



**In re MKG (Subject) (Miscellaneous Application E047 of 2024)
[2024] KEHC 8956 (KLR) (Family) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8956 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E047 OF 2024

SN RIECHI, J

JULY 19, 2024

**IN THE MATTER OF AN APPLICATION/PETITION
UNDER THE MENTAL HEALTH ACT CAP 248**

IN THE MATTER OF MKG

IN THE MATTER OF

MNK PETITIONER

AND

MKG SUBJECT

JUDGMENT

1. Before this Court is a Petition dated 29TH January, 2024 in which the petitioners seek orders;
 - i. That the subject namely MGK be adjudged to be a person suffering from mental disorder under section 26 of the *mental Health Act* Cap 248 of the Laws of Kenya.
 - ii. That the Petitioner namely MNK be and is hereby appointed as Manager and Guardian of the subject namely MGK.
 - iii. That the Petitioner shall act as manager and guardian in accordance with the directions and orders of the court and in particular do the following:
 - a. Manage the subject’s health care;
 - b. Have access and operate the subjects bank accounts;
 - c. Execute documents on behalf of the subject;



- d. Make decisions and handle the subject's statutory obligations payable to the government;
2. The petition is premised on the grounds on face of it and the affidavit by the petitioner sworn on even date. The matter was canvassed by way of viva voce evidence on the online platform.
3. The Petitioner, MNK testified that she know the subject. She is her mother and she was married to VKN who is deceased. She stated they had 5 children but one passed away. The children are GG-deceased, LG, SM, MN and SNK.
4. The petitioner testified that the subject was a primary school teacher. She is 75 years old and stays with her brother LK at her mother's home. She testified the subject was diagnosed with dementia 6 years ago. The subject has one plot at {Particulars Withheld}. She has rental property in {Particulars Withheld} with rental income of Kshs.10,000/=.
5. SMK testified that he knows the subject and she is his mother. He stated the petitioner is his sister. He stated they have agreed that M should be concerned about the subject. She should be in charge of her property.
6. LGK testified that that he stays in {Particulars Withheld} with her mother. She forgets. She fears herself. She bothers herself.
7. SNK testified that he knows the subject. He stays in US and runs a transport company.
8. The court was able to observe the subject on the online platform and the court tried to engage the subject. The Subject MKG testified that; "I am at home in my house. I know M." The court notes that the subject does not remember name of who stays with her.
9. The Petitioner produced a medical report from Healthy mind Consultants prepared by Dr. Praxides Pessah, Consultant Psychiatrist. The Doctor in report stated *inter alia* that:-

“Diagnosis: Moderate Alzheimer’s Dementia with Psychotic symptoms.

Professional Opinion-MG cannot be relied upon to make executive decisions given the nature of her illness and prevailing symptoms.”

10. I have carefully considered this Petition, 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]

11. The Petitioner has sought to be declared as Guardian and Manager of the subject. To merit the above orders the Petitioner must adduce evidence sufficient to satisfy the Court firstly that the subject 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.
12. The Petitioner stated that the subject was diagnosed with impaired cognitive function and features of dementia by Dr. Praxides Pessah and who has been attending to the subject since June 2022.
13. The Petitioner stated subject’s cognitive function has steadily declined from 2016 and the subject is presently incapable of managing and attending to her personal business affairs. The subject is therefore wholly dependent upon the family for her physical and emotional wellbeing.
11. 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 Petition dated 29th January 2024 and make orders as follows;
 1. The court hereby appoints MNK as the Guardian NK as the Guardian and Manager of affairs of the subject’s estate.

DATED at NAIROBI this 19th day of July, 2024

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S.N.RIECHI

JUDGE

