



REPUBLIC OF KENYA



**In re JWM (Subject) (Miscellaneous Case E262 of 2023)
[2024] KEHC 8032 (KLR) (Civ) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL**

MISCELLANEOUS CASE E262 OF 2023

PM NYAUNDI, J

JUNE 7, 2024

JUDGMENT

1. By Notice of Motion dated 27th November 2023, the Applicant presents this application under Sections 2A, 2B, 3, 3 (1)(5) and 26 of the *Mental Health Act*, order 51 rules 1,3 and 4 of the *Civil Procedures Rule* and seek that she be appointed as a personal representative of JWM, whom it is stated that on account of mental infirmity is incapable of protecting her interests.
2. The matter proceeded for hearing on the virtual platform via *viva voce* evidence. The applicant testified as the first witness. She is a daughter of the subject. The subject was diagnosed as suffering from Dementia. She has presented this application so that she can access the subject's bank accounts and make decisions regarding her treatment.
3. The other children of the subject, namely; JWM, PKM, were present in Court. The Court interviewed them. They confirmed that their mother is ill and expressed support for the Application
4. The other sibling AI, was not in Court, he presented a signed consent and a letter from his school confirming that he was engaged in class.
5. The Application is supported by the report of Dr. Catherine Munanie Syngo, Consultant psychiatrist who confirms that the subject was diagnosed with dementia in 2019 and that she has poor memory and decreased motor functions.
6. The Doctor surmises the Subject's condition as follows-
Jennifer has severe dementia, her condition is not likely to improve. She will need full time caregiver. She is not able to make decisions about her finances and other issues requiring judgement, abstract and frontal lobe functions.
Please assist the family to have an official guardian to take care of her.



Determination

7. 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.
8. From the evidence provided to this court the applicants' request for appointment as personal representative is to be able to provide adequate care to the subject and ensure her wellbeing. The applicant is the daughter of the subject authorized by other siblings of the subject to obtain orders appointing her personal representative of the subject. The applicant has demonstrated through medical evidence from doctors who attended to the subject that she is not in proper mental position to take care of her affairs and her welfare.
9. It is in the subject's best interest that the Applicant is appointed as her personal representative to ensure that funds are available for her upkeep and further medical attention in the future.
10. In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:
 - a. JWM is hereby declared as suffering from a mental disorder under section 26 of the [Mental Health Act](#) (Cap 248).
 - b. CWM is hereby appointed under section 27 of the [Mental Health Act](#) as the manager of the estate of JWM.
 - c. CWM is hereby appointed manager of the estate of JWM 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 Applicant shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging JWM.



- e. In accordance with section 27(4) of the *Mental Health Act*, 2022 the Applicant shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate JWM.
- f. As Manager of the Estate of JWM the Applicant may dispose of the property only with the sanction of the court.
- g. The matter will be mentioned before court on Mention on July 25, 2024 to confirm compliance.
- h. Costs to be met out of the Estate of the Subject.

DELIVERED SIGNED & DATED AT NAIROBI THIS 7th DAY OF June, 2024.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

