



**In re JMG (Family Miscellaneous Application E008 of 2023)  
[2024] KEHC 4092 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4092 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
FAMILY MISCELLANEOUS APPLICATION E008 OF 2023**

**GL NZIOKA, J**

**APRIL 8, 2024**

**IN THE MATTER OF AN APPLICATION OF TERESIA WAIRIMU MURIAMA  
& STEPHEN NJOROGE MURIAMA TO BE APPOINTED AS GUARDIANS AND  
MANAGERS OF THE ESTATE OF AFFAIRS OF JOHN MURIAMA GICHIRIRI**

**AND**

**IN THE MATTER OF SECITONS 26 AND 28 OF THE {{>/AKN/KE/  
ACT/1989/10 MENTAL HEALTH ACT}} (CAP 248) LAWS OF KENYA**

**IN THE MATTER OF**

**TWM ..... 1<sup>ST</sup> PETITIONER**

**SNM ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. The subject application herein in dated 28<sup>th</sup> February 2023 and amended on 27<sup>th</sup> July 2023. The petitioners are seeking for the following prayers:
  - a. A declaration that JMG is a person suffering from mental disorder within the definition of the [Mental Health Act](#) Cap 248.
  - b. An order appointing the petitioners herein as guardians of JMG.
  - c. An order declaring the petitioners as the duly appointed managers of the estate of JMG with the power necessary for the management of his assets, and to plead and prosecute and/or defend any action brought by or against the Subject in respect of any of the assets forming part of his estate.
  - d. Such other orders that the court may deem just and expedient in the circumstances to grant.



2. The application is supported by an affidavit sworn by the 1<sup>st</sup> applicant in which she deposes as follows in a nutshell that she is the wife of the Subject and, they were blessed with six (6) issues all of whom are of majority age.
3. That, the Subject was attacked by a buffalo on 3<sup>rd</sup> June 2022 and was treated and diagnosed with dementia, a mental disorder, which has affected his capacity to manage his personal and legal affairs necessitating the appointment of a legal guardian and manager of his estate and affairs.
4. She averred that her other five (5) children are not opposed to the application and have consented to the appointment of herself and the second petitioner as the legal guardians and managers of the Subject.
5. The application is based on the various documents annexed to the affidavit in support thereof being
  - a. Copies of National Identification Cards of the petitioners and the children of the subject.
  - b. Copy of the birth certificate of the 2<sup>nd</sup> petitioner
  - c. A medical report by Dr. Andrew Mwikamba, a Consultant Psychiatrist based at Meru Doctor's Plaza stamped 23<sup>rd</sup> February, 2023 that concludes JMG has a mental disorder, dementia that was aggravated by his accident, and that it is a progressively worsening disorder that needs management.
  - d. An undated medical report by Dr. Andrew Mwikamba, MPDC No A5336 a Consultant Psychiatrist based at Meru Doctor's Plaza reaching a similar conclusion as the afore report and further that, the dementia has interfered with his independence in everyday activities thus requiring assistance. Furthermore, it is the opinion of Dr. Mwikamba that, he, JMG, would benefit from being put under a guardian.
6. The application is premised on the provisions of section 26 and 28 of the *Mental Health Act*. The subject section states as follows
  1. An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—
    - a. a supporter of the person with mental illness; or
    - b. the representative of the person where the person with mental illness has not appointed a supporter.
  2. An application under subsection (1) shall be submitted together with an affidavit setting out—
    - a. the grounds upon which the application is made;
    - b. the full particulars as to the property and relatives of the person to whom it relates; and
    - c. a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
  3. A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the—
    - a. person in respect of whom the application is made; or
    - b. where an application is made by a supporter to the representative of the person with mental illness.



4. Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.
5. The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.
6. The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—
  - a. court to examine the person; or
  - b. person to be examined by a qualified registered mental health practitioner.
7. I have considered the application in the light of material placed before the court and I note that, the medical report by Dr. Andrea Mwikamba confirms that, the subject herein, JMG suffers from mental disorder called dementia aggravated by the accident he suffered when he was gored by a buffalo. That, the dementia is progressively worsening mental disorder causing significant cognitive decline in learning, memory, language, executive function and social cognition.
8. That he is currently not able to make any independent decisions and he would benefit from being put under a guardian.
9. In the view of the aforesaid and the fact that, the applicants want to file a civil suit on behalf of the subject, I allow the amended application in terms of prayer 2 and 3
10. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 8<sup>TH</sup> DAY OF APRIL 2024**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:-

Ms Asuma holding brief for Mr. Mutembei for the petitioners

Ms Ogutu-Court assistant

