



**CNK & another (Miscellaneous Application E034 of 2023)  
[2023] KEHC 17635 (KLR) (Family) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17635 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**MISCELLANEOUS APPLICATION E034 OF 2023**

**MA ODERO, J**

**MAY 15, 2023**

**IN THE MATTER OF A PETITION BY CNK & ANK**

**AND**

**IN THE MATTER OF ENK**

**AND**

**IN THE MATTER OF SECTION 26, 27, 28, 29 AND 30 OF  
THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF CIVIL PROCEDURE RULES 2010, ORDER 32 RULE 1,2,3 AND 15**

**IN THE MATTER OF**

**CNK ..... 1<sup>ST</sup> PETITIONER**

**ANK ..... 2<sup>ND</sup> PETITIONER**

**JUDGMENT**

1. Before this court is the Petition dated February 16, 2023 by which the Petitioners CNK and ANK seek the following orders:-

“ 1. That the Petitioners be appointed the manager of the estate of ENK in as far as the funds in AC No 6580xxxxxx at Eco, Bank Towers Nairobi Branch is concerned with full access to the said account but only for purposes of using the funds therein for the sole benefit of the said ENK



2. That the Petitioners be appointed the guardian of the said ENK
3. That the Petitioners be and is hereby given power to access, make enquiry, take control of and/or deal with the bank account of the said ENK particularly the funds in A/C No 6580xxxxxx at Eco, Bank Towers Nairobi Branch.
4. That the care, control and custody of the said ENK is on the Petitioners.
5. That the court be pleased to make any other orders as it deems just in these circumstances.”

2. The Petition was supported by the Affidavit of even date sworn by the Petitioners. The matter was canvassed by way of vive voce evidence on the virtual platform.
3. The Petitioners told the court that the subject ENK is their mother. They state that their Father passed away on January 10, 2023.
4. The Petitioners state that the subject suffers from Dementia and Alzheimers Disease. That as a result the subject is unable to do anything for herself and requires full time care. They state that due to her illnesses the subject is not able to manage her own affairs. The Petitioners pray to be appointed as Guardians for the subject and manager of her affairs.
5. 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 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]
6. I have perused the medical report dated January 26, 2023 prepared by DR EA Neurophysician. The reports indicated that upon examination the subject had abstract thinking and poor recall. That her family had complained of irrational behavior on the part of the subject.



7. The Doctor concluded that the subject suffers from a “a dementing illness” and is “incapable of minding her own affairs”. He recommended that a Guardian be appointed for her.
8. I was able to see the subject online. She was an elderly lady who was frail and appeared tired. She did not comprehend the court proceedings.
9. Based on the medical report presented to the court and from my own observation I find that the subject suffers from a Mental incapacity in terms of Section 26 of the *Mental Health Act*.
10. The subject is a widow, the Petitioners who are her biological children are the persons closest to her and are in my view best placed to be appointed as her Guardians.
11. PW3 JWK and PW4 DNK are also the children of the subject and are siblings to the two Petitioners. They both confirm that their mother is unwell and is not in a position to manage her own affairs. Both PW3 and PW4 state that they are aware of and support the petition.
12. Based on the foregoing I am satisfied that this Petition has merit. I therefore make the following orders:-
  - 1) The subject ENK is declared to be a person suffering from a mental disability in terms of Section 26 of the *Mental Health Act* Cap 248, Law of Kenya.
  - 2) The Petitioner CNK and ANK be and are hereby appointed as Guardians for the subject and managers of her affairs.
  - 3) The said Guardians are authorized to access and deal with the account of ENK being Account No 6580xxxxxx held at Eco, Bank Towers Nairobi Branch.
  - 4) No orders on costs.

**DATED IN NAIROBI THIS 15<sup>TH</sup> DAY OF MAY 2023.**

.....  
**MAUREEN A. ODERO**

**JUDGE**

