



**In re AWW (Miscellaneous Application E010 of 2024)
[2024] KEHC 4569 (KLR) (15 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4569 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS APPLICATION E010 OF 2024
MA ODERO, J
APRIL 15, 2024**

**IN THE MATTER OF APPLICATION FOR APPOINTMENT OF A
MANAGER OF THE ESTATE OF AWW UNDER
THE MENTAL HEALTH ACT AND CIVIL PROCEDURE ACT
AND
IN THE MATTER OF THE ESTATE OF: AWW
(THE SUBJECT)**

IN THE MATTER OF

MWN 1ST APPLICANT

MNW 2ND APPLICANT

JUDGMENT

1. Before this court is the Notice of Motion dated 22nd March, 2024 by which the Applicants MWN and MNW seek for orders That

- “ 1. Spent
- 2. The Applicants be appointed managers over the estate of AWW to wit her Mukurweini Equity Bank Branch Account No. 0040XXXXXX911 who suffers from mental disorder.
- 3. The Applicants be appointed manager over the subject Mukurweini Equity Bank Branch Account Number 0040XXXXXX911 with general powers to deal with that account.
- 4. Costs be in the cause”



2. The application was supported by the Affidavit of even date sworn by the two Applicants.
3. The matter was canvassed in Open Court.
4. PW1 MWN is the mother of the subject whilst PW2 MNW is a sister of the subject. They both told the court that the subject is an adult woman who currently resides with her mother in Mukurweini. That the subject is not married but has an eighteen (18) year old daughter.
5. The Applicants told the court that the subject fell ill about two (2) years ago. That she suffers from a mental disorder and is no longer in a position to manage her own affairs. The Applicants now seek to be appointed as the legal guardians and managers of the affairs of the subject to enable them cater for her medical expenses and pay the school fees for subjects daughter who attends college in Karatina.

Analysis and Determination

6. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of a patient (subject) as follows:-

“Order for custody, management and guardianship.

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. Where upon 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.” [Own emphasis]
7. I have considered the petition before the court, the evidence adduced before the court as well as the documents annexed to the Petition. In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental disorder rendering her incapable of managing her own affairs.
8. I have considered the evidence on record. I have perused the Medical Report dated 5th April, 2024 prepared by Joseph Muriithi for the medical superintendent Mukurweini Sub-County Hospital.
9. The report indicates that the subject has been diagnosed with “severe dementia/schizophrenic/ depression.” That these are all mental disorders which are progressive in nature.



10. The report indicated that the subject was initially receiving medical care at the Mathare Teaching and Referral Hospital but due to cost implications she was moved to a hospital nearer to her home and family. Annexed to the report were various prescriptions and medical notes.
11. I was able to see the subject who was physically present in court. She appeared frail and weak. She was confused and unaware of her surroundings. Though she stated her name the subject was unable to answer any other questions put to her only laughing nervously.
12. It is clear that the subject suffers from a mental disorder and is not in a position to manage her own affairs.
13. PW3 Faith Waruguru is the daughter of the subject. She confirmed that her mother is suffering from a mental disorder. PW3 told the court that she attends Tumu Tumu College and that it was the subject who was responsible for her school fees and upkeep.
14. PW3 confirmed that she was aware of this Petition for Guardianship filed by her Grandmother and Aunt and stated that she had no objection to the same.
15. In the case of *Re N. M. K* (2017) eKLR, the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

“In considering an application brought under sections 26 and 27 of the Mental Health Act the court is guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers from a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [own emphasis]

16. All in all I am satisfied that this application is merited. I therefore allow the same and make the following orders.
 - (1) The subject AWW is declared to be a person suffering from a mental disorder within the terms of Section 26 of the Mental Health Act, Cap 248, Laws of Kenya.
 - (2) The Petitioners MWN and MNW are hereby appointed as the Guardians for the subject and managers of her estate.
 - (3) The Petitioners MWN and MNW are authorized to manage the account of the subject AWW being Account Number 0040XXXXXX911 held at Equity Bank, Mukurweini Branch in order to cater for the medical expenses of the subject and to pay fees and expenses for the subject daughter FW
 - (4) No orders on costs.

DATED IN NYERI THIS 15TH DAY OF APRIL, 2024.

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MAUREEN A. ODERO
JUDGE

