



REPUBLIC OF KENYA



In re SMN (A Person Suffering from Mental Disorder) (Family Miscellaneous Civil Case E017 of 2024) [2025] KEHC 4579 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E017 OF 2024
FN MUCHEMI, J
APRIL 3, 2025
IN THE MATTER OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF SMK(A PERSON SUFFERING FROM MENTAL DISORDER)
IN THE MATTER OF
RNM APPLICANT**

RULING

Brief Facts

1. The application for determination dated 18th September 2024 seeks for orders of adjudging SMK (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 appointing the applicant as the manager of the estate of the subject under Section 28 of the *Mental Health Act* to manage his estate.
2. The applicant is the wife of the subject and they were blessed with two issues namely Michelle Wangari Mwaura and Elizabeth Wanjiku Mwaura. The applicant avers that the subject has been having health challenges for a period of over ten (10) years and he was diagnosed by Dr. Stephen Ngigi with senile dementia. Furthermore, the respondent has been diabetic for the last ten years and his condition has rapidly deteriorated with loss of cognitive functions for the last six years. The applicant avers that the respondent is currently on different types of medication to manage his health.
3. The applicant states that she has incessantly supported the respondent by providing him with all his basic needs including medication whilst also managing all his finances in a proper and lawful manner. The applicant further states that her daughters have consented to her being appointed guardian ad litem as she is the primary caregiver to the subject.



4. The applicant further swore an affidavit dated 13th February 2025 and testified that the subject has several properties but he is unable to manage them due to his illness. The applicant testified that the estate comprises of a motor vehicle registration number KCM 991L Nissan Vanette; land parcels L.R. No. Gatamaiyu/Kamuchege/776; L.R. No. Ndithini/Mananja Block 1/2443; L.R. No. 18137 located within Thika Municipality in Kiambu County as well as being a holder of Bank Accounts No. 0313712249 in ABSA Bank and A/c No. 0340171222549 Equity Bank. The subject also owns Safaricom shares.

Issues for determination

5. 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.

6. 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.
7. 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.”
8. 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.



9. The medical report by Dr. Stephen K. Ngigi, a consultant, dated 4th September 2024, states that the patient suffers from senile dementia. The medical report indicated that the subject's condition has rapidly deteriorated with loss of cognitive functions for the last 6 years. The medical report further indicated that the subject has developed severe short term memory loss associated with partial disorientation, visual and auditory hallucinations. Furthermore, the subject appears confused and cannot perform his biological and physical needs without support. He is also known diabetic for the last 10 years. The medical report further indicated that the subject is no longer independent in his day to day living.
10. It is apparent from the medical report 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 his own affairs.

Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject.

11. 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.
12. The applicant has stated that she is the wife of the subject. The daughters of the applicant swore an affidavit consenting to the appointment of their mother as the legal guardian and manager of the subject and estate of the subject. Furthermore, the court had the opportunity to examine the subject in court and noted that the subject confirmed that he is unwell and he lacks the mental capacity to manage himself.
13. Thus, there being no objection from any family members of the subject and the application being well supported as required under the law, it is my considered view that the prayers for appointment of guardian ad litem and manager of the subject's estate are merited. Thus, the application dated 18th September 2024 is allowed as prayed in terms of prayers 2 and 3.
14. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF 2025.

F. MUCHEMI

JUDGE

