



**In re EWM (A Person Suffering from Mental Disorder) (Family Miscellaneous Application E014 of 2024) [2025] KEHC 6805 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6805 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
FAMILY MISCELLANEOUS APPLICATION E014 OF 2024  
A MSHILA & A MSHILA, JJ**

**MAY 23, 2025**

**JUDGMENT**

**IN THE MATTER OF AN APPLICATION FOR BY NELLY WAWERU  
THAIRU TO BE APPOINTED GUARDIAN OVER THE AFFAIRS  
AND MANAGER OF THE ESTATE OF EDWIN WAWERU MUCHAI**

**IN THE MATTER OF**

**NWT ..... APPLICANT**

**JUDGMENT**

**Introduction.**

1. Before the court for determination is the Chamber Summons application dated 13<sup>th</sup> March, 2024 brought under the provisions of Section 26(1) and (3), Section 27(1) and Section 32 of the Mental Health Act and Section 3A of the Civil Procedure Act; the Petitioner seeks the following orders:
  - a. Spent.
  - b. Spent
  - c. In the interim the Honourable Court be pleased to appoint the Petitioner NWT as the legal guardian of the Subject pending the hearing and determination of this Petition.
  - d. The Petitioner NWT be allowed to control KABETE/KARURA/1XX4 and motor vehicle registration number KCH 0X2X pending the hearing and determination of this case.
  - e. This Honourable Court places a restriction on the property pending the hearing and determination of this case
  - f. The Honourable Court make orders as to costs occasioned by this Petition



- g. The Honourable Court make such other and further orders as this Honourable Court may deem just.
2. The Application was supported by a Supporting Affidavit sworn by NWT the Petitioner herein made on 15<sup>th</sup> January, 2024 in which she deponed that she was the sister of the subject, this was verified by the Chiefs Letter dated 10<sup>th</sup> February, 2024.
3. She further deposes that she had the authority and express consent of her siblings to file the Petition; and that she was competent to make the affidavit;
4. The subject was aged 67 years and he suffered a stroke which left him with a weakness on the right side and loss of speech; his mental capacity is fine but due to the stroke he is not able to converse and his mobility is incapacitated and is not able to walk or get about without the assistance of a wheelchair; he also a diabetic and is hypertensive; as a result of the condition the subject is no longer able to source for his income and take care of himself and is thus fully dependent on his siblings; The Petitioner urged the court to adjudge the subject as a person suffering from a mental disorder and to appoint her as the legal guardian and manager over the subject for the better management of the subjects' affairs.
5. At the hearing of the Petition Doctor Bernard Gitura a general practitioner and specialist cardiologist who examined the subject testified on the subjects mental stability and incapacity and the medical treatment; he produced the medical report marked as PExh.1 in support of his evidence;
6. The Application was unopposed

#### **Issues For Determination.**

7. Having perused the Petition, the application and upon hearing the medical expert evidence this court finds that the only issue framed for determination is whether the orders sought are merited.

#### **ANALYSIS.**

8. The issue relating to custody, management and guardianship is provided under Section 26 of the Mental Health Act Cap 248 which provides:

- “(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
  - c. 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.
  - d. Where upon inquiries 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 just 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 Doctor has produced medical expert evidence that confirmed the subject was suffering from a heart condition characterized by an impairment to converse and needed a guardian to look after him as he was unable to take care of his affairs.
10. Upon observing the subject at the hearing hereof, it is evident the subject was not able to express himself and that he was able to comprehend or respond to simple greetings and instructions; going by the doctors evidence the subjects current condition was managed by daily use of drugs otherwise the subject is unable to make any rational decision and needs assistance.
11. This court is satisfied that granting the Petitioner the orders sought would be in the best interest of the subject whom this court finds to be semi paralyzed person who requires to be managed; this court is also satisfied that this is a suitable case for the issuance of the orders sought as the subject is found to be a person who needed his affairs to be managed and was in need of medical and personal care.

### **Findings And Determination.**

12. For the foregoing reasons this court makes the following findings and determinations:-
  - i. The Petition is found to have merit and it is hereby allowed.
  - ii. The subject herein EDWIN WAWERU MUCHAI is hereby adjudged to be a person suffering from a mental disorder pursuant to Section 26 of the Mental Health Act;
  - iii. This court hereby appoints Petitioner NELLY WANJIKU THAIRU to be the legal guardian and manager of the subject EDWIN WAWERU MUCHAI.
  - iv. This Order shall manage but not distribute his estate as set out in the Inventory of the Subjects assets moveable and immovable; and in particular Title No. KABETE/KARURA/1X4, M.V.Reg. No. KCH 0X2X and Standard Chartered Bank A/C No. 01XXX3-09XX7-000 without the consent of the Court;
  - v. The Petitioner shall in particular do the following:-
    - a. Execute and sign documents on behalf of the Subject with respect to the subjects' estate.
    - b. Receive monies and proceeds from the subjects estate.
    - c. Utilize these proceeds to cater for the subject's health care, medical expenses and maintenance;
    - d. To render to family members and other beneficiaries regular half yearly accounts on the monies received from the estate of the subject.
  - vi. This being a family matter there shall be no order as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**A. MSHILA**



## **JUDGE**

In the presence of:-

Sanja – Court Assistant

Miss Kiarie – for The Petitioner

