



REPUBLIC OF KENYA



KENYA LAW
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**In re PWN alias PGN (Subject) (Miscellaneous Application
E055 of 2022) [2025] KEHC 6077 (KLR) (Family) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6077 (KLR)

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

MISCELLANEOUS APPLICATION E055 OF 2022

CJ KENDAGOR, J

MAY 7, 2025

RULING

1. This Ruling is on the application dated 26th March, 2025 filed by PWN alias PGN, hereinafter referred to as (“the Applicant”). It seeks the following orders;
 - a. THAT this application be certified urgent and be heard ex parte in the first instance;
 - b. THAT pending the hearing and determination of this Application, the Honourable Court do issue a temporal stay of its orders dated 22nd May, 2023 reached through a mediation agreement dated 15th July, 2022 between the managers and Respondents;
 - c. THAT pending the hearing and determination of this Application the Honourable Court do direct that all rental collection from the Applicant/Subject’s property known as Plot Number B6X1 and B6X4 (Kisumu Ndogo Flats) in Ongata Rongai be deposited in the Applicant’s Account Number 0653XXX6406, ABSA Bank, Karen Branch;
 - d. THAT pending the hearing and determination of this Application an order to issue restraining AN, the 2nd Respondent and SWN the 3rd Respondent from residing, accessing, collecting rental income and or in any manner dealing with the Applicant’s property known as Dan Lei Apartment Number A1, Plot Number B4X6-Gataka Road Flat and Plot Numbers B621 and B6X4 (Kisumu Ndogo Flats) in Ongata Rongai;
 - e. THAT an order to issue removing JWN and JDS as managers of the Applicant’s estate and directions for them to give an account of the estate during their management and tenure;
 - f. THAT an order do issue directing AN the 2nd Respondent and SWN the 3rd Respondent given an account as to all rental income collected from Plot Numbers B6X1 and B6X4 (Kisumu Ndogo Flats) in Ongata Rongai;
 - g. An order do issue declaring the Applicant as a person of sound mind capable of managing her estate;



- h. The managers and the Respondent herein be restrained from residing, accessing, collecting rental income and or ain any manner dealing with the Applicant's property known as Dan Lei Apartment Number A1, Plot Number B4X6-Gataka Road Flat and Plot Numbers B6X1 and B6X4 (Kisumu Ndogo Flats) in Ongata Rongai;
 - i. Any other relief or orders that the Court may deem fit to issue;
 - j. Cost of this Application.
2. The Applicant is the biological mother of JWN, AN, SWN, PPD, CD and JD.
3. JWN and PD applied to be appointed as guardians and managers of all her affairs and estate. JD lodged a protest and they were referred to Court Annexed Mediation where they entered into a Mediation Settlement Agreement dated 15th July, 2022. The Agreement was adopted as an Order of the Court on 24th September 2022. The orders were as follows;
 - a. THAT JWN and JDS shall work jointly to ensure the matters affecting PWN are well catered and attended to within reasonable time;
 - b. THAT JWN and JDS shall create a WhatsApp group upon signing of this agreement as a mode of communication to facilitate the views of other family members in regards, PWN and inform them of the matters at hand;
 - c. THAT any matter handled within by either party under emergency shall be communicated to the group and indicating any expenses incurred and the mode of recovery if and when necessary;
 - d. THAT when any emergency arises the party that has dealt with the said issue shall endeavour to communicate at least within Twelve (12) hours and responses made;
 - e. THAT any consent requested by a party shall not be unreasonably denied;
 - f. THAT there shall be two WhatsApp groups with the main one with all family members involved in the matter and the second one with only the two managers;
 - g. THAT the family shall organize a family meeting within 14 days of signing this agreement to communicate the same to PWN;
 - h. THAT for avoidance of doubt, any other family member is allowed to take any action deemed fit in regards to their mother, PWN;
 - i. THAT parties have been made aware by the mediator that this mediation settlement agreement is binding and final. No appeal shall be allowed by this Honourable Court;
 - j. THAT this mediation settlement agreement is voluntarily negotiated, concluded and signed by the parties to settle their dispute in an amicable and understanding manner and takes effect immediately.
4. JWN and JD, designated as joint guardians and managers, found themselves in a contentious dispute shortly after their appointment. The evidence presented reveals that their inability to collaborate effectively hindered their execution of the responsibilities spelt out in the consent order.
5. The Applicant named all six children as respondents to the application. JD filed a Replying Affidavit and SWN filed a Replying Affidavit on his behalf and on behalf of JWN, PD and AN.



6. During the hearing of the application currently before the Court, the Court directed that the Applicant be present, along with the managers and the other children who also attended the court.

Analysis and determination.

7. The issues for determination are as follows;
 - i. Whether PWN, also known as PGN, is a person suffering from a mental disorder or incapacity;
 - ii. Whether the appointment of guardians/managers should be upheld;
 - iii. What decision should be made regarding the management of her properties.
8. Section 26 of the *Mental Health Act* states that:
 - 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.
9. The appointment of JWN and JD was premised on this provision. The Applicant acknowledges in her affidavit that she was unwell and required assistance during the period when the application for guardianship was filed in Court (year 2022).
10. Under Section 34 of the *Mental Health Act*, the Court can set aside the appointment or issue any orders that may be appropriate;
 1. The court may, for any sufficient cause, remove any manager or guardian appointed by it under this Part, and may appoint any other fit person in his place; and may make such order as it considers necessary to ensure that the person removed transfers the property under his care, and of which he was manager, to his successor, and accounts to the successor for all money received or disbursed by him in connection with the property.
 2. The court may also, for any sufficient cause, remove the guardian of a person appointed by it and appoint any other fit person in his place.
11. As this case has significant implications for the Applicant, it was essential to establish her comprehension of the legal proceedings before the Court. During the interview, the Applicant spoke softly, attributing her faint voice to ongoing health challenges. She stated that she is diabetic and has hypertension, and her eyesight is affected. Despite this, she categorically asserted that she does not experience any mental health issues, firmly maintaining her ability to manage her affairs independently.
12. In the interview, she painted a vivid picture of her family dynamics, noting that her children had largely become independent adults save for CD, who relies on her assistance due to specific medical conditions.
13. She exhibited a thorough understanding of her properties. She stated that the actions and interference of her children have adversely affected both her well-being and her financial interests.
14. During her testimony before the court, she recounted how, following the legal proceedings, her children, SWN and AN, began to collect rent from one of her properties - specifically, Plot B621 and B624 Kisumu Ndogo. She expressed her frustration and distress at being entirely cut off from the rental income generated by this property. She mentioned that the tenants were directed to pay their rent into



- a different account, which has removed her access to funds she stated are legally hers, putting her in a difficult financial position.
15. JWN and JD acknowledged that they had differences and that these affected their relationship with the Applicant and their performance of responsibility as guardians/managers. PD insisted that he and the siblings acted in the Applicant's best interests. He argued that, due to her medical condition, the Applicant was vulnerable and had become a victim. He claimed that her money, which she frequently withdrew in large amounts, was misused and that she was taken advantage of.
 16. It is acknowledged in the Affidavits that the 2nd and 3rd Respondents are collecting rent for the property, excluding the Applicant.
 17. The siblings have differences that are negatively impacting their relationship with their mother, the Applicant. Their disagreements do not grant them any rights or entitlements concerning her personal affairs or properties, as long as she remains competent and capable of making her own decisions. This means that unless she becomes incapacitated or suffers from serious health issues that impair her judgment, the guardians or the other children cannot assert control or influence over her, her property or financial matters.
 18. Following a thorough examination of the evidence presented during the court proceedings, including a detailed report submitted by Dr. G, a qualified psychiatrist, I concluded that the Applicant does not exhibit any mental disorder or condition that would incapacitate her from effectively managing her personal and financial affairs.
 19. It is essential to recognize that disability does not equate to inability; the Applicant demonstrates the capacity to make informed decisions and navigate her responsibilities independently.
 20. Despite the fact that she may have been unwell at the time the application was submitted, it was inappropriate for the children to commence and conclude the mediation process without involving her. She had a significant interest in the issues being discussed, and her absence is detrimental.
 21. It was similarly inappropriate to change the bank account for rent deposits without the Applicants' involvement.
 22. The application dated 26th March, 2025 is merited and the same is allowed in the following terms;
 - i. The Court finds that PWN alias PGN, (Applicant) is fully capable of independently managing her own affairs.
 - ii. The Mediation Settlement Agreement dated 22nd May 2022 and its adoption, along with the subsequent Decree issued on 22nd May 2023, are set aside.
 - iii. The appointment of JWN and JD as guardians and managers is hereby revoked.
 - iv. The management of the Applicant's property shall revert to her forthwith. The Respondents, including JWN and JD, are prohibited from engaging in any transactions or activities concerning the properties unless explicitly authorized by the Applicant.
 - v. AN and SWN are ordered to deposit any funds in their custody that were collected as rent into the specified ABSA Account in the Applicant's name [particulars withheld] within three days from today.
 - vi. AN and SWN to file a statement of accounts, accounting for the rent collected from properties B621 and B6X4 at Kisumu Ndogo Flats, within 21 days from today.



- vii. Parties to bear own costs.
- viii. Mention 11th June 2025 to confirm compliance.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS
ONLINE PLATFORM ON THIS 7TH DAY OF MAY, 2025.**

C. KENDAGOR

JUDGE

