



**In re HC (Subject) (Miscellaneous Application E205 of 2022)  
[2023] KEHC 18129 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18129 (KLR)

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

**MISCELLANEOUS APPLICATION E205 OF 2022**

**MA ODERO, J**

**MAY 19, 2023**

**IN THE MATTER OF SECTION 26 OF THE MENTAL**

**HEALTH ACT, CAP 248**

**AND**

**IN THE MATTER OF HC**

**IN THE MATTER OF**

**HE ..... APPLICANT**

**JUDGMENT**

1. Before Court is the Petition dated August 31, 2022 by which the Petitioner he seeks the following orders:-
  - “1. An order that HE be appointed the Guardian and Manager of the Estate of [Particulars withheld] limited to the management of her financial affairs including the operation of the existing bank accounts in the name of HC.
  2. Costs be in the cause”
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 she is a neighbour and close friend of the subject HC. That the subject is ninety-three (93) year old woman who lives on her own in the Karen Area of Nairobi County.
4. The Petitioner told the court that the subject suffered a stroke in April 2022. From that time the subject has required round the clock nursing care. She is on a wheelchair and is unable to undertake activities



of daily living. The Petitioner stated that she has stepped in and has been assisting the subject to manage her affairs. She now wishes to be appointed as the legal guardian for the subject.

5. PW2 EM is a brother of the subject. He told the court that he is aged ninety-two (92) years old. That the subject is a widow who has no living children thus PW2 is her closest living relative PW2 stated that he was aware of this petition for guardianship filed by the Petitioner and confirms that he has no objection to the same. PW2 states that the Petitioner is best placed to manage the affairs of his sister.
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 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]
7. I have considered the petition before the court, the evidence adduced before the court as well as the documents annexed to the Petition. In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental incapacity rendering her incapable of managing her own affairs.
8. The Petitioner told the court that the subject who lives alone had previously been managing her own affairs until she suffered a stroke in April 2022. That following that stroke the subject became fully dependant on others to feed her, wash her etc. and uses a wheel chair and requires round the clock nursing care. PW2 who is a brother to the subject confirms that his sister suffered a stroke in April 2022.
9. I have perused the medical report dated August 16, 2022 prepared by Dr Marie-Louse Cantamessa of the Karen Surgery. The Doctor confirmed that the subject suffered a stroke which rendered her unable to walk and requiring help with activities of daily living like eating and bathing, dressing etc.
10. The medical report further indicated that the subject is “not oriented in time and was not able to answer verbal questions on a simple mini mental state examination.” The subject also seemed unaware of current events in the country. The Doctor opined that the subject did not have the mental capacity to handle her financial affairs.



11. I have also considered the contents of the second medical report dated January 27, 2023 prepared by Dr JK Mutiso, a specialist Psychiatrist with Gilead Mental Health Consultants. The report indicated that upon examination the subject was found to be aware of her surroundings. However she was found to be totally disoriented in time and suffered profound memory loss.
12. The psychiatrist diagnosed the subject as suffering from “Major Neurocognitive Disorder due to Alzheimer’s Disease complicated by major Vascular Neuro-cognitive Disorder after the stroke in April 2022”. The doctor opined that the subject suffered from mental incapacity and was unable to manage her own affairs.
13. I was able to see the subject online. She was a frail elderly woman. The subject was lucid and answered all the questions put to her by the court. She confirmed that she was sick after suffering a stroke. The subject confirmed that she was aware of and had no objection to this Petition.
14. Based on the material availed to this court I am satisfied that the subject herein suffers from a mental illness under the terms of the *Mental Health Act*. She is clearly incapable of managing her own affairs. The Petitioner who has been previously assisting the subject has indicated that she is willing to be appointed as the legal guardian for the subject. PW2 who is the subject brother has given his consent to this Petition. He has signed a consent dated August 31, 2022.
15. Finally I find merit in this Petition. The Petitioner HE is hereby appointed as the legal Guardian for the subject HC and Manager of her affairs.

**DATED IN NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2023.**

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

