



**In re Estate of JENK (Miscellaneous Application E247 of 2022)  
[2023] KEHC 3070 (KLR) (Family) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 3070 (KLR)

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

**FAMILY**

**MISCELLANEOUS APPLICATION E247 OF 2022**

**EKO OGOLA, J**

**FEBRUARY 16, 2023**

**IN THE MATTER OF SECTION 26 AND 28 OF THE  
MENTAL HEALTH ACT CAP 248, LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE ESTATE OF J. E.N.K**

**IN THE MATTER OF**

**BPN ..... 1<sup>ST</sup> PETITIONER  
LWK ..... 2<sup>ND</sup> PETITIONER  
NJK ..... 3<sup>RD</sup> PETITIONER**

**JUDGMENT**

1. Before this Court is a Petition dated November 22, 2022 by which the Petitioners BPN, LWK and NJK pray this court for the following orders:
  - i. That the Petitioners being son, sister and brother of the Ward respectively be appointed as managers and guardians in respect of the ward
  - ii. That the Petitioners shall act as managers and guardians in accordance with the directions and orders of the court
  - iii. That the Petitioners be granted special leave of the court to complete administration of the father’s estate Succession Cause No E 2387 of 2021 and execute all such documents as may be necessary to give effect to the ward’s interest
  - iv. That the cost and legal fees of this application be provided for



2. The Petition was supported by an Affidavit of even date sworn by all the three petitioners jointly.
3. According to the Petitioners, the Subject was diagnosed with a serious mental illness (Schizophrenia) at the age of 19 years. That specialists have advised that the illness is irreversible, chronic and severely impacts on her ability to make decisions about her life and daily affairs.
4. The Petitioners desire to be granted guardianship of the subject so as to be able to take care of the subject's personal needs and attend to the pending business that will affect the subject's interest.
5. 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]
6. The Petitioners have sought to be declared as the Guardians and Managers of the Subject. 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 her own affairs. The Petitioners stated that the Subject was diagnosed with Schizophrenia at the age of 19 years. The Petitioners have produced a medical report for the Subject. The report is dated November 17, 2022 and prepared by one Dr AN Nguthi a Consultant Psychiatrist from FG Njenga & Nguthi Associates. The report in regard to the Subject stated that: -

“The above named (JENK) has been under our care since 1997.

She developed a serious mental illness (Schizophrenia) at the age of 19 years. She has required to be on regular medication and follow up and has been stable.

She had a relapse early this year and was admitted at Chiromo Lane Medical Centre from January 28, 2022 to February 15, 2022. She has been stable since then.

Her last review was on October 4, 2022.



Schizophrenia is a chronic mental disorder that affects behavior personality and ability to make rational decisions.

In my opinion, Joyce is not in a position to make important decisions about her life.

7. 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 merit of this Petition and I hereby allow the Petition dated November 22, 2022 as prayed. The Petitioners BPN, LWK and NJK are appointed as Guardians and Managers for the Subject JENK.
8. In the discharge of their duties as the Guardians and Managers of the Subject, the Petitioners shall be governed by the Provisions of Section 27 of the *Mental Health Act* Cap 248 Laws of Kenya.

**Dated, Signed and Delivered at Nairobi this 16<sup>th</sup> day of February 2023.**

**E.K. OGOLA**

**JUDGE**

Judgment read and delivered online in the presence of:

Mr. Rao for the Petitioners

Ms. Gisiele Court Assistant

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**E.K. OGOLA, J. JUDGMENT MISC E247 OF 2022**

