



In re Appointment of Guardian Ad Litem for ERL (A Person of Unsound Mind) (Miscellaneous Application E255 of 2023) [2024] KEHC 3372 (KLR) (Family) (11 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3372 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E255 OF 2023
HK CHEMITEI, J
APRIL 11, 2024
IN THE MATTER OF AN APPLICATION FOR AN
APPOINTMENT OF GUARDIAN AD LITEM FOR ERL (A
PERSON OF UNSOUND MIND)

IN THE MATTER OF

ASL 1ST PETITIONER
JSL 2ND PETITIONER
MNT 3RD PETITIONER

RULING

1. Before this Court for determination is petition dated 20th November, 2023 by which the petitioners, ASL, JSL and MNT, seek the following orders:
 - a. That the Subject, ERL (the subject) herein be declared a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#).
 - b. That this Honourable Court be pleased to appoint the Petitioners as guardians in respect of ERL and grant them custody, care and management of the Subject in accordance with the [Mental Health Act](#), with powers to sign, access, withdraw, execute and/ or carry out any act incidental to the affairs of the subject.
2. The application is not opposed or objected to.
3. ASL, JSL and MNT have sworn verifying affidavits dated 20th November, 2023. They have also filed witness statements in support of the petition; and annexed copies of their national identity cards.



4. There is on record a medical report dated 11th October, 2023 issued by Dr. M. M. Okonji, FRCPsych, Consultant Psychiatrist.

Background

5. The Petitioners are nephew and nieces to the Subject who has been diagnosed with dementia thus not fit to manage herself and her estate.
6. The doctor's report recommends that her family members have a conference and set forward a process for the management of herself and her estate.
7. The Subject, ERL, is single and has no children; and as a result, family members agreed that the Petitioners apply for guardianship over the Subject.

Analysis and Determination

8. I have carefully considered the petition before the court and its supporting documents and address them as below.
9. In *In re W K G (A Person Suffering From Mental Disorder)* [2019] eKLR the court, at paragraphs 12 and 13, observed that, "... In the circumstances, the Court allows the Petitioner's prayer by appointing them as managers with general powers of management concerning all the immovable assets of the Subject, but with special powers concerning the Subject's movable assets [Emphasis mine], including the Subject's bank accounts and with power to liquidate any movable assets of the Subject for purposes of meeting any medical or living and other expenses concerning the Subject and his estate [Emphasis mine]. This court further directs under Section 33 of the *Mental Health Act* that within six months of this appointment, the Petitioners do furnish the Court with a full inventory of the Subject's assets and a statement of account showing the sums of money realized or received and disbursed by them on account of the Subject's estate. The parties are at liberty to apply further."
10. Based on the foregoing, I allow the petition dated 20th November, 2023 as prayed.
11. Lastly, the Petitioners do furnish this court with a full inventory of the Subject's assets and a statement of account showing the sums of money realized or received and disbursed by them on account of the Subject's estate; within 6 months from the date of this ruling.
12. The parties are at liberty to apply further.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 11TH APRIL 2024.

H. K. CHEMITEI

JUDGE.

