



In re SJN (A Person Suffering From Mental Disorder) (Miscellaneous Application E164 of 2024) [2024] KEHC 12555 (KLR) (Family) (11 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12555 (KLR)

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

MISCELLANEOUS APPLICATION E164 OF 2024

CJ KENDAGOR, J

OCTOBER 11, 2024

**IN THE MATTER OF AN APPLICATION/PETITION UNDER
SECTIONS 26,27,28 OF THE MENTAL HEALTH ACT CAP 248**

**IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE
ACT CAP 21 LAWS OF KENYA AND THE CIVIL PROCEDURE RULES**

AND

IN THE MATTER OF SJN.... (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY LMW, MGN & SWN TO BE APPOINTED
GUARDIANS OVER THE AFFAIRS AND MANAGERS OF THE ESTATE OF THE SAID SNN**

IN THE MATTER OF

LMW 1ST PETITIONER

MGN 2ND PETITIONER

SWN 3RD PETITIONER

JUDGMENT

1. Before this Court is an application dated 8th August, 2024 by which the Petitioners LMW, MGN and SWN seek the following orders:-
 - i. Spent
 - ii. That the Petitioners be appointed as the legal guardians of the estate of SNN with special powers of attorney to dispose of a portion measuring 0.05Ha out of land parcel number Muguga/Jetscheme/xxxx and sign all necessary documents through it to facilitate payment of;



- a. School fees for his children
 - b. Medical expenses
 - c. Salary for the nurse aid
 - d. Purchase of sundry expenses
- iii. That the Petitioners be appointed as the managers of the estate of SNN
 - iv. Any other relief and order that the court may deem fit to give in the circumstances.
2. The application was supported by an Affidavit dated 8th August, 2024 sworn by the Petitioners.
 3. The firm of Mungai Githinji Advocates represent the 1st Petitioner, and the firm of C & G Advocates LLP represent the 2nd and 3rd Petitioners. They are all in consensus on the orders being sought. The matter was canvassed by way of viva voce evidence. The Petitioners who testified as PW1, PW2 and PW3 told the Court that they are the wife, mother and brother respectively of the subject SNN who suffered brain injury and has been diagnosed with schizophrenia. Prior to the illness, SNN was married to LMW, and they were blessed with 2 issues, as evidenced in the birth certificates attached to the application. The first issue is in university, while the second is in grade 6. SNN is unable to care for himself, and the petitioners are in distress about meeting basic needs arising from medical bills of SNN, school fees for his children, amongst other basic expenses, hence this application for guardianship.
 4. The Petitioners stated that they seek to be appointed as Guardians of SNN and his estate managers. They told the court that the SNN suffers from schizophrenia (annexure MGN3), which has left him mentally incapacitated and unable to take care of himself, as evidenced by the chief's letter. The petitioners are seeking guardianship with special power to dispose of a portion of land measuring 0.05Ha out of Muguga/Jetscheme/xxxx owned by SNN to meet the basic needs.
 5. The Petitioners stated that SNN started being unwell in 2015; in 2017, the condition worsened, and in August, he was taken to Mathare Mental Hospital in fear of harming himself. The costs for his continued treatment and management are high, and as such, they require funds, thus necessitating the disposal of the land parcel.
 6. I have carefully considered this Application, the Affidavit filed in Court, and 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].
7. The Petitioners have sought to be declared as Guardians and Managers of the Patient. To merit the above orders, the Petitioner 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 his affairs. The Petitioners testified that the patient was diagnosed with Schizophrenia. They testified that the SNN is unable to take care of himself and supported by the Chief’s letter annexed thereto.
8. A Medical Report dated 2nd August, 2024 prepared by Dr. Ayuya of Mathari National Teaching and Referral Hospital (Annexure MGN-3’) was produced as an exhibit. The doctor diagnosed the subject with Schizophrenia. The report stated inter alia that: -
- “The patient is required to continue with treatment and clinical review.”
9. The Court was able to interview SNN, who confirmed that he stays at home, though his speech was blurred. She said that PW1 and the children are well. He also confirmed to be sick.
10. The Petitioners, the wife, mother, and brother, are all in agreement with this Petition for Guardianship. The subject currently lives with the second Petitioner, who takes care of him. I note the Petitioners’ distress, thus necessitating urgent access to funds to cater for his continuous medical review and other essential expenses.
11. Based on the material availed to this Court, I am satisfied that the subject suffers from a mental illness under the terms of the *Mental Health Act*. I am satisfied of the merits of this Application.
12. The Petitioners LMW, MGN and SWN are hereby appointed as Guardians and Managers for the subject SNN.
13. I hereby allow prayers 2 and 3 of the Application dated 8th August, 2024.
14. The Guardians shall file a report within six months on the status of management of the Subject’s estate.
15. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 11TH DAY OF OCTOBER, 2024.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

