110301xxxx held at KCB bank which can sufficiently settle the hospital charges. Further, the subject requires to use urinary catheters which are expensive to purchase.
5. That the afore medical expenses are likely to overwhelm the family and she is afraid that the little savings she has will be depleted as the subject has been the sole bread winner. Further the subject requires specialized medical care which is currently not guaranteed as she cannot readily access sufficient resources to adequately cater for his medical needs and neither can the subject be able to access his bank account and other assets to enable him cover his medical costs.
6. I have considered the application and note that the applicant has attached the following documents in support of the application: -
 - a. A marriage certificate as evidence of the legal status as a wife to the subject.
 - b. The national identity card of the subject.
 - c. A copy of consent from the children of marriage that they have no objection to grant of orders sought.
 - d. A copy of the subject’s medical report indicating what he is suffering from and inability to make sensible decisions.
7. Be that as it were, upon considering the application, the court ordered that the children of the subject be in attendance on the 18th June 2024 when the matter was scheduled for hearing to authenticate the consent. Further, that evidence of hospitalization and/or alleged surgery be availed from the hospital where the surgery was scheduled to take place and an indication be given as to the cost of the surgery.
8. Consequently, thereto the applicant filed additional documents being: -
 - a. Appointment of surgery to be conducted on 18th June 2024
 - b. Results of the MSK ultra sound conducted on 14th May 2024
 - c. A photo of the MSK ultra sound conducted on 14th May 2024
9. Notably most of these documents were incapable of assisting the court as they were illegible and/or written in medical language not easily understood by the court.



10. On 26th November 2024, the court directed that the order requiring the children of the subject attend court be complied with. Further, the balance on the bank account referred to herein be provided and costs of the surgery be disclosed.
11. On 16th December 2024 the court took note of the consent to allow the application filed by the children of the subject. However, the balances on the subject's bank account and cost of the surgery had not been provided.
12. On 29th January 2025 the applicant's counsel informed the court that, she had filed further documents being: -
 - a. Letter from the doctor treating the subject dated 19th December 2024
 - b. Invoice for a CT scan Angiogram
 - c. List of medication required and the cost thereof
13. Notably from the medical report of Dr. Munjiri Kaniaru dated 19th December 2024 filed at Nakuru County Referral and Teaching Hospital, the subject is "currently paralysed and unable to speak or carry out his normal duties, and therefore warrants assistance. Further he requires a CT Angiogram of the lower limb at a cost of Kshs 19,000 and daily medication although no cost is given for the daily medication.
14. Furthermore, the bank has written indicating that, the subject's account No 110301xxxx in the name of SNK is held at KCB Naivasha Branch and has a credit balance of Kshs five hundred and ten thousand, one hundred and ten cents seventy-five only (Kshs 510,110.765) as at 19th December 2024.
15. Pursuant to the aforesaid, I find that the application is well supported and I allow it in terms of prayer (1) although the purpose of the alleged petition is not clear. The order herein should simply read that, the applicant is appointed as a guardian of the subject pursuant to the provisions of section 26, 27 and 28 of the [Mental Health Act](#) (Cap 248) Laws of Kenya.
16. To safeguard the interest of the subject no withdrawal will be made from the bank account without a court order as to how much is to be withdrawn and the purpose thereof. However, a sum of Kshs 30,000 shall be given to the applicant for the CT scan as stated in the doctor's letter and for daily medication.
17. The cost of the application shall be in the cause.
18. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 10TH DAY OF MARCH 2025

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Nkoki for the applicant

Ms. Hannah: court assistant

