



REPUBLIC OF KENYA



**In re GKM (Subject) (Miscellaneous Application E185 of 2023)
[2024] KEHC 174 (KLR) (Family) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E185 OF 2023
PM NYAUNDI, J
JANUARY 18, 2024
IN THE MATTER OF GKM
AND
MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF THE RIGHTS OF OLDER MEMBERS
OF SOCIETY UNDER ARTICLE 57 OF THE CONSTITUTION**

JUDGMENT

1. The Application dated 4th September 2023 is presented by BNK a son to the Subject with the support of his Siblings; SWK, VWM, TWK and ENK.
2. All the Children of the Subject attended Court and Confirmed that they are supportive of the Application. The Subject was present in Court virtually. He referred to his children as his siblings. Initially he indicated that he was not aware he was in Court, when the Court explained to him the nature of the Application he responded and said he did not object to the Application.
3. The Applicant presented medical records of the Subject including Report from Dr. Wambui K, Consultant Psychiatrist at Mathari National Teaching & Referral Hospital dated 13th February 2023 that summarised the findings as follows-

I have examined the above 87 years old male with complaints of increased forgetfulness. I have found him to be suffering from Dementia. This is a chronic irreversible disease which presents with deterioration in cognitive function thus presenting with memory loss, difficulty performing familiar tasks, disorientation and impaired judgment, thereby making it difficult for him to perform his day to day activities.



4. The children of the Subject indicated that on account of his condition the subject needs assistance in virtually every respect, for his day to day needs. The Applicant has property that can be utilised to meet the expenses of his treatment and care.

Determination

5. From the foregoing, the issue(s) that are to be determined by the Court are: -
 1. Whether the Subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 2. Whether the Applicant and his siblings should be appointed as guardian to the Subject as well as manager of the estate of the Subject.
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. Section 26 1 (a) and (b) of the *Act* grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
7. Section 28 (1) of the same *Act* provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep. The Petitioner/ Applicant will require to access funds from the subject's bank account Equity Bank of Kenya and funds from Sanlam for the purpose of maintaining the subject to the best possible medical condition. Under Section 26(3) of the *Act* it provides,

“Whereupon 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 persons, including proper provision for his maintenance...”
8. From the evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition envisaged under Section 26 of the *Mental Health Act*.
9. In light of the above, the Court holds that: -
 - i. GKM (the Subject) is hereby adjudged to be suffering from mental disorder pursuant to Section 26 of the *Mental Health Act*, Cap 248 Laws of Kenya.
 - ii. BNK, SWK and VWM are hereby appointed the legal guardians to GKM.
 - iii. BNK, SWK and VWM are hereby appointed managers of the estate GKM under Section 28 of *Mental Health Act* to manage his estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 - iv. Pursuant to this appointment BNK, SWK and VWM shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging GKM.



- v. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Petitioners shall cause within 30 days the publication of notice in the Gazette, informing the public of their appointment as the manager of the estate of GKM.
- vi. As Manager of the Estate of GKM the Petitioner may dispose of the property only with the sanction of the court.
- vii. The matter will be mentioned before court on 27th March, 2024 to confirm compliance.

No order as to costs

It is so ordered

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 18TH DAY OF JANUARY, 2024.

P. NYAUNDI

JUDGE

In the presence of;

Gaita Advocate for Petitioner

