



In re JKK (Patient) (Family Miscellaneous Application E003 of 2024) [2024] KEHC 7043 (KLR) (14 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7043 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E003 OF 2024**

FN MUCHEMI, J

JUNE 14, 2024

**IN THE MATTER OF SECTION 26 & 28 OF THE
MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA**

AND

IN THE MATTER OF THE ESTATE OF J.K.K (PATIENT)

AND

**IN THE MATTER OF AN APPLICATION BY MMKK, ENM,
JNMK AND SSS TO BE APPOINTED THE JOINT GUARDIANS
AND MANAGERS OF THE ESTATE OF J.K.K (THE PATIENT)**

IN THE MATTER OF

**MMKK 1ST PETITIONER
ENM 2ND PETITIONER
JNMK 3RD PETITIONER
SWW 4TH PETITIONER**

JUDGMENT

Brief Facts

1. By a Petition dated 4th April 2024 and filed in court on 5th April 2024, the petitioners invoked Sections 26, 27 and 28 of the [Mental Health Act](#), Cap 248 Laws of Kenya and sought the following prayers:-
 - a. This Honourable Court be pleased to declare that the subject J.K.K. is suffering from mental disorder as defined under the [Mental Health Act](#) (Cap 248 Laws of Kenya).
 - b. This Honourable court be pleased to appoint the petitioners as Guardians of J.K.K the subject.



- c. This Honourable Court be pleased to appoint the petitioners as managers of the estate of the subject with power to:-
- i. Take the necessary action for the welfare and upkeep of the patient and his estate with liberty and power to seek and obtain medical treatment for the said patient with funds from his estate;
 - ii. Take the necessary action subject to the provisions of the *Mental Health Act* for the protection and preservation of the estate of the subject including collecting all monies payable to him, paying out all his just debts, managing his businesses, bank accounts, monies and executing any necessary deeds and documents on his behalf;
 - iii. Take the necessary action subject to the provisions of the *Mental Health Act* for the protection and preservation of the Estate of the patient J.K.K. and if necessary to transfer such of his assets into a holding company or other entity for the purposes of estate management and planning;
 - iv. Operate all his said bank accounts and sign all necessary documents, including cheques, withdrawal slips or other documents to facilitate withdrawal of funds from the said accounts and any other account with any bank or financial institution in Kenya for purposes of his medical treatment, maintenance and other necessary outgoings of the Estate of the patient subject
 - v. Take any other necessary action to preserve and protect the interest of the subject and his estate.
2. The 1st petitioner is a daughter in law to the patient as she is the widow of the deceased son of the subject one SKK while the 2nd, 3rd & 4th petitioners are daughters of the subject. The petitioners state that they are four out of the five children of the subject and that they do not know the whereabouts of their brother GNK that being the reason for being unable to procure his consent in filing this petition.
3. The petitioners aver that the subject is 89 years old, and has five children. His wife died several years ago and the petitioners have been taking care of him.
4. The basis of the petition is that the patient is a mental infirm having been diagnosed to be suffering from complex traumatic stress disorder and major neurocognitive disorder due to Alzheimer's disease. These conditions have significantly affected the subject's ability to manage his personal affairs. The petitioners aver that the patient's state of mental disorder has been certified by Dr. J.K. Mutiso, a psychiatrist in his letter dated 5th March 2024.
5. Due to the subject's illness, the petitioners state that he has been rendered unfit to physically and mentally manage his personal affairs and his estates. The petitioners further state that the subject is the registered owner of several moveable and immovable properties and bank accounts as follows:-
- a. Title Number Githunguri/Kanjai/1622
 - b. Title Number Githunguri/Kanjai/1623
 - c. Title Number Kwale/Majoreni/1560.
 - d. Title Number Gatamoyu/Kagure/16.
 - e. Title Number Gatamoyu/Kagure/947.



- f. Bank Account No. (Particulars withheld) at Kenya Commercial Bank Githunguri Branch and Account No. (Particulars withheld) at Kenya Commercial Bank Githunguri Branch.
 - g. Ordinary shares in Kiwankinja Company Limited which is the registered proprietor of Title Number Kilifi/Jimba/385.
 - h. Motor Vehicle registration number (Particulars withheld).
6. The 1st petitioner testified that the subject lives in Githunguri and that the petitioners home is about 2km away from that of the subject. The 1st petitioner further testified that the subject was diagnosed with Alzheimer’s disease in 2010 and since then his condition has deteriorated to the extent that he has loss of memory. The 1st petitioner stated that the subject has a cook and a caregiver who takes care of him and ensures that he takes his medicine as advised by the doctor. The 1st petitioner further stated that she and the three petitioners work as a team to take care of the subject.
 7. The subject was cross examined by the court and he stated that the 1st petitioner is his daughter in law and the other 3 petitioners are his daughters. The subject further testified that he sends his children to the bank to withdraw money for his use. He further stated that he cannot recall the names of any of his children and neither can he remember the names of their spouses.
 8. The petitioners called Moses Njau Njoroge, a caregiver to the subject as a witness. PW2 stated that he cooks for the subject, helps him in the bathroom to bathe, cleans and dresses him up. The witness further stated that he serves the subject with his medicine taken twice daily and further that the subject suffers from memory loss.

Issues for determination

9. The main issues for determination are as follows:-
 - a. Whether the patient should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248.
 - b. Whether the petitioners should be appointed as guardians to the subject as well as managers of his properties.

The Law

Whether the patient should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248.

10. Section 2 of the [Mental Health Act](#) defines “person suffering from mental disorder” as follows:-

“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”

11. Section 26 provides 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 of the 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 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.
12. According to the Medical Report by Dr. J. K. Mutiso, a specialist psychiatrist, the subject has been suffering from Alzheimer disease/dementia since 2010 and upon evaluation on 26th February 2024, the doctor found that he had a history of advanced loss of memory, diminished cognitive function inability to take care of his own personal hygiene and normal self-care. He had flash backs of his late wife who died in 2007, visual hallucinations, delirious episodes, irrational and occasional bizarre behaviour, verbal and physical aggressive behaviour, confabulation, claustrophobia. The subject has withdrawal symptoms and restricted movements and does not want to leave his home compound and has great difficulty taking off his day in the mornings. The doctor states that he diagnosed the aforesaid symptoms and found them consistent with complex Post Traumatic Stress Disorder and Severe Neurocognitive Dementia due to Alzheimer's disease. Dr. J. K. Mutiso is a psychiatrist currently practicing in Menelik Hospital in Nairobi.
13. It is apparent from the doctor's report that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing his own affairs. The medical evidence corroborates the evidence of the petitioners' evidence on the mental and physical condition of the subject.

Whether the petitioners should be appointed as guardians to the patient as well as managers of the Estate of the patient.

14. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
15. The petitioners are the daughter in law and daughters of the subject. Respectively. In their joint affidavit, the petitioners depose that they do not know the whereabouts of their brother GNK and were unable to procure his consent to filing the instant petition. A letter from the chief dated 3rd April 2024 was annexed confirming that the subject is a resident of his location and has five children his late wife. The first-born son was said to be deceased.
16. From the evidence placed before me, I find that the petitioners have satisfied the requirements of the law in this petition. I hereby grant the orders sought in this petition as follows:-
 - a. That the petitioners are hereby jointly appointed guardians of the subject James Kihara Kinyanjui to take care of him, provide medical treatment other personal and financial needs.



- b. The petitioners are hereby jointly appointed to manage the bank accounts and properties of the subject for his own benefit and for the benefit of his immediate family, including collection of debts and payments of debts due and owing to the subject.
- c. That there shall be no order as to costs.

It is hereby so ordered.

JUDGMENT DELIVERED, DATED AND SIGNED AT THIKA THIS 14TH DAY OF JUNE 2024.

F. MUCHEMI

JUDGE

