



**In re PGN (a Person Suffering from Mental Disorder) (Miscellaneous Application E12 of 2020) [2023] KEHC 3069 (KLR) (Family) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 3069 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E12 OF 2020  
EKO OGOLA, J  
FEBRUARY 16, 2023**

**IN THE MATTER OF**

**DMM ..... 1<sup>ST</sup> APPLICANT  
MNG ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is a Petition dated July 20, 2020 by which the Petitioners DMM and MNG pray: -
  - a. That the petitioners be appointed the managers of the estate of PGN
  - b. That the petitioners be appointed the guardians of the said PGN
  - c. That the Petitioners be and are hereby given power to access, make enquiry, take control of and/or deal with all the properties of the said PGN particularly land parcel No XXXX (Original No XXXX) and Land Reference Nos XXXX being the subdivisions derived from the fraudulent subdivision of the said property
  - d. That care, control and custody of the said PGN be placed upon the Petitioners
  - e. That the Petitioners be allowed to institute suit to protect the said PGN assets that have been fraudulently dealt with particularly land parcel No XXXX (Original No XXXX and Land Reference Nos XXXX
  - f. That the court be pleased to make any other orders as it deems just in these circumstances
2. The Petition was verified by an Affidavit of even date sworn by both Petitioners
3. The Petitioners stated that they are both daughters of the patient. That the patient is suffering from dementia a condition that affects his memory, thinking, language, judgment and behavior thereby making him incapable of managing himself and or his affairs.



4. According to the petitioners, the patient's estate has been dealt with to his detriment and is at a further risk of being dealt with to his detriment and to the detriment of his beneficiaries. That one of the patient's sons by the name Alexander Njonde has fraudulently caused subdivision of land Parcel No XXXX (originally No XXXX) in a manner that the patient did not intend to. That indeed the borehole that serves the family is at the risk of being sold off.
5. The Petitioners listed the properties of the patient as follows:
  - i. Land reference No XXXX (Original No XXXX) and the subdivisions derived from it being land reference No XXXX
  - ii. Title No Kikuyu/Kikuyu Block XXXX/12
  - iii. Pension account at KCB Account No 11XXXX & rent account at Family Bank
  - iv. Title No Dagoretti/Riruta/s XXXX
  - v. Developed plot at Lucky summer, Nairobi
  - vi. Shares at [particulars withheld] Investment Co and at Mug-Muguga Co.
6. The Petitioners listed the family members of the patient as follows: -
  - i. MNG
  - ii. DMM
  - iii. PMG
  - iv. MNG (deceased)
  - v. CMG(deceased)
  - vi. SG (resident of the United Kingdom)
  - vii. AN
7. The Petitioners aver that the patient is incapable of protecting and/or managing his estate and his affairs including his real properties, pension and bank accounts and the patient's estate is suffering loss and damage and is bound to suffer further loss and damage until a manager and guardian of his person and his estate are appointed.
8. In support of the Petition, one Caroline Njeri Manji filed a Supplementary Affidavit dated November 11, 2020. Caroline is a widow of MN one of the deceased sons of the patient. She states that she often checks on the patient's rental properties at Kikuyu and they are unkempt. She claims that one Florence Njeri Mungai who has been given the responsibility to collect the rent from the said properties and look after the patient, Florence has failed, neglected or refused to do so.
9. Caroline further claims that with regard to property No XXXX (Originally No XXXX), FM and AN were entrusted with the subdivision process but they failed and instead went ahead to subdivide the property contrary to the wishes of the patient. This action has caused the members of the family to acquire different acreage sizes from the said land.
10. In response to the Petition, Florence Njeri Mungai (hereinafter "the Respondent") filed an answer to the Petition dated January 12, 2021. The Respondent states that she is a daughter-in-law to the patient being a widow of Christopher Mungai Chege (deceased) who was the 2<sup>nd</sup> born child of the Patient.



11. The Respondent has not denied that the patient is suffering from dementia. However, she has denied the alleged threat and fraud to the estate, stating that in 2008 the patient intended to subdivide his property to his children and as such the 1<sup>st</sup> Petitioner was tasked with the responsibility of sourcing for a surveyor.
12. The Respondent avers further that the 1<sup>st</sup> Petitioner found a surveyor and the subject dealt with him personally and caused the property to be sub-divided, each child of the patient was shown their portion and the transfer process carried out.
13. The Respondent deposes that land reference number 1049/214 and the account at family bank do not form part of the estate of the patient. She also stated that both CMG and MNG were married at the time of their demise and should be included as members of the family.
14. According to the Respondent, the Petitioners did not seek approval from all family members before filing the Petition. The respondent claims that she and the 1<sup>st</sup> Petitioner DMM have been managing the affairs of the patient with the consent of all family members.
15. The Respondent itemized how the rent she collects from the Kikuyu property is utilized.

### **Determination**

16. I have carefully considered this Petition, the responses and 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]
17. The Petitioners have sought to be declared as the Guardian and Manager 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 her own affairs. The Petitioners stated that the Patient was diagnosed with



Dementia in 2017. The Subject is unable to attend to his affairs or represent his interests. Therefore, the Petitioners seeks authority to manage the affairs of the patient and represent his interests.

18. The Petitioners have produced two medical reports for the patient. One report is dated July 1, 2020 and prepared by one Prof Paul G Kioy a Neurologist and Clinical Neurophysiologist at Upperhill Neurology Services. The report in regards to the patient states that: -

“This is a follow up report on the one done in 2017. We confirm that Mr. Ng’ang’a has been our patient for more than ten years now. He presented with poor memory, general psychomotor slowing and steady cognitive decline. When evaluated further both clinically and using laboratory tests, we diagnosed him as having dementia and clinical depression. He was managed for both and when depression lifted, he improved and the dementia appeared to lighten although it did not completely disappear. He remained with barely perceptible cognitive deficit which steadily became worse despite treatment in the fashion of Alzheimer’s disease.

At the current level, Mr. N has remained with profound cognitive deficit that would make any decision making process and meaningful judgment impossible. His interaction with others and ability to grasp the import of his activities compounded by his poor memory renders him grossly intellectually incapacitated. He is therefore advised to delegate all his responsibilities to those who are legally expected to shoulder such responsibilities.”

19. The other report is from the same doctor reporting the same condition on the patient. Based on the material availed to this court, it is not in doubt that the patient suffers from a mental illness under the terms of the [Mental Health Act](#).
20. This petition has however been highly contested. The members of the family of the patient could not agree to the Petition. However, they finally agreed on who should be the guardians and managers of the estate of the patient. The consent which was recorded under the guidance of M/s H T & Associates Advocates reads as follows: -
1. By consent, the parties have agreed that MNG, DMM, CNM and FNM be appointed as the guardians of PGN to so act in his best interests, care, control and custody.
  2. The matter be marked as settled with no order as to costs with any party at liberty to apply in case of any need arising.
21. The parties have signed the consent.
22. This court hereby adopts the consent of the parties. In the discharge of their duties as the Guardians and Managers of the patient, they shall be governed by the Provisions of Section 27 of the [Mental Health Act](#) Cap 248 Laws of Kenya. The guardians shall work together for the best interest of the patient.

**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 Thimba for the Petitioners**

**Ms Gisiele Court Assistant**

