



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re EMN (Miscellaneous Civil Case 242 of 2022)  
[2024] KEHC 1316 (KLR) (5 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1316 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS CIVIL CASE 242 OF 2022**

**TA ODERA, J**

**FEBRUARY 5, 2024**

**IN THE MATTER OF;**

**SECTION 26 OF THE MENTAL HEALTH ACT**

**[CAP 248 –LAWS OF KENYA]**

**AND**

**AN APPLICATION FOR APPOINTMENT AS NEXT FRIEND,  
GUARDIAN & MANAGER OF THE AFFAIRS AND ESTATE OF EMN**

**BY**

**DIVINAH KEMUNTO MORANG'A ..... PLAINTIFF**

### **RULING**

1. The Applicant herein namely DKM moved the court vide a Notice of Motion dated 5th October 2022 under section 26 (1) of the *Mental Health Act* cap 248 Laws of Kenya and order 32 rules 1-15 of the *civil procedure Act* for the following orders:
  - i. That That the Honorable court be pleased toto order the subject herein E. M. N to be produced in court for purposes of an inquiry for the court to establish her mental status.
  - ii. That the Honorable court be pleased to appoint the applicant herein DKM as the guardian next friend and the manager of the affairs of her estate.
  - iii. that the estate including the proceeds accruing to the estate from any source or claim be held in trust and for the benefit of the subject.
  - v. there be no orders as to costs
2. The application was premised on the ground that; -
  - a. That n 26.5.2022 the subject herein was involved in rod traffic accident.
  - b. The subject was treated at Kisii county referral hospital where she was admitted for 19 days.



- c. She sustained a moderate head injury which left her unconscious and caused an internal bleeding.
  - d. That due to the said injuries the subject has been affected psychologically and she is unable to carry out any activities on her own neither can she manage herself
  - e. That she now exhibits characteristics of a person of unsound mind such as hallucinations, delusions and violence.
  - f. That the subject needs to be taken care of and her estate managed.
  - g. That the family wishes to recover damages from the said accident.
  - h. That the subject is currently under the care of applicant who is her sister.
  - i. The application is for guardianship
  - j. It is in the interest of justice that the applicant be appointed guardian of the subject.
  - k. The application has been made without unreasonable delay.
3. The application is supported by the annexed affidavit of DKM sworn by the by the Applicant dated 5<sup>th</sup> October 2022. The Applicant deponed that he is a resident of Kisii County and a sister to the subject herein. She reiterated the contents of the affidavit and attached her national identity card DKM-1, police abstract – DMK -2, discharge summary and treatment notes -DMK- 3, medical report by Dr. Peter Momanyi Morebu DKM -4. Letter from Kisii county referral hospital DKM 5and draft plaint dkm 6 and letter for he said school RW-2.
4. The application was not opposed.

### **Analysis and Determination**

Prayer 1 was dispensed with as the application was heard in the absence of the subject.

5. I have carefully considered the application and all the annexures attached to it and the issue for determination is whether this court should allow the application and grant guardianship pf the subject to the applicant herein.
6. Section 2 of the *Mental Health Act* Cap 248 provides that:
- “A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
7. Section 26 of the *mental health Act* empowers the court to grant custody, management and guardianship orders The said section 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.”

- 8. Section 27 provides for powers of a managers of the estate of a patient while Section 28 of the same Act provides for management of the subject's estate.
- 9. I have perused the application and the affidavit of the applicant and the letter from Dr. P. M Morabu Hospital Nakuru and I am satisfied that the patient is suffering from post-traumatic psychosis characterized by violence hallucination delusion and thus has mental incapacity under section 2 of the [Mental Health Act](#) and thus unable to manage his affairs.
- 10. on whether Applicant should be appointed as guardian/ manager to the patient’s estate. She says she is a sister to the subject She has been recommended by the area chief vide letter dated 16.1.24. The mother to the subject attended court and consented to the applicant being granted guardianship orders. It is clear that the subject is mentally challenged and is in need of special care and protection.
- 11. The application is merited and I proceed to allow as prayed in terms of prayers 2-5 in the interest of the patient.

**T.A ODERA**

**JUDGE**

**5. 2.24**

**DELIVERED IN OPEN COURT AT KISII ON THIS 5<sup>TH</sup> DAY OF FEBRUARY 2024.**

In the presence of

Applicant

Miss Nyandoro for applicant

Court Assistant: Oigo

**T.A ODERA**

**JUDGE**

