



**In re SWK (Miscellaneous Application E208 of 2022)
[2023] KEHC 1756 (KLR) (Family) (6 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E208 OF 2022
MA ODERO, J
MARCH 6, 2023**

IN THE MATTER OF

SK PETITIONER

JUDGMENT

1. Before this court is the Petition dated September 30, 2022 by which the petitioner SK seeks the following orders:-
 1. A determination/declaration that SWK , the subject person herein, has degenerated into being a person suffering from dementia exacerbated by failing physical health and requires guardianship for the management of her affairs and estate.
 2. The applicant herein, SK be awarded guardianship over SWK .
 3. The appointment does confer on SK the power to act as next friend to SWK .
 4. The SK be authorized to act as guardian and manager, agent with full power and authority to manage the estate of the above-named SWK .
 5. This honourable court be pleased to make such further orders as it may consider just.
2. The Petition was supported by the affidavit of even date sworn by the petitioner. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The petitioner told the court that the subject SWK was his mother. That his mother is a widow her husband having passed away in the year 2007. The petitioner stated that the subject was diagnosed with Dementia in the year 2018.



4. The petitioner told the court that the subject who lives in Kenol area of Murang'a county requires round the clock care as she is unable to do anything for herself. That her memory and motor skills have been affected. That the Petitioner is unable to manage her own affairs and requires a guardian.
5. Pw2 NW and Pw3 MN are the siblings of the petitioner and daughters of the subject. They both confirm that their mother suffers from dementia and is not in a position to manage her own affairs. Both daughters confirm that they are aware of and have no objection to this petition.
6. Section 26 of the [Mental Health Act](#), cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of a patient (subject) 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. Where upon 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 is not dangerous to himself and is not dangerous to himself or to others or likely to act in a manner of 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]
7. I have considered the Petition before this court as well as the evidence on record, I have carefully examined the documents filed in support of this Petition. A medical report dated October 29, 2019 prepared by Dr Kaguri S Kanja consultant neurosurgeon is annexed as annexure 'SK-3' to the Petition. This report indicates that the subject suffers from “a mental condition which includes Memory loss among other cognitive impairment”. The doctor opined that the subject is not fit to carry out any transaction.
8. I was able to see the subject online. She was an elderly woman who appeared confused and clearly did not comprehend the court proceedings. Infact the subject got up and walked away whilst the court was still addressing her. Based on the medical report and my own observation it was clear to me that the subject suffers mental challenges and clearly has no capacity to manage her own affairs.
9. The subject is a widow and all her children agree that she requires a Guardian. PW2 and PW3 who are daughters of the subject indicated to the court that they have no objection to the Petitioner who is their brother, being appointed as Guardian for their mother. The two witnesses have both signed a written consent dated September 30, 2022.
10. Based on the material presented to his court I find 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. The petitioner SK is hereby appointed as guardian of the subject SWK and manager of her affairs. No orders on costs.

DATED IN NAIROBI THIS 6TH DAY OF MARCH 2023.



MAUREEN A ODERO
JUDGE

