



REPUBLIC OF KENYA



**In re JKM (A Person Suffering from Mental Incapacity) (Miscellaneous Case E018 of 2024) [2024] KEHC 6092 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6092 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CASE E018 OF 2024  
DO CHEPKWONY, J  
MAY 15, 2024  
N THE MATTER OF JKM ( A PERSON  
SUFFERING FROM MENTAL INCAPACITY)  
IN THE MATTER OF AN APPLICATION BY JWK TO  
BE APPOINTED AS A GUARDIAN OVER THE AFFAIRS  
OF THE ESTATE OF JKM**

**IN THE MATTER OF**

**JWK ..... PETITIONER**

**RULING**

1. What is before the court for determination is the Petition dated 23<sup>rd</sup> April 2024 which seeks the following orders:
  - a. That this Honourable Court be pleased to issue a Declaration that the subject JKM is a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#).
  - b. That this Honourable Court be pleased to appoint JWK as the guardian of the affairs of JKM in accordance with the [Mental Health Act](#) with powers to sign, access, withdraw, execute and/or carry out any acts incidental to the affairs of the subject including access to his KCB account.
  - c. That the costs of the Petition be provided for.
2. The Petition is based on the Affidavit sworn by JWK sworn on 23<sup>rd</sup> April, 2024, where she has deponed that she is the biological daughter of the subject herein JKM (“ hereinafter the Subject”) and is the first born in a family of seven children as particularised in the Chief’s Letter dated 22<sup>nd</sup> April, 2024 that is annexure “JWK-3”. She holds that the subject is currently admitted at Avenue Hospital at Parklands



where he has been from 15<sup>th</sup> April, 2024 as seen in the medical report dated 20<sup>th</sup> April, 2024, annexed as “JWK-4”.

3. According to the Petitioner, the subject underwent surgery and is currently recovering at the Intensive Care unit. It is the Petitioner’s averment that the subject was examined by a Psychiatrist and the Medical Report dated 14<sup>th</sup> May, 2024 on his mental status states that the subject has an impaired level of consciousness having sustained subdural haematoma and cerebral infarcts. In the Psychiatrist’s opinion in the medical report, the subject ‘is in no capacity, at this point, to carry out executive functions and would therefore require assistance by an administrator.’
4. The Petitioner holds that due to the continued stay of the Subject at the hospital, the bill has accumulated to Kshs 587,866.38 as at 23<sup>rd</sup> April, 2024 and it is her wish that she be granted access the Subject’s bank account held at KCB Bank as Account Number 1102463361. She urges that the court appoints her as a guardian of the subject so that she can administer his affairs as well as the hospital bill on his behalf which she undertakes to lawfully carry out his best interest.
5. The Petitioner relies and has urged the court to invoke the provisions of Section 26 of the [Mental Health Act](#) alongside its discretionary powers and appoint her as the guardian of the subject.
6. The court has considered the Petition, the Affidavit in support and the annexures attached thereto particularly the Consent given by the other children of the subject being Nancy Muthoni Kang’ee ID 8xxxxx7, Peter Njuguna Kang’ee ID 9xxxxx8, Rose Njeri Kang’ee ID 11xxxx01, Paul Kiaraho Kang’ee ID 11xxxx80, Joyce Wanjiru Kang’ee ID 14xxxx95 and Mary Tibira Kang’ee ID 20xxxx9 for the Petitioner, who is their eldest sister to be appointed as a guardian for their father. The court has also taken note of the attached medical reports and the hospital bill of Avenue Hospital attached which continues to accumulate and appreciates the urgency of the Petition before the court.
7. The law on an applications such as the present one is made provided for under Section 26 of [Mental Health Act](#), Cap 248 Laws of Kenya which gives the court judicial power over persons and estates of persons who are shown to be suffering from mental disorder and/or any incapacity. Section 26 of the Act provides as follows:-

“[26]. Application for administration

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. The court is also guided by the case of [Re N. M. K.](#) [2017] eKLR which considered what should guide the court in applying Section 26 and 27 of Cap 248 and held 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:
- i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
  - ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
  - iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”
8. In the instant case, the court should consider whether there is medical evidence, whether the Petitioner is fit to be appointed as a guardian and whether the Petitioner will use her powers for the benefit of the Subject.
9. On the first ground, the court finds that the medical report is sufficient medical evidence to show that the subject has in no capacity to carry out executive functions due to the subdural haematoma and cerebral infarcts. The [Mental Health Act](#) defines a person with Mental illness at Section 2 as follows:-
- “person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—
- a. person diagnosed with alcohol or substance use disorder; and



- b. a person with suicidal ideation or behavior.
10. In the medical report provided by the Petitioner, the doctor has stated that the subject has no capacity to carry out executive functions and would require assistance by an administrator.
11. Therefore, in consideration of the current status of being unconscious and hospitalized at Avenue Hospital and the age of the subject which is indicated in the report as 86 years old, the court proceeds to allow the Petition dated 23<sup>rd</sup> day of April, 2024 with orders that:-
  - a. That the Subject, JKM be and is hereby declared a person suffering from a mental disorder under Section 26 of the *Mental Health Act*.
  - b. That JWK be and is hereby appointed as a Guardian of the affairs of JKM in accordance with the *Mental Health Act* with powers to sign, access, withdraw, execute and/or carry out any acts incidental to the affairs of the Subject including access to his KCB Account.
  - c. There shall be no orders as to costs

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 15<sup>TH</sup> DAY OF MAY , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence:

Mr. Njung'e counsel for Applicant

Court Assistant - Martin

