



REPUBLIC OF KENYA



**In re GMM (Subject) (Miscellaneous Application E091 of 2024)
[2024] KEHC 8957 (KLR) (Family) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8957 (KLR)

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

MISCELLANEOUS APPLICATION E091 OF 2024

SN RIECHI, J

JULY 19, 2024

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP AND
MANAGEMENT BY IBRAHIM THITU MAKWATTAH, ASHA KASYONTHI
MAKWATTAH, YUSUF MAKWATTAH MUTUA, ISHMAEL NZOKA**

JUDGMENT

1. Before this Court is an application dated 12th May 2024 in which the petitioners seek orders;
 - i. That GMM be declared to be suffering from mental disorder as defined under [Mental Health Act](#) CAP 248.
 - ii. That the Applicants herein be appointed as guardians over the affair of GMM.
 - iii. That the applicants herein be appointed as managers of the Estate of GMM.
 - iv. That the costs of this application be borne by the estate of GMM.
2. The application is premised on the grounds on face of it and the affidavit by INM sworn on the even date. The matter was canvassed by way of viva voce evidence on the online platform.
3. RKM testified that the subject is her husband. They married in 2010 and she had two children before he married her. She testified the subject had earlier on married MK who is now deceased. They had 4 children namely; INYM,AK and IM.
4. The RKM the 5th Petitioner testified further that the subject suffers from Dementia since 2015. She deponed that they have taken him to several doctors. The current Doctor Hooker sees him at Aga Khan. He last saw the subject in February 2024. The subject is 79 years old and used to run a hotel in Kibwenzi.
5. The 5th Petitioner stated that the subject has the following property; Rental House in south b Rental House in Pangani and several parcels of Land.



6. She testified that the subject is not able to manage coordinate or run business or his property. She stated they have agreed on appointment of the 4 other applicants and herself.
7. IN M testified that the subject is his father and he is the 1st born. He stated they have agreed to the Petition.
8. AKM stated the subject is his father and she support the petition.
9. YMM stated the subject is his father and he support the Petition.
10. IN stated the subject is his father and he support the petition.
11. The court was able to observe the subject on the online platform and the court tried to engage the subject. The subject is quiet and does not respond to greetings.
12. I have carefully considered this application, the Affidavit filed in Court as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs 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) 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.” [own emphasis]
13. The Petitioners have sought to be declared as Guardians and Managers of the Patient. To merit the above orders the Petitioners must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the Patient is incapable of managing her own affairs.
 14. The Petitioners testified that the subject has suffered dementia since 2015. The Petitioners stated that Dr. Hooker has been seeing him. The Petitioners produced Medical Report dated 1st March 2024 from



Aga Khan University Hospital prepared by Dr.Juzar Hooker,Dr,Consulting Neurologist. The Doctor in report stated inter alia that:-

“Diagnosis

Severe advanced dementia....”

15. Based on the material availed to this Court, I am satisfied that the Subject suffers from a mental illness under Section 26 of the *Mental Health Act*. I find merit of this application dated 12th May 2024 and make orders as follows;

1. The court hereby appoint jointly;
 - a. INM
 - b. AK Mh
 - c. Yusuf Mh Mutua
 - d. IN Mh
 - e. RKM as the Guardians and Managers of affairs of the subject’s estate.

DATED AT NAIROBI THIS 19TH DAY OF JULY, 2024

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S.N.RIECHI

JUDGE

