



**In re CNW (Subject) (Family Miscellaneous Civil Case E113 of 2024)
[2024] KEHC 9663 (KLR) (Family) (7 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 9663 (KLR)

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

FAMILY MISCELLANEOUS CIVIL CASE E113 OF 2024

SN RIECHI, J

AUGUST 7, 2024

IN THE MATTER OF CNW (SUBJECT)

IN THE MATTER OF

BMW 1ST PETITIONER

MNN 2ND PETITIONER

JUDGMENT

1. The Petitioners, BMW and MNN are biological daughter and sister of the subject respectively . The petitioners in their amended application dated 26th June , 2024 are seeking orders;
 - i. That the petitioners be appointed the managers of the estate of Caroline Njeri Waithaka under section 28 of the [Mental Health Act](#) with general powers among them, to operated her SmiOne Account No.4248400188009324 and transact using the account and sign all necessary documents thorough it to facilitate payment for:
 - a. School fees
 - b. Medical expenses for the subject
 - c. Salary for the nurse aids
 - d. Purchase for sundry expenses.
 - ii. That the honourable court be pleased to grant the Petitioners BMW and MNN as the manager of the estate of Caroline Njeri Waithaka with the powers to act as the designated account holder of SmiOne account No.4248XXXXX8009324.
2. The Petition is supported by petitioners’ affidavit sworn on even date. The petitioners briefly deponed that 1st Petitioner’s mother subject herein has maintained an account with SmiOne which has remained



- dormant since the deterioration of her health in 2018. They averred that in July 2018, the Petitioner's mother subject suffered a permanent brain injury due to complications from a blood clot and subsequent cardiac arrest which left her mentally incapacitated.
3. The petitioners averred that due to the subject's condition, she is unable to perform her normal duties in order to provide for herself and the family. They averred that 1st Petitioner, being the sole child and dependent, has been unable to access her mother's account since 2018 which the -Petitioner's mother subject used primarily to cater for the 1st Petitioner's needs.
 4. The petitioners averred that the 1st Petitioner is in distress as she cannot meet basic expenses, arising medical bills and school fees amongst other expenses as she is currently pursuing her undergraduate studies. That unless the Honorable Court asserts or gives the Petitioners the general powers over the estate of the subject and, in particular, the right over the Smi One account no. 42484001 XXXX9324, the 1st Petitioner and the subject stand to suffer irreparable harm and the inability to sustain themselves before the 1st Petitioner graduates and gets into formal employment.
 5. This petition was canvassed by viva voce evidence. Petitioner testified that she is 21 years old and she has a waiting slip for ID Card. She testified that she the subject is her mother and she does not have any property. She has a bank account in SmiOne Bank in the U.S. Petitioner stated she stays in Kenya and a student at Strathmore University.
 6. MNN testified that the subject is her sister and she is her elder sister. She was born in 1981 and she is 43 years old and not married. She has a child called B who is 21 years old. She testified that their parents are deceased and they have siblings namely AW and FW. She testified that the subject had a cardiac arrest and brain damage. She is unable to do anything for herself. She has been taken to India in 2018. They were there for 7 months. She is now under Home Care. She stated they have attached Medical Reports from South B hospital, India and Mp Shah Hospital.
 7. This court also observed the subject virtually and the subject appears unwell and can't speak.
 8. The court has exhaustively considered all the material placed before it, the main issue for determination is whether the court should grant the guardianship and management orders as sought in the application herein.
 9. Section 2 of the [Mental Health Act](#) Cap 248 provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
 10. The court is empowered to grant orders sought by the application in relation to custody, management and guardianship under Section 26 of the [Mental Health Act](#) Cap 248 which provides:

“(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



- c. 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.
 - d. Where upon inquiries 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 just 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.”
11. The authority to manage affairs of an estate of a subject is donated under Section 27 of the [Mental Health Act](#) whereas Section 28 of the same Act provides for management of the subject's estate.
 12. The court in Re N M K [2017] eKLR considered what should guide the court when applying Section 26 and 27 of Cap 248. The held as follows:
 - “In considering an application brought under sections 26 and 27 of the [Mental Health Act](#), the Court is guided by three main factors:
 - i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
 - ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
 - iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”
 13. Before this court there is a medical report dated 24th May 2024 prepared by Dr.Omondi from South B Hospital who stated that;
 - “ She developed cardiac arrest that eventually led to hypoxic.... and a permanent brain damage....She is not in a position physically, mentally and intellectually to take care of herself and she need a 24 hours care taker....”
 14. From the evidence and medical report, I am satisfied that the subject suffers from mental illness under section 2 of the Mental Act, the same has adversely affected her cognitive and the ability to take care of her affairs. The Subject lacks the mental capacity to manage her affairs which my view falls within the definition of Section 2 of the [Mental Health Act](#) Cap 248.
 15. Having settled the issue of whether the subject should be declared as a person suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248, and that, she is suffering from mental disorder to such an extent as to be incapable of managing her affairs,the court is tasked with determining whether the petitioners should be appointed as guardians/ managers to the subject .



16. 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.
17. This court thereof under section 26 of the *Mental Health Act* appoints the petitioners BMW and MNN as guardians to Caroline Njeri Waithaka (Subject).The Petitioners are also appointed to manage the subject's estate.
18. In accordance with the provisions of Section 33 of the Mental Act, the petitioners will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

DATED AT NAIROBI THIS 7TH DAY OF AUGUST 2024.

S. N. RIECHI

JUDGE

