



**In re Estate of GNM (Family Miscellaneous Application
E013 of 2023) [2024] KEHC 5419 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS APPLICATION E013 OF 2023
MA ODERO, J
MAY 6, 2024
IN THE MATTER OF A PETITION/APPLICATION UNDER
SECTIONS 26 AND 28 OF THE MENTAL HEALTH ACT,
CHAPTER 248 OF THE LAWS OF KENYA
AND
IN THE MATTER OF THE ESTATE OF GNM (A PERSON WITH MENTAL ILLNESS)
AND
IN THE MATTER OF AN APPLICATION BY JGM, PNM
AND AMM TO BE APPOINTED JOINT GUARDIANS AND
MANAGERS OF THE ESTATE OF GNM (A PERSON WITH MENTAL ILLNESS)**

JUDGMENT

1. Before this court is the Petition dated 5th December, 2023 by which the Petitioners JGM, PNM and AMM seeking orders

That;-

- “(A) The Honourable Court be pleased to declare that GNM is a person with mental illness as defined under the *Mental Health Act*, Chapter 248 of the Laws of Kenya.
- “(B) The Honourable Court be pleased to appoint the Petitioners herein, JGM, PNM and AMM to be the guardians of GNM.
- “(C) The Honourable Court be pleased to appoint the Petitioners herein, JGM, PNM and AMM to be the managers of the Estate of GNM and managers of her affairs.
- “(D) The costs of the Petition be provided for.



(E) Any other relief and order that the Honourable Court may deem fit to give in the circumstances.”

2. The Petition which was brought under Sections 26 and 28 of the [Mental Health Act](#) CAP 248, Laws of Kenya was supported by the Affidavit of even date sworn by the Petitioners. The matter was canvassed by way of Vive Voce evidence on the virtual platform.
3. The three petitioners are all the biological sisters of GNM (hereinafter ‘the subject’). The Petitioners all testified that the subject has suffered from mental illness all her life. That currently the subject resides with another of their sisters known as ‘CN’
4. The Petitioners state that due to her diminished mental capacity the subject is unable to manager her own affairs. That the subject is unmarried and has no children. They pray to be appointed as joint Guardians for the subject and Managers of her Estate to enable them provide for the subject and for her medical expenses.

Analysis and Determination

5. 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 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 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]
6. 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.
7. I have considered the evidence on record in this matter. I have perused the Medical Report dated November 1, 2023 prepared by Dr. Musau a Psychiatrist based at the Karatina Sub-county Hospital.



8. The Report indicates that the subject was noted to have “intellectual development disorder” (intellectual disability). That this affected her ability to make informed decisions. The doctor opined that the subject was not in a position to manage her own affairs.
9. I was able to see and speak with the subject online. She was able to state her name clearly when asked and she confirmed that she lives with ‘C.’ However, the subject appeared to have no understanding of the court proceedings.
10. The subject appeared fearful and confused. She had a vacant look. In my opinion the subject clearly had some kind of mental disability and would not be in a position to manage her own affairs.
11. PW3 CNG confirmed to the court that the subject who is her sister has suffered from a mental disorder from her birth. PW3 confirmed that she has lived with and provided for the subject for the past six (6) years.
12. The other siblings of the subject EWK, MWM, GMM, EKM and RWM all appeared in court and confirmed that they are aware of this petition for Guardianship. They all confirm their consent to the petition. The said siblings have all signed an Affidavit of consent dated 5th December, 2023.
13. 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 principle in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [Own emphasis]

14. The Petitioners are the sisters of the subject and have her interests at heart. Indeed they have been living with and providing for the subject all her life. I am satisfied that the petitioners will uphold the best interests of the subject herein.
15. Finally I am satisfied that this Petition has merit and I make the following orders;-
 - (1) The subject GNM 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 JGM, PNM And AMM are hereby appointed as joint Guardians for the subject and managers of her Estate.
 - (3) No orders on costs.

DATED IN NYERI THIS 6TH DAY OF MAY, 2024.

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MAUREEN A. ODERO

JUDGE

