



**In re Estate of FMM (Patient) (Miscellaneous Application
E013 of 2023) [2023] KEHC 17756 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 17756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E013 OF 2023**

TA ODERA, J

MARCH 22, 2023

**IN THE MATTER OF SECTION 26 AND 38 OF THE MENTAL HEALTH ACT
AND
IN THE MATTER OF THE ESTATE OF FMM (PATIENT)**

IN THE MATTER OF

RW APPLICANT

RULING

1. The Applicant herein namely RW moved the court vide a Notice of Motion dated February 11, 2023 under section 26 and 28 of the [Mental Health Act](#) cap 248 Laws of Kenya for the following orders:
 - i. Spent.
 - ii. That the honorable court be pleased to appoint the applicant herein RW as the legal guardian or manager of the patient herein FMM and or his estate for purposes of protecting/taking care of him operating his bank account, managing his welfare resources, affairs, wellbeing and or any other thing/issue connected and or related to him including but not limited providing him with the necessary medication and other needs.
 - iii. That costs be in the cause.
2. The application was premised on the ground that;-
 - a. The patient herein is a police officer and was seriously injured while on duty and currently suffers from severe status epilepticus with seizures and has remained in a vegetative state for the last 7 months which makes him totally unable to manage his affairs and is also mentally impaired.
3. The application is supported by the annexed affidavit of RP sworn by the by the Applicant dated February 11, 2023. The Applicant deponed that he is a resident of Nakuru County and a teacher at



[particulars withheld] schools as per his identity card RW-1 and letter for he said school RW-2. Also that he is the only sibling to the subject who is a police officer and that their mother who was single is deceased as per copy of letter from the chief -RW-3 and job identity card of the subject - Rw-3 and that he is under his care and provision. He further stated that the subject was injured while on duty and currently suffers from severe status epilepticus with seizures and has remained in a vegetative state for the last 7 months which makes him totally unable to manage his affairs and is also mentally impaired as per report from neurosurgeon at Mediheal hospital -RW -5 .

4. He informed the court that the patient was neither married nor had any children as per the letter of the chief dated 6.3.23 annexed to the further affidavit dated 7.3.23. He deponed that the subject patient holds account number 0111670xxxxxxx at cooperative Bank of Kenya but is unable to operate the same due to the said health status. He told this court that he is the one single handedly taking care of financial needs of the patient and this has drained his resources hence he needs guardianship orders to help him operate the account of the patient, manage his affairs, resources, wellbeing and medication.
5. The application was not opposed.

Analysis and Determination

6. I have considered the application and all the annexures attached to it and the issue for determination is whether this court should allow the application and grant guardianship of the subject to the applicant herein.
7. Section 2 of the *Mental Health Act* Cap 248 provides that:

“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.”
8. Section 26 of the *Mental health Act* empowers the court to grant custody, management and guardianship orders The said section provides;
 - “(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.”

9. Section 27 provides for powers of a managers of the estate of a patient while Section 28 of the same Act provides for management of the subject's estate.
10. I have perused the application and the affidavit of the applicant and the letter from Dr Tanay U Sholapurkar a consultant neurosurgeon at Mediheal Hospital Nakuru and I am satisfied that the patient is suffering from severe status epilepticus and has been in a vegetative state for the past 7 months and thus has mental incapacity under section 2 of the [Mental Health Act](#) and thus unable to manage his affairs.
11. On whether Applicant should be appointed as guardian/manager to the patient's estate. He says he is the sole close relative of the subject/patient who is remaining after the demise of their mother. He has been recommended by the area chief and his boss vide letters RW1 and RW-1 he is the only closest relative to the patient and thus has priority to be apply to be appointed guardian under section 26 of the Act.
12. The application is merited and I proceed to allow as prayed in the interest of the patient.

T.A. ODERA - JUDGE

22/3/2023

DELIVERED VIA TEAMS PLATFORM IN THE PRESENCE OF;

NJUGUNA FOR APPLICANT,

COURT ASSISTANT; BOR.

T.A. ODERA - JUDGE

22/3/2023

