



**In re JMK (a Person Suffering from Mental Disorder) (Miscellaneous Application 9 of 2023) [2023] KEHC 17455 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17455 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
MISCELLANEOUS APPLICATION 9 OF 2023**

**MW MUIGAI, J**

**MAY 11, 2023**

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

**AND**

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

**IN THE MATTER OF**

**SKM ..... 1<sup>ST</sup> APPLICANT**

**LNK ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. The Applicants herein, SKM and LNK under certificate of urgency filed petition under Section 26,27,29 and 30 of the *Mental Health Act* Cap 248 and they sought to be appointed legal guardians of JMK and to manage his estate.
2. The subject, JMK of ID No xxxxxxxx suffers from mental incapacity that hinders decision making and conduct of his affairs and ensuring his wellbeing.
3. The Applicant, SKM of Id No. xxxxxxxx and LNK of ID No xxxxxxxx presented the subject's medical reports of April 18, 2023 from Machakos Level 5 & Referral Facility/Hospital from Dr Nzau Muange a Psychiatric Consultant and current medical report of April 20, 2023 from Dr John Gatere a Consultant Psychiatrist of Chiromo Lane Medical Centre. The Report confirms that the subject was diagnosed to suffer from Major Depressive Disorder and Alcohol Use Disorder. The subject is also undergoing treatment for TB. The subject was admitted at the Chiromo Lane Medical Centre on April 20, 2023 and he needs to undergo Alcohol detoxification for about one week and thereafter a three months rehabilitation program.



4. The Applicants Supporting Affidavit deposed that they are the subject's father and wife respectively. The subject JMK and LNK were blessed with two children namely LKB certificate Serial No xxxx and RK birth Certificate Serial No xxxx.
5. The subject has over time over indulged in alcohol leading to serious mental breakdown which has made his mental health deteriorate to the point that he cannot manage his own affairs leading to him being admitted at Chiromo Lane Medical Centre.
6. The subject is in employment, working for the Machakos County as a driver and he usually receives his salary through Co-operative Bank Account No xxxx Machakos Branch and the Applicants are praying that the subject Bank Account be frozen for a period of three (3) months and the two Applicants be appointed as the Administrator of his estate.

### **Determination**

7. 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 Legal Guardians to the Subject as well as Legal Managers of the estate of the Subject.
8. 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.
9. 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...”

10. From the evidence produced by the Applicant, the Medical Reports on record 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*.
11. Relying on these Medical Reports, this Court is satisfied from medical reports dated April 18, 2023 by Dr. Nzau Muange of Machakos Level 5 Hospital which stated that the subject is undergoing treatment due to Alcohol Induced disorder, Severe Depression. He is currently not mentally fit to handle finances and recommended urgent rehabilitation services for detoxification and treatment for 90 days. The medical report of April 20, 2023 from Dr. John Gatere of Chiromo Lane Medical Centre, confirms the subject was diagnosed to suffer from Major Depressive Disorder and Alcohol Use disorder. He will undergo Alcohol detoxification for about one week and thereafter a three months rehabilitation program.



12. The subject suffers mental incapacity as well as undergoing T.B. treatment and requires care and attention for his well-being. Therefore, in the interest of justice, the Applicant ought to be his legal guardians 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. JMK (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. SKM & LNK are hereby appointed the Legal Guardians to JMK
  3. SM & LNK are hereby appointed Legal Managers of the estate of JMK 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. SKM & LNK to manage the subject's Bank Account No. xxxx in Co-operative Bank Machakos Branch, immovable properties and/or settle liabilities with regard to suit properties if any.
  5. SKM & LNK 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 11<sup>TH</sup> MAY, 2023.  
(VIRTUAL/PHYSICAL CONFERENCE)**

**M.W. MUIGAI**

**JUDGE**

**IN THE PRESENCE:**

Mr. Munyaka - For the Applicant

Geoffrey/Patrick - Court Assistant(s)

