



**In re MS (Miscellaneous Application E268 of 2023)
[2024] KEHC 15451 (KLR) (Family) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 15451 (KLR)

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

MISCELLANEOUS APPLICATION E268 OF 2023

EKO OGOLA, J

MARCH 7, 2024

IN THE MATTER OF THE MENTAL HEALTH ACT CHAPTER 248 OF LAWS OF KENYA

-AND-

**IN THE MATTER OF NEELAM ATTA MOHAMED SHAD
(A PERSON SUFFERING FROM A MENTAL ILLNESS)**

IN THE MATTER OF

RJH PETITIONER

JUDGMENT

1. The Petition before the Court is dated 8th December 2023 where the petitioner prays to be declared and appointed as the guardian of NAMS (hereinafter referred to as ‘the subject’) and manager of the subject’s estate.
2. The subject was born on 18th November 1954, and immediately after birth, she was diagnosed with cerebral palsy. The diagnosis according to the medical report of Dr. Irum Mirza dated 6th November 2023 is that it is irreversible and it requires a full-time carer for all her activities of daily life. The doctor stated that the subject requires assistance to mobilize, feed, groom, and bathe her. The subject is aphatic and visually impaired since birth and expresses herself through moaning. The petitioner averred that due to her mental condition, the subject is incapable of handling and/or managing her affairs.
3. The petitioner is the only living relative and nephew of the subject. The petitioner’s late mother, Dr.KSS was the subject’s sister. The petitioner’s late mother died on 7th July 2022, and before her death, she managed the affairs of the subject and ensured that she was looked after. In the petitioner’s late mother’s Will, she appointed the petitioner as the executor of her Will and further directed that the petitioner take up the responsibility of taking care of the subject’s well-being.



Determination

4. I have considered all the material placed before me. Section 27 of the [Mental Health Act](#) states that:

- “1) The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including —
- (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.
- (2) The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
- (3) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
- (4) The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.
- (5) Within fourteen days of the Gazette Notice under subsection (4), any person may lodge an objection to the person appointed as manager.”

5. The definition in Section 2 of the Act provides that:

- “person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—
- (a) a person diagnosed with alcohol or substance use disorder; and
 - (b) a person with suicidal ideation or behaviour;”

6. Based on the medical report and affidavit on record, I am satisfied that the subject suffers from a mental disorder and that the disorder has occasioned the diminution of her mental capacity and adversely affected her cognition and therefore ability to take care of her affairs or herself.

7. In the circumstances, the Petition dated 8th December is allowed and I make the following orders:-

- a. That NAMS is a person suffering from a mental disorder within the definition of the [Mental Health Act](#).
- b. That RJH is appointed to be the guardian of NAMS
- c. That RJH is appointed to be the manager of the estate of NAMS.
- d. There will be no orders as to costs

Orders accordingly.



DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MARCH 2024

E.K. OGOLA

JUDGE

In the presence of

Mr. Shah h/b for Mr. Omarmo for the Petitioner

Gisiele Muthoni Court Assistant

