



**In re EKK (Miscellaneous Case E236 of 2023)
[2024] KEHC 2073 (KLR) (1 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E236 OF 2023**

PM NYAUNDI, J

MARCH 1, 2024

**N 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 EDITH KAARI KANYI

BETWEEN

**LWK 1ST PETITIONER
CKK 2ND PETITIONER
HMK 3RD PETITIONER**

AND

EKK RESPONDENT

JUDGMENT

1. By Chamber Summons dated 30th October 2023, the Applicants present this application under Section 26 (1) (b) and 28 of the [Mental Health Act](#) Cap 248 and seek to be appointed legal guardians and manager of the Estate of the subject EKK
2. The Applicants are the biological daughter and sons of the subject. They deposed in their supporting affidavit that the subject who is aged 77 years suffers from senile dementia. Due to the subject’s advanced age and being a geriatric patient, she has not been able to take care of herself, manage her affairs and or make decisions for herself.
3. Dr. K. Ndege’s (Consultant Neurologist) medical report dated 31st July, 2023 states the following; after examination and observation of the subject who is an elderly lady;

Lack of cooperation, insomnia, restlessness and disorientationmemory absent, unable to perform her activities of daily living and she cannot sign documents.



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

This lady suffers from moderately advanced dementia. Consequently, subject requires constant assistance and care.

4. The Applicants also submitted the Chief's letters of 4th October, 2023 as well as another letter dated 16th January, 2024, that confirmed that the subject was diagnosed with dementia and also confirmed that the subject is a mother to 5 children; namely;

LWK Id No.1036XXXX

CKK Id No. 10645XXXX

VMK Id No. 1349XXXX

HJMK Id No. 1441XXXX

CWK Id No. 2062XXXX

The members of the family were present in Court and consented to this application alongside written consents filed in Court.

Determination

5. 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.
6. From the evidence provided to this court the Applicants' request for appointment as legal guardian to be able to provide adequate care to the subject and ensure her wellbeing. The Applicants are the children of the subject authorized by other siblings of the subject to obtain orders appointing them legal guardians of the subject and manager. The Applicants have demonstrated through medical evidence from doctors who attended to the subject that she is not in proper mental position to take care of her affairs and her welfare.
7. The Applicant sought from this Court the relevant orders to be appointed manager of the subject's estate.



8. It is in the subject's best interest that the Applicants are appointed as their legal guardians and managers of her estate to ensure that funds are available for her upkeep and further medical attention in the future.
9. In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:
 - a. EKK is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
 - b. LWK, CKK And HMK are hereby appointed under section 27 of the *Mental Health Act* as the Manager of the estate of EKK
 - c. LWK, CKK And HMK are hereby appointed manager of the estate of EKK 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.
 - d. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging EKK
 - 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 EKK
 - f. As Manager of the Estate of EKK the Petitioners may dispose of the property only with the sanction of the court.
 - g. The matter will be mentioned before court on Mention on 5th June 2024 to confirm compliance.
 - h. Costs to be met out of the Estate of the Subject.

DELIVERED SIGNED & DATED AT NAIROBI THIS 1ST DAY OF MARCH, 2024.

NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

