



**In re RMS (Miscellaneous Application 180 of 2019)  
[2023] KEHC 18440 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18440 (KLR)

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

**FAMILY**

**MISCELLANEOUS APPLICATION 180 OF 2019**

**MA ODERO, J**

**MAY 19, 2023**

**IN THE MATTER OF SECTIONS 26, 27, 28 OF THE MENTAL  
HEALTH ACT (CAP 248) OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF NRMS( PERSON SUFFERING FROM MENTAL DISORDER)**

**AND**

**IN THE MATTER OF AN APPLICATION BY ARS TO BE APPOINTED AS  
NRMS'S GUARDIAN AND MANAGER OF THE ESTATE OF THE SAID NRMS**

**IN THE MATTER OF**

**ARS ..... PETITIONER**

**JUDGMENT**

1. Before this court is the Petition dated October 18, 2019 by which the Petitioner ARS seeks orders That:-
  1. NRMS's be and is hereby adjudged to be a person suffering from a Mental disorder under section 26 of the [Mental Health Act](#), Cap 248 of the Laws of Kenya.
  2. ARS be appointed as the Manager of NRMS's estate with the powers 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.
  3. ARS be appointed a Guardian in respect of NRMS
  4. There be no orders as to the costs of this Petition.



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 NRMS is her brother. She told the court that the subject has suffered impaired mental capacity since childhood. That the subject is not married and has no children.
4. The Petitioner further stated that the subject resides with her in the Westlands area of Nairobi as their parents are both Deceased. That due to his diminished mental capacity the subject who is 47 years old is not able to manage his own affairs. The Petitioner therefore prays to be appointed as Guardian for the subject and manager of his affairs.

### **Analysis and Determination**

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.'
6. I have perused the medical report dated October 1, 2020 prepared by Dr Muchiri Wang'ombe a Consultant Psychiatrist at the Healthy Mind Consultants. Upon examination it was noted that the subject had impaired function, poor memory and poor concentration.
  7. The doctor opined that the subject 'suffers from Intellectual disability' which was described as a 'development disorder that does not improve with time.' The Doctor found that the subject was incapable of making rational decisions and is incapable of managing his own affairs.
  8. I was able to see and interview the subject online. He was a middle aged man who was neatly dressed and answered basic questions about himself. The subject spoke slowly and clearly did not comprehend the court proceedings. He had to be prompted by his sister to respond to the court's questions.



9. Based on the medical report and from my own observations I find that the subject is suffering from a mental incapacity and is clearly unable to manage his own affairs.
10. PW2 AJS is a sister to the subject who resides in Australia. She confirmed that the subject has had a mental infirmity since his childhood. PW2 confirmed that she was aware of this Petition and that she has no objection to the same.
11. Finally I find merit in this Petition and allow the same. This court makes the following orders:-
  - 1) The subject NRMS is hereby adjudged to be a person suffering from a Mental disorder within the terms of Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya.
  - 2) The Petitioner ARS is hereby appointed as the Guardian of the subject and Manager of his affairs.
  - 3) No orders on costs.

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

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**MAUREEN A. ODERO**

**JUDGE**

