



**In re FNG (Miscellaneous Case E150 of 2023)
[2024] KEHC 2475 (KLR) (Civ) (8 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2475 (KLR)

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

CIVIL

MISCELLANEOUS CASE E150 OF 2023

PN GICHOHI, J

MARCH 8, 2024

**IN THE MATTER OF SECTION 26 AND 28 OF THE
MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF FNG

BETWEEN

EWG 1ST APPLICANT

JWG 2ND APPLICANT

BNG 3RD APPLICANT

AND

FNG SUBJECT

JUDGMENT

1. Applicants filed Notice of Motion application dated 20th June, 2023, pursuant to Order 51 of the [Civil Procedure Rules](#) and Section 1A, 1B and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the Law, and seek to be appointed legal guardians to manage the affairs of the subject FNG .
2. The Applicants, biological daughters and a son of the subject asserted in their application that the subject is the only surviving administrator of the Estate of RGT (Deceased) as the other two administrators of the estate are deceased leaving the subject as a sole administratrix.
3. They further asserted that the subject is of advanced age, sickly and has a memory lapse as a result of old age. It's their averment that the subject had applied for the grant of letters of administration be rectified to include the Applicants as Co Administrators of the estate of RGT (Deceased).



4. Modern Aberdare View Hospital medical report dated 20th June, 2023 states the following; after examination and observation of the subject who is an elderly lady;

no rational speech function, memory absent judgment and episodes of abnormal behavior.

The diagnosis is dementia and the doctor's opinion is;

This lady suffers from senile dementia with poor memory, speech and judgment. Consequently, she is mentally incapable of making rational decisions

5. There is also letter from Chief of Kangari Location dated 8th May, 2023 that confirmed that the subject is a mother to 10 children and two are deceased.
6. All the children of the Applicant were present at the hearing and confirmed that they have given their consent to the Application further to the written consents filed.

Determination

7. Notwithstanding that the Applicant's omitted to cite the relevant law, to wit the mental Act, having observed that all the Children are in support of the Application in exercise of mandate donated vide Article 159 (d) of the Constitution of Kenya. I will proceed to consider the Application under the provisions of the Mental Health Act.
8. The provisions of the Mental Health Act ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The Mental Health Act, at Section 26 provides 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.
 2. 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.
 3. 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 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 Subject was present in Court and the Court was able to observe that she appeared disoriented and unable to communicate.
10. I am satisfied by the medical report submitted that the subject is not in proper mental position to take care of her affairs and her welfare.
11. It is in the subject's best interest that the Applicants are appointed as her legal guardian and manager of her estate so that they can be able to execute the duties of Administrators in the estate of RGT .



In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:

- a. FNG is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
- b. EWG ,JWG and BNG are hereby appointed under section 27 of the *Mental Health Act* as the Manager of the estate of FNG .
- c. EWG ,JWG and BNG are hereby appointed manager of the estate of FNG under Section 28 of *Mental Health Act* to manage her 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.
- d. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging FNG .
- e. In accordance with Section 27(4) of the *Mental Health Act*,2022 the Petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate FNG .
- f. As Manager of the Estate of FNG the Petitioners may dispose of the property only with the sanction of the court.
- g. The matter will be mentioned before court on 6th June 2024 to confirm compliance.
- h. Costs to be met out of the Estate of the Subject.

DELIVERED SIGNED & DATED AT NAIROBI THIS 8TH DAY OF MARCH, 2024.

M. NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

Kimani for Applicant

