



**In re MANMT (Miscellaneous Application E019 of 2023)
[2024] KEHC 474 (KLR) (16 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 474 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS APPLICATION E019 OF 2023
SN MUTUKU, J
JANUARY 16, 2024**

IN THE MATTER OF

LNT APPLICANT

RULING

1. LNT, the Applicant herein filed this Notice of Motion under the [Health Act](#) and other provisions of the law seeking the following prayers:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That the Subject, MANMT, be declared to be a person suffering from mental disorder as defined under the [Mental Health Act](#), Cap. 248 Laws of Kenya.
 - e. That the Petitioner/Applicant be appointed as legal guardian to MANMT, the Subject.
 - f. That the Petitioner/Applicant be granted management orders and authorized to undertake all legal functions with regards to the financial affairs, interests, and welfare of the Subject.
 - g. That any further or other relief and order that this court may deem fit to give in the circumstances.
2. The grounds in support of the Application are that the Applicant is the first born of the Subject; that the Subject has been unwell for the past five (5) years and has been diagnosed to be suffering from dementia that has affected her memory to an extent that she cannot manage her own affairs.
3. The Applicant has listed the following as the properties belonging to the Subject:
 - a. Ngong/Ngong/xxxx



- b. Ngong/Ngong/xxxx
- c. Ngong/Ngong/xxxx
- d. Ngong/Ngong/xxxx

Oral evidence

- 4. On 14th December 2023, this court took evidence of Dr. Gloria Njoni Sane, a consultant psychiatrist, who has been attending to the Subject. The doctor testified that she has been attending to the Subject who suffers from severe senile dementia, a progressive condition affecting the elderly aged 65 years and above. That the condition has no cure and only medication can be used to mitigate the condition. That the condition gets worse to an extent that the patient cannot remember their surroundings, leading to agitation and restlessness. That the condition also affects cognitive ability to think, reason and make rational judgment and that in later stages the patient cannot remember and therefore the patient may require round the clock care.
- 5. The doctor further testified that the condition affects how a patient carries herself leading to fear and agitation because the patient cannot remember their surroundings. She told the court that the Subject is not focused on her surroundings and cannot remember what she did earlier or make legal or financial decisions. The doctor produced the report dated 20th September 2023 as an exhibit (Ex. 1) in this matter.
- 6. LNT, the Applicant, was the second witness to testify. She adopted her Affidavit in support of this application and all the annexures as her evidence in court. She told the court that she has obtained the consent of her siblings to bring this application. She testified that the Subject is aged 77 years old.

Determination

- 7. I have read the pleadings and the records in the court file. I note that prayers 1, 2, and 3 of the Application were granted by the order of this court (Limo, J) on 7th September, 2023.
- 8. Section 2 of the *Mental Health Act* defines a “person with mental illness” as means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness. I have considered the evidence of Dr. Gloria Njoni Sane and the medical report she produced in evidence. I am satisfied that the Subject in this matter is a person with mental illness as defined in the *Mental Health Act*.
- 9. Section 26 of the *Act* provides as follows:
 - 26. Application for administration
 - (1) An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—
 - (a) a supporter of the person with mental illness; or
 - (b) the representative of the person where the person with mental illness has not appointed a supporter.
 - (2) An application under subsection (1) shall be submitted together with an affidavit setting out—
 - (a) the grounds upon which the application is made;



- (b) the full particulars as to the property and relatives of the person to whom it relates; and
 - (c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
- 10. The Application before me has satisfied these requirements save for listing the relatives of the Subject. Section 27 of the *Mental Health Act* empowers this court to make such orders as it considers necessary for the administration of the estate of any person with mental illness including the following:
 - (a) an order making provision for the maintenance of the person;
 - (b) an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and
 - (c) an order making provision for the payment of the person's debts.
- 11. Under subsection (4) of section 27, the court is mandated to inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness for purposes of any objection that may be raised in respect to such appointment. The period for raising any objection is 14 days after the gazette notice has been published.
- 12. I have considered this matter. I am aware that the Subject cannot fend for herself and requires daily care. However, this court was not informed about any income generating property of her estate to fund her daily needs and her treatment. It is crucial to provide all the required information to aid the court in making appropriate orders in regard to the Subject's daily needs and treatment.
- 13. I am satisfied that the Applicant has persuaded this court to grant the orders sought. Consequently, I grant prayer 4 of the Notice of Motion dated 4th September 2023 and declare the Subject, MANMT, a person with mental illness. I further grant prayer 5 of that application and appoint the Applicant, LNT, as legal guardian to the Subject, MANMT.
- 14. LNT, is appointed manager of the estate of the Subject for the purposes of safeguarding the property and to undertake the duties of a manager contemplated under section 28 of the *Mental Health Act*.
- 15. To enable this court to make further orders in regard to the care of the Subject, the Applicant is directed to file in court all the particulars relating to the estate of the Subject and monthly financial needs and medical expenses. This shall be done within 30 days after today.
- 16. This matter shall be mentioned on a date to be fixed in court to confirm compliance with these directions and to make further orders.
- 17. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 16TH JANUARY 2023.

S. N. MUTUKU

JUDGE

