



In re KN (A Person Suffering from Mental Disorder) (Miscellaneous Application E015 of 2022) [2023] KEHC 3993 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3993 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

MISCELLANEOUS APPLICATION E015 OF 2022

MW MUIGAI, J

APRIL 20, 2023

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF
MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**

AND

IN THE MATTER OF K.N. (A PERSON SUFFERING FROM MENTAL DISORDER)

IN THE MATTER OF GUARDIANSHIP OF SUBJECT

IN THE MATTER OF

FNM PETITIONER

RULING

1. The Applicant, FNM under certificate of urgency filed petition under section 26(1) and 29 of the [Mental Health Act](#) Cap 248 and he sought to be appointed legal guardian of KN and to manage his estate.
2. The subject, KN , suffers from mental incapacity that hinders decision making and conduct of his affairs and ensuring his wellbeing.
3. The Applicant, FNM Id No. 105xxxx presented the subject's medical reports dated 6/12/2022 & comprehensive and current medical report of February 21, 2023 from Dr Alfred Gitonga of Mathari National Teaching & Referral Hospital. The letters confirm that the subject was diagnosed to suffer from chronic medical condition of intellectual and cognitive difficulties since birth. He has family history of intellectual difficulties emanating from his late mother who suffered similar complaints. He dropped out of school in 2011 in Class 3 at the age of 14years old.
4. The subject has been under treatment at the Mathari National Teaching & Referral Hospital since September 20, 2022. From the Medical Reports the subject was diagnosed with intellectual disability which entails deficits in general mental abilities, impairment in every day adaptive functioning and the



onset is during the developmental period and the subject cannot live independently and will require assistance in self-care and conduct of his affairs and general well-being.

5. The Applicant's Supporting Affidavit deposed that the subject's mother, MMM who was her sister suffered similar disabilities until she died on July 6, 2005. The subject's mother never lived independently and was under the care and resided with their mother.
6. The subject's father is unknown, after her sister's demise, the subject became an orphan and has since lived and been under the Applicant's care. The subject has limited attention span and inability to remember things. He is unable to read or write and unable to take up any form of employment and is unable to distinguish people's behavior and can easily be taken advantage of. He requires constant supervision and assistance from the Applicant other family members to ensure his material needs, care and comfort.
7. The Applicant FNM Id No 105xxxx and KN , Subject's family consist of the following members who have consented to the Applicant's appointment as Legal Guardian to the subject and Legal Manager of his estate;
 - a. LMM ID No 626xxxx
 - b. SMM ID No 3798xxxx
 - c. JNM ID No 430xxxx
 - d. BM ID No 883xxxx
 - e. FKM ID No 780xxxx
 - f. JNM ID 936xxxx

Determination

8. From the foregoing, the issue(s) that are to be determined by the Court are:-
 1. Whether the Subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 2. Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.
9. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. Section 26 of the *Act* grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by close relatives or any other suitable persons.
10. Section 28 of the same *Act* provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep.

Under Section 26(3) of the *Act* it provides,

“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 persons, including proper provision for his maintenance...”

11. From the evidence produced by the Applicant, the Medical Reports on record and written consents of siblings, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under Section 26 of the [Mental Health Act](#).
12. Relying on these Medical Reports, this Court is satisfied from medical reports dated 6/12/2022 & comprehensive and current medical report of 21st February 2023 from Dr. Alfred Gitonga of Mathari National Teaching & Referral Hospital, confirm the subject was diagnosed to suffer from chronic medical condition of intellectual and cognitive difficulties since birth. The subject suffers mental incapacity and requires care and attention for his well-being. Therefore, in the interest of justice, the Applicant ought to be his legal guardian to ensure care, support and conduct of his affairs, assist in decision making on the subject’s behalf and manage his estate for the subject’s wellbeing.

Disposition:

13. In light of the above, the court holds that: -
 1. KN (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the [Mental Health Act](#), Cap 248 Laws of Kenya.
 2. FNM is hereby appointed the Legal Guardian to KN .
 3. FNM is hereby appointed Legal Manager of the estate of KN under Section 28 of [Mental Health Act](#) to manage his estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 4. FNM to manage the subject’s immovable properties and/or settle liabilities with regard to suit properties;
 5. FNM to manage and utilize the Subject’s estate to ensure he is well taken care of , provision of necessities; fixed abode, food and clothing and medical care and assistance.

**DELIVERED DATED SIGNED IN OPEN COURT IN MACHAKOS ON 20TH APRIL 2023.
(VIRTUAL/PHYSICAL CONFERENCE)**

M.W. MUIGAI

JUDGE

