



REPUBLIC OF KENYA



KENYA LAW
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**In re HNM (Subject) (Petition E026 of 2023)
[2023] KEHC 19431 (KLR) (23 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E026 OF 2023
A MSHILA, J
JUNE 23, 2023
IN THE MATTER OF SECTION 26 OF THE
MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF HNM..... SUBJECT
IN THE MATTER OF A PETITION FOR ORDERS OF MANAGEMENT
AND GUARDIANSHIP RELATING TO HNM (SUBJECT)
IN THE MATTER OF
MWM PETITIONER**

JUDGMENT

1. MWM filed her petition dated 2nd June, 2023 praying for the following reliefs;-
 - a. That HNM be adjudged to be suffering from a mental disorder under the *Mental Health Act* Cap 248 of the Laws of Kenya.
 - b. That HNM be declared incapable of protecting his interests with regard to his affairs due to a mental condition which has mentally incapacitated him.
 - c. That MWM be appointed as a guardian of HNM.
2. The Petition is supported by the supporting affidavit of MWM. She deposed that she is the daughter of HNM who is aged 80 years and was gravely affected by the death of his wife in 2018 which has caused his mental health to deteriorate. She attached a medical report as evidence that the subject suffers from Alzheimer’s Dementia, Co-morbid diabetes, hypertension and prostatism as such he lacks the mental capacity to conduct his affairs hence the need for a legal guardian. She further deposed that the subject had filed a suit being ELC No 934 of 2013 which he is unable to prosecute hence they face eviction



which they need to defend. She attached minutes where her siblings consented to her being appointed as the guardian ad litem.

3. Directions were given that the consent be filed in court, the doctor to be present during the hearing and the chief's letter to be availed before court.

Applicant's Case

4. During the hearing of the Petition, Dr Nganga testified that the subject is an old man who appears disoriented and suffers from chronic dementia causing him to be forgetful thus cannot make sound decisions.
5. Issues for Determination
6. After reading the applicants averments and hearing the doctors evidence this court has framed only one issue for determination;
 - i) Whether the subject has a mental disorder requiring the appointment of MWM as his guardian.

Analysis

7. The application is premised under the provisions of the *Mental Health Act* which governs the handling of persons suffering from mental disabilities;
11. The petitioner deposed that the subject suffers from Alzheimer's Dementia, Co-morbid diabetes, hypertension and prostatism as such he lacks the mental capacity to conduct his affairs.
12. There is a presumption of law that all persons are sane until proved otherwise; the burden of proof to controvert this presumption was upon the petitioner to demonstrate that the subject was mentally challenged; the petitioner relied wholly on the evidence of Dr Ng'ang'a.
13. At the hearing hereof the doctor was in attendance and gave evidence on the treatment of the subject; he prepared a report and produced the annexure which is a Medical Report;
14. The applicable law is found at Section 26 (1) of the *Mental Health Act* which empowers this court to make orders for the management of a person suffering from a mental disorder; and for a guardian of the subject who can either be a close relative or a person the court determines to be suitable;
15. Upon perusal of the medical report prepared by Dr Nganga this court is satisfied with this doctor's area of specialty and expertise as a psychiatrist; and from his evidence it is apparent that the doctor was of the opinion that the subject is fully dependent on his children for support in all aspects. He recommended for among others that the subject should receive psychosocial support from his children and friends. The court notes that the petition is uncontested as a consent has been filed before court; the court is also satisfied that the petition is supported by satisfactory medical evidence on the subject's mental health.
16. From the material placed before it, this court is satisfied that the subject has a mental disorder and is not capable of managing his own affairs; this court is also satisfied that he requires a guardian.

Findings and Determination

17. For the foregoing reasons this court makes the following findings and determinations;
 - (i) The subject is found to be a person who requires to be managed as he has a mental disorder.



- (ii) The Petitioner MWM is hereby granted guardianship of the subject herein strictly limited for the purpose of prosecuting case No ELC 934 of 2013.
- (iii) There shall be no order as to costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 23ND DAY OF JUNE, 2023.

HON. A. MSHILA

JUDGE

In the Presence of :-

Mourice - Court Assistant

Kimotho for the petitioner

