



**In re MWN (The Subject) (Family Miscellaneous Civil Case
E001 of 2025) [2025] KEHC 3136 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E001 OF 2025**

FN MUCHEMI, J

MARCH 6, 2025

IN THE MATTER OF

GMG 1ST PETITIONER

FNG 2ND PETITIONER

JUDGMENT

1. The applicant filed this petition as a Notice of Motion. However, by the court hearing the petitioner's evidence, these proceedings converted to a petition. The prayers in this petition dated 16th January 2025 are for the 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 applicants as the subject's legal guardians. The application further seeks for the court to allow the petitioners to access the subject's bank account number 11XXXXXXX34 held at Kenya Commercial Bank, Thika Branch.
2. The petitioners are the sons of the subject who was diagnosed with Acute Intracerebral hematoma on 19th April 2021 which has caused her dementia. The petitioners state that they have been taking care of the subject together with their siblings since 2021 when she started losing her memory but unfortunately her condition has worsened over the years. The petitioners testified that they have been managing all the personal affairs of the subject as well as attending to her other needs with help of other family members.
3. The petitioners aver that the subject does not have the mental capacity to sufficiently understand, absorb and retain information including advice and cannot make lucid decisions based on advice and information given. Due to her mental and health status, the subject is unable to access her bank account which has strained the petitioners' finances as a family as they have had to cater for her hospital bills amongst other needs.
4. The petitioners urged the court to allow them withdraw money from the subject's bank account so as to settle financial obligation of the subject including basic utilities and medical expenses.



5. The petitioners testified that the subject has been physically sick for the last 4 years. She suffered a stroke due to her illness, pulmonary thromboembolism and memory loss. The petitioners testified that the subject is immobile and she is normally in a wheel chair. The petitioners further testified that due to her illness, the subject has to be fed, cleaned and to be taken care of as she is under medication. Thus, the petitioners testified that they need money to meet expenses for the subject and her other needs.

Issues for determination

6. 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 petitioners should be appointed as guardians to the subject as well as managers 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

7. 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.
8. 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.”
9. 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.



10. According to the medical reports by Dr. Ndaihera, a radiologist, dated 2021, and Dr. Gecaga dated 19th April 2021, the patient is suffering from pulmonary thromboembolism and intracerebral hematoma, intraventricular acute haemorrhage and generalized cerebral and cerebellar atrophy.
11. The court had the opportunity to observe the subject and she recognized her children but did not know where she was and why she was in court. The subject told the court that she visits the hospital regularly. The court observed that the subject was suffering from a cognitive problem, memory loss and she is physically incapacitated.
12. It is apparent from the medical reports that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing her own affairs.

Whether the petitioners should be appointed as guardians to the subject as well as managers of the Estate of the subject

13. 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.
14. The petitioners have stated that they are the sons of the subject. The petitioners annexed a signed consent of their brothers stating that they support the petitioners being appointed the legal guardians and managers of the subject and her estate.
15. Thus, there being no objection from any family member and the course of the application being well supported as required by 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.
16. Thus the application dated 6th January 2025 is allowed in the following terms: -
 - a. That LNG is hereby declared as mentally incapacitated under the *Mental Health Act*.
 - b. That the petitioners GMG and FNG are hereby appointed legal guardians of the subject LNG.
 - c. That the petitioner shall manage the subject's affairs and provide for her maintenance, medical expenses and general care from fund in the subjects account No.11XXXXXXX34 Kenya Commercial Bank Thika.
17. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

