



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re KNN (Miscellaneous Application E232 of 2022)  
[2023] KEHC 3063 (KLR) (Civ) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 3063 (KLR)

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

**CIVIL**

**MISCELLANEOUS APPLICATION E232 OF 2022**

**EKO OGOLA, J**

**FEBRUARY 9, 2023**

**IN THE MATTER OF SECTION 26, 27, AND 28 OF THE  
MENTAL HEALTH ACT CAP 248, LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE ESTATE OF KNN**

**IN THE MATTER OF**

**PSG ..... PETITIONER**

**JUDGMENT**

1. Before this Court is a Petition dated 21<sup>st</sup> September 2022 by which the Petitioner PSG prays this court for an Order for Guardianship and management of the estate of KNN.
2. The Petition was supported by an Affidavit of even date sworn by PSG.
3. According to the Petitioner, the Subject patient is her husband, aged 60 years. The Subject suffered a stroke sometime in the year 2013 and the stroke recurred in September 2018 leaving the patient on daily medication, confused and unable to talk fluently. The Subject is unable to transact any kind of business as he has continued to suffer memory loss. The Subject is unable to walk and he is dependent on his children for movement.
4. The Petitioner desires to be granted guardianship of the Patient so as to safeguard the Subject's estate and also the Subject's interest in defending the case at Embu Environment and Land Court (ELC Case No. 13 of 2020 Nickson Mutinda Kiunga v Nguru Nduma).
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 Petitioner has 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 Petitioner stated that the Subject suffered stroke in 2013 then again in 2018. As a result, the Subject’s cognitive functions are grossly impaired and is unable to attend to his affairs or represent his interests. Therefore, the Petitioner seeks guardianship order to protect the interest of the Subject.

7. The Petitioner has produced medical note for the Subject. She has also produced to this court a report from Arrow Medical Centre. The report is dated 20<sup>th</sup> February, 2014 and prepared by one Dr. Frederick Owiti a Consultant Psychiatrist. The report in regard to the Subject stated that: -

“The above named is Kenyan who developed hemorrhagic stroke in 2013. The condition reduced him to a person with significant memory loss. His power to walk also diminished. Being less ambulant, he depends on relatives and his children to make him move about whenever there is need.

He is therefore not fit to transact any business whatsoever.”

8. The Petitioner also produced the latest medical report dated 9<sup>th</sup> February, 2021 made by David Ndonge Musyoka, a consultant Physician based at Upper Hill Medical Centre. Part of the report reads as follows: -

“KNN is a 60-year-old man who has been under my care since 25/09/2018.



His medical condition has remained stable but has not recovered fully from the stroke. His speech and memory remained poor”

9. 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 21<sup>st</sup> September 2022 as prayed. The Petitioner PSG is appointed as Guardian and Manager for the Subject KNN.
10. In the discharge of her duties as the Guardian and Manager of the Subject, the Petitioner 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 9<sup>TH</sup> DAY OF FEBRUARY 2023.**

**E.K. OGOLA**

**JUDGE**

Judgment read and delivered online in the presence of:

M/s. Kipruto h/b for Mr. Masika for the Petitioner

Ms. Gisiele Court Assistant

