



REPUBLIC OF KENYA



**In re RKM (Subject) (Miscellaneous Application E040 of 2024)
[2024] KEHC 8955 (KLR) (Family) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8955 (KLR)

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

MISCELLANEOUS APPLICATION E040 OF 2024

SN RIECHI, J

JULY 19, 2024

**IN THE MATTER OF AN APPLICATION/PETITION UNDER SECTIONS
2,26,27,28 OF THE MENTAL HEALTH ACT CAP 248
IN THE MATTER OF RACHEAL KABURA MUKURIA(SUBJECT) A PERSON
SUFFERING FROM MENTAL HEALTH DISORDER
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP AND
MANAGEMENT BYJANE MUTHONI MUKURIA,JULIUS BABU MUKURIA
AND AMOS NJENGA MUKURIA**

JUDGMENT

1. Before this Court is a petition dated 27th February 2024 in which the petitioners seek orders that ;
 1. The Petitioners wish to apply for the guardianship of the person known as Rachael Kabura Mukuria an adult female and a senior citizen of the Republic of Kenya born in 1930.
 2. The Petitioners full names are Jane Muthoni Mukuria, Julius Babu Mukuria and Amos Njenga Mukuria all residing in Limuru Sub-county within the Republic of Kenya,
 3. The Petitioners are the biological children of Rachael Kabura Mukuria and all farmers by occupation born in the years 1963, 1968 and 1957 respectively
 4. The Petitioners are the children of Rachael Kabura Mukuria who was diagnosed with mental condition of senile dementia and is therefore incapable of protecting her interests with regard to her affairs.
 5. They have been taking care and providing for subject Rachael Kabura Mukuria since her diagnosis as she is unable to tend to any of her affairs.



6. That we have voluntarily obtained the consent of all other siblings who are the children of the said Rachael Kabura Mukuria.
7. The Petitioners are willing and able to act in the said capacity and there is no interest adverse to that of the patient Rachael Kabura Mukuria.
8. The Petitioners have not made any previous application for guardianship ad litem order in respect of Rachael Kabura Mukuria.
9. The Petitioners wish to have the said Rachael Kabura Mukuria receive appropriate medical attention and to also be able to manage her personal affairs on her behalf.

Reasons Wherefore The Petitioner Prays that;

- a. The Petitioners be appointed the Guardians of Rachael Kabura Mukuria;
 - b. The Petitioners be appointed the managers for the affairs of Rachael Kabura Mukuria;
 - c. The Honourable court be pleased to make any further or other order deemed necessary; and
 - d. There be no order on costs.
2. The Petition is premised on the grounds on face of it and the joint affidavit by Petitioners sworn on the even date.
 3. In their Petition dated 27th February 2024 the petitioner aver that the subject Rachael Kabura Mukuria who is their mother was born in the year 1930 and is a senior citizen of the Republic of Kenya. They referred to attached copy of Rachael Kabura's Identity Card.
 4. The petitioners averred that the subject was diagnosed with a mental condition senile dementia and requires constant special medical care and attention as evidenced by attached copy of the medical report.
 5. The Petitioners stated that as a consequence of her aforementioned mental incapacity, their mother Rachael Kabura Mukuria is incapable of managing her affairs and protecting her interests. The petitioners stated further that they wish to have their mother receive appropriate medical attention due to her mental incapacity.
 6. The petitioners averred that they therefore make this application for the guardianship of their mother in order to assist in managing her affairs, secure for her urgent necessary specialized medical attention as a person with mental disabilities, safeguard and promote her welfare, well-being and health rights.
 7. The Petitioners stated that they have obtained the consent of their siblings the other children of Rachael Kabura Mukuria who are not listed in this petition as evidenced by attached copy of a consent marked JMM.
 8. By consent this matter was canvassed by way of *viva voce* evidence on the online platform.
 9. Jane Muthoni Mukuria testified that the subject is her mother and she is 93 years old. She stated she is 60 Years old and the subject has 10 children namely Peter Ngotho, Margaret Njoki (Deceased), Amos Njenga, John Karangi (Deceased), Jane Muthoni, David Njau, Joseph Mwaniki Mukuria, Julius Babu, Esther Njambi and Grace Nyacuma.
 10. Jane Muthoni Mukuria stated that the subject stays with her at their home and they take care of her. She stated her mother has the following assets; Limuru Land, Land in Kahuho, Nakuru, Lower Kabete.



She stated further that they want to divide land among themselves. Each to get their own money and see how they can assist her. She stated they have taken the subject to Limuru Hospital. She stated the Doctor said she will need a Wheel Chair and Caregiver by a nurse.

11. The court was able to observe the subject on the online platform and the court tried to engage the subject. The subject appears elderly and does not respond to greetings in Kikuyu by the court assistant. is quiet and does not respond to greetings.
12. The Petition is supported by;
 - i. Peter Ngotho-3101588
 - ii. Margaret Njoki
 - iii. Michael Waribe-
 - iv. Amos Njenga-6440772
 - v. Julius Babu-9325225
 - vi. David Njau Mukuria-
 - vii. Joseph Mwaniki-10345544
 - viii. Esther Njambi-13216378
 - ix. Grace Nyacuma Njenga
13. 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]
9. 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.

10. The Petitioners stated that the subject has suffered and they took her to Limuru Hospital. The petitioners produced Medical Report dated 16th March 2023 from Limuru Health Care prepared by RCO Ken Njuguna. The CO in the report stated inter alia that:-

“Has been diagnosed with Dementia....”

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 application dated 12th May 2024 and make orders as follows;

1. The court hereby appoint jointly;

- a. Jane Muthoni Mukuria
- b. Julius Babu Mukuria
- c. Amos Njenga Mukuria

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

