



**In re BWK (Petition E036 of 2021) [2023] KEHC 1927 (KLR) (10 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1927 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KIAMBU**  
**PETITION E036 OF 2021**  
**MM KASANGO, J**  
**MARCH 10, 2023**  
**IN THE MATTER OF SECTION 26, 28(2) &(2) OF THE**  
**MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF: BWK (THE SUBJECT)**  
**AND**  
**IN THE MATTER OF: APPLICATION BY EWM FOR**  
**APPOINTMENT AS GUARDIANS OF THE SUBJECT**

**JUDGMENT**

1. This petition is filed by the sister in law of the subject. The petitioner seeks prayers for the subject to be adjudged as suffering from mental disorder, as provided under Section 26 of the *Mental Health Act* and that she be appointed manager of the subject's estate.
2. The Mathari National Teaching and Referral Hospital through Dr. Nganga, has confirmed by medical report dated 22<sup>nd</sup> March, 2021 that the subject has been treated at that Hospital and presently being managed for what the report terms a chronic and lifelong schizophrenia disorder. The report concluded by stating:-  

“The patient is suffering from an obvious psychotic disorder. This predisposes her to awkward behaviour, exploitation and potential danger to herself and others.”
3. Section 2 of the Mental Act, Cap 248 defines who suffers from mental disorder 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.”



4. Section 26 of Cap 248 provides circumstances under which the court may order for guardianship of a subject. That 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.
- (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.’

5. I am satisfied that the petitioner has proved that the subject not only suffers from mental disorder but that she is incapable of managing her affairs. The subject is the registered owner of property Ndarugu/Gathaite/(Withheld). There is a dispute that has arisen in respect to that immovable property and as deponed by the petitioner, there may be need to file a court action to protect the interests of the subject.

6. The subject has a grown-up son, namely, DKW. That son alongside the subject’s brother and mother have consented to the petitioner filing the present petition.

7. I am of the view that the best interest of the subject will be Served by making a guardianship order as prayed. I however will only grant limited power over the subject’s immovable property, that of filing any court action on behalf of the subject. in regard to the duties of a manager of estate of the subject, I cite the case *In re of an Application for custody, management and appointment of guardians and estate managers over DMK* [2021] eKLR as follows:-

The duty of the manager of an estate of a person found to be suffering from mental disorder was recognized by the court in *Steven Kariuki Kiriamburi & Another v Jane Gaturi Kiriamburi & 4 Others* [2020] eKLR. In that case the court went further to state that:-

‘Once the order for appointment is granted, a trust relationship is created between the applicant and the subject and thus the subject’s estate that may be vested in him will only be held on behalf of and for the benefit of the subject. In any event, the trustees will not be able to dispose of the property without court’s authority as provided for under Section 27 of the act. In addition, Section 33(1) of the Act requires the manager or guardian provide an inventory and annual accounts of the subject’s estate.’



## **Disposition**

- a. BWK is hereby declared as a person suffering from mental disorder within the meaning of Section 2 of the *Mental Health Act*.
- b. This Court orders EWM the petitioner shall be guardian and with full custody and management of BWK the subject.
- c. EWM, the petitioner as a guardian of BWK, the subject, is granted power as may become necessary to sue and/or defend a suit against or for the subject's estate and interests.
- d. For avoidance of doubt EWM the petitioner is not granted power to sell any estate property moveable or immovable of BWK, the subject.
- e. There shall be no order as to costs of this petition.

**JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 10<sup>TH</sup> MARCH, 2023.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Mourice/Julia

For Petitioner : - Ms. Gathoni

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**

