



REPUBLIC OF KENYA



**In re NAO (Patient) (Miscellaneous Case E219 of 2023)
[2024] KEHC 7979 (KLR) (21 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E219 OF 2023**

PM NYAUNDI, J

JUNE 21, 2024

**IN THE MATTER OF SECTION 26 AND 28 OF THE
MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

**IN THE MATTER OF AN APPLICATION BY NNI AND SLO TO BE APPOINTED
GUARDIANS AND MANAGERS OF THE ESTATE OF DR. NAO (PATIENT)**

JUDGMENT

1. By Petition dated 12th October the Petitioners herein, ANI And SLO seek to be appointed guardian of the Subject Dr. NAO whom they submit is a person suffering from mental disorder as defined under the *Mental Health Act*.
2. The 1st Petitioner is the wife of the Subject, she solemnized her marriage with him on 9th August 1997 as evidenced by marriage certificate serial number 128420.
3. The union was blessed with 4 children, the eldest Eric Ariba Olemba is deceased. The surviving children, all of whom are adults, are
 - a. Dr. MMK
 - b. SLO and
 - c. PJO
4. On 17th January 2022, the Subject was diagnosed with Alcohol- induced major neurocognitive disorder, Amnesic confabulatory type, with severe use disorder and benign neoplasm prostate. The subject was last in hospital in July 2023.
5. It is her evidence the Subject is incapable of making rational decisions and in consequence, and has infact demonstrated a proclivity of making decisions that are injurious and harmful to his wellbeing.
6. The Petitioners have availed a medical report by Dr. J.M. Ndegwa dated 17th June 2022, the report concludes by stating ‘ he is not able to make judicious decisions when required hence he may require assistance of the same by the son (SLO) and/ or spouse (ANO)’.



7. The Children of the subject, MMK, SLO and PJO were all present and confirmed that they support the Petition.
8. The subject was present in Court and confirmed that he understands that the Petitioners seek to be appointed as guardians and managers over him. He consents to the application.

Determination

9. The provisions of the [Mental Health Act](#) ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The [Mental Health Act](#), at Section 26 provides that:
 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. Whereupon 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.
10. I am satisfied by the medical report submitted that the subject is not in proper mental position to take care of his affairs and his welfare.
11. It is in the subject's best interest that the Applicants are appointed as his legal guardians and manager of his estate so that they can be able to execute the duties of Administrators in the estate of DR. NAO. In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:
 - a. DR. NAO is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
 - b. ANI and SLO are hereby appointed under section 27 of the [Mental Health Act](#) as the Managers of the estate of DR. NAO.
 - c. ANI and SLO are hereby appointed managers of the estate of DR. NAO under Section 28 of [Mental Health Act](#) to manage her estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 - d. Pursuant to this appointment the Petitioners shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging DR. NAO



- e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate DR. NAO.
- f. As Manager of the Estate of DR. NAO the Petitioners may dispose of the property only with the sanction of the court.
- g. The matter will be mentioned before court on 24th September 2024 to confirm compliance.
- h. Costs to be met out of the Estate of the Subject.

DELIVERED SIGNED & DATED AT NAIROBI THIS 21ST DAY OF JUNE, 2024.

P. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

