



In re FKK (Petition E019 of 2022) [2023] KEHC 529 (KLR) (7 February 2023) (Ruling)

Neutral citation: [2023] KEHC 529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E019 OF 2022
RB NGETICH, J
FEBRUARY 7, 2023**

IN THE MATTER OF

GWG APPLICANT

RULING

1. The Applicant filed application dated June 16, 2022 seeking to be appointed as the Guardian ad litem / Manager of the estate of FKK who is incapacitated.
2. The grounds of the application are that, the subject FKK who is her husband, has a Mental Neurological condition referred to as Dementia/Alzheimer's since 2015 and in 2018 he was declared a person with mental disability and is incapable of managing his estate, his accounts and properties; and it is in the interest of his family to have the applicant appointed to manage the estate of the subject.
3. The application is supported by the annexed affidavit of GWG the applicant herein sworn on June 16, 2022. She deposes that she is the wife of the subject and has attached a marriage certificate that the condition of the subject has deteriorated and the subject is now under 24-hour care nursing. She stated that the subject has completely lost his memory.
4. The applicant was served with warrants of attachment and proclamation notice in Mavoko CMCC No.361 of 2020 in respect to a road traffic accident involving Motor Vehicle KAY 842B that was sold in 2018.
5. On June 20, 2022, this court granted Letter of Administration to the applicant limited to prosecuting Mavoko CMCC No. 361 of 2020.
6. The application was heard on the 18th of January 2023 where the applicant GW informed the court that she is the wife of the subject who is 55 years old. Their two children aged 25 and 20 years respectively attended court.
7. KKK informed the court that he is 25 years old and is a son of the subject FK. He confirmed to court that he is aware of the prayers sought by his mother and is not opposed to the mother being granted



the orders of managing his father's estate. He confirmed to the court that his father is suffering from Dementia and not able to manage his estate.

8. AMK aged 20 years old, a daughter to the applicant and the subject told the court that she is 20 years old and confirmed that his father is suffering from dementia and is not able to manage his assets. She informed the court that she is not opposed to the applicant being granted orders to manage her father's estate.
9. The court called for a Chief's letter and the same was filed. The Chief's letter dated January 19, 2023 confirms that the applicant is the wife of the subject.

Determination

10. The issue for determination is whether the court should grant guardianship and management orders as sought in the application herein.

11. Section 2 of the *Mental Health Act* Cap 248 provide as follows: -

“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.”

12. Section 26 of the *Mental Health Act* Cap 248 provide as follows: -

“(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.”



13. The court in *Re NMMK* [2017] eKLR considered what should guide the court when applying Section 26 and 27 of *Cap 248*. The court 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.”

14. The court should be minded on the best interest of the subject. I have perused the subject’s medical record filed in support of the application herein. Record show a medical board was composed and assembled at Thika General Hospital on October 30, 2018 which upon observing that subject’s condition of presenile dementia had deteriorated, made opinion that he is a person with mental disability. I also note that the medical assessment report of 19th November 2018 indicated that the subject is dependent on a care giver. From the foregoing, I am convinced the subject lacks the mental capacity. It is not in dispute that the condition has affected the manner in which the Subject handles his daily affairs.

15. From the doctor’s report it is clear that the subject is dependent on a care giver as he is not able to manage his daily affairs. The Applicant being the subject’s legal wife who has been taking care of him; I find her a suitable person to be appointed as the manager of the affairs of the subject. The application is supported by the children of the deceased.

16. From the foregoing I do exercise my discretion as enshrined under Section 26 of the *Mental Health Act* and appoint the Applicant Gladys Wanjiku Wanjiru as the Guardian Ad Litem/Manager of the affairs of the subject Francis Kireru.

Final Orders:

- 1) Gladys Wanjiku Wanjiru is hereby appointed as Legal Guardian/Manager of the estate of the subject Francis Kireru.
- 2) No orders as to costs.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU

THIS 7TH DAY OF FEBRUARY, 2023

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RACHEL NGETICH

JUDGE

In the presence of:

Kinyua – Court Assistant

Mrs. Muhuhu for Applicant

