



**In re GKM (Miscellaneous Application E009 of 2023)
[2023] KEHC 3062 (KLR) (Family) (9 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E009 OF 2023
EKO OGOLA, J
MARCH 9, 2023
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248, LAWS OF KENYA
AND
IN THE MATTER GKM (A PERSON SUFFERING FROM MENTAL DISORDER)
AND
IN THE MATTER OF AN APPLICATION BY BWK TO BE APPOINTED GUARDIAN
OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF THE SAID GKM
IN THE MATTER OF
BWK PETITIONER**

JUDGMENT

1. Before this Court is a Petition dated December 8, 2022 by which the Petitioner BWK prays this court for the following orders that:
 - i. The subject, GKM be recognized as a person suffering from mental disorder under the *Mental Act*, Cap 248 as amended by the Mental Health (Amendment) Act, 2022 (“the *Mental Health Act*”)
 - ii. The Petitioner be appointed as Guardian GKM (the subject) to ensure maintenance of the Subject in accordance with Section 27(1)(a) of the *Mental Health Act* with powers to sign, access, collect, withdraw, execute, represent and/or carry out any other act necessary to protect the affairs of the subject
 - iii. The Petitioner be appointed as Manager of the estate of the Subject in accordance with Section 27(2) of the *Mental Health Act* with powers to charge, sell, gift, surrender, transfer, exchange



or otherwise deal with any movable or immovable property comprised in the Subject's estate as permitted by court

- iv. The Petitioner be allowed do all such things and take all such actions that are necessary to ensure the proper maintenance of the subject and the preservation of his estate;
 - v. The records of the subject and this petition be sealed for confidentiality reasons; and
 - vi. Such other order(s) as this Honorable
2. The Petition was supported by an Affidavit of even date sworn by all the petitioner.
 3. The Petitioner avers that she is the wife to the Subject who is 79 years old and together they have five children namely;
 - i. AMK(deceased)
 - ii. MPNK
 - iii. MWK (deceased)
 - iv. HWK; and
 - v. SMNK
 4. The Petitioner deposes that the Subject was diagnosed with dementia and depression in 2018. That the illness has deteriorated the subject's cognitive functions greatly affecting his capacity to care for himself and his affairs. According to the petitioner, the subject experiences severe and long episodes of memory loss and confusion and usually requires multiple repetition in order to understand what he is being told.
 5. The petitioner deposes that the subject before his illness was actively involved in business and owns several properties which the Petitioner fears might go to waste.
 6. The Petitioner desires to be granted guardianship of the subject so as to be able to take care of the subject's personal needs and other affairs including the powers to sign, access, manage, withdraw, sell, charge, transfer, gift, develop, collect, withdraw, execute, represent and to do all such things and take all such actions that are necessary to ensure the proper maintenance of the Subject and the preservation of the Subject's estate.
 7. 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]
8. The Petitioner has sought to be declared as the Guardian and Manager of the Subject. 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 his/her own affairs.
 9. The Petitioner stated that the Subject was diagnosed dementia and depression in the year 2018. The Petitioner has produced a medical report for the Subject. The report is dated August 3, 2022 and prepared by one Dr Nelly Kitazi a Consultant Psychiatrist from AgaKhan University Hospital. The report in regard to the Subject stated in part that: -

“he was noticed to have change in behavior over the last four (4) years with marked deterioration in cognitive functions.

He has been on treatment for dementia and depression since July 1, 2022

This has greatly affected his memory to a point where he now is unable to remember most things happening around him and forgets within hours. Needless to say, he has serious limitations in handling his business finances.

It is therefore advised he refrains and withdraws from any such activities.”
 10. Based on the material availed to this Court I am satisfied that the Subject suffers from a mental illness under the terms of the 0 Mental Health Act. I am satisfied of the merit of this Petition and I hereby allow the Petition dated December 3, 2022 as prayed. The Petitioner BWK is appointed as Guardian and Manager for the Subject GKM
 11. 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 9TH DAY OF MARCH 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

M/s. Makena for the Petitioners

Ms. Gisiele Court Assistant

