



REPUBLIC OF KENYA



In re JMM (A person Suffering from Mental Disorder) (Miscellaneous Application 146 of 2019) [2023] KEHC 19675 (KLR) (Family) (23 June 2023) (Judgment)

Neutral citation: [2023] KEHC 19675 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS APPLICATION 146 OF 2019

MA ODERO, J

JUNE 23, 2023

**IN THE MATTER OF SECTION 26 AND 28 OF THE
MENTAL HEALTH ACT 248 OF LAWS OF KENYA**

AND

IN THE MATTER OF JMM (APERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY SWM TO BE APPOINTED
GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF JMM**

AND

IN THE MATTER OF GUARDIANSHIP OF SUBJECT – JMM

IN THE MATTER OF

SWM PETITIONER

JUDGMENT

1. Before this court is the petition dated July 24, 2019 by which the petitioner SWM seeks the following orders that:-

- “ 1. The petitioner be and is hereby appointed as the guardian of JMM and the manager of the affairs of her estate.
2. Any other order the court may deem fit and just to grant.
3. Cost of the petitioner”



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 herein JMM is his wife of forty two (42) years. He told the court that the subject was diagnosed with ‘dementia’ in the year 2005. That as a result the subject is not in a position to manage her own affairs.
4. The petitioner states that he has had to hire two (2) full time carers to look after the subject as well as a physiotherapist. He now seeks to be appointed as the guardian for the subject and manager of her 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.” [own emphasis]
6. 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.
7. The petitioner told the court that the subject who is his wife has been ill since the year 2005. Annexed to the petition is a copy of their marriage certificate serial number xxxxx (Annexure SWM’1’)
8. I have perused the medical report dated March 14, 2016 prepared by Dr D R Mukiri Githegi a Consultant Physician/Cardiologist. The reports indicates that the subject suffers from alzheimers dementia. The doctor indicates that the subject requires full time care.
9. I was able to see the subject online. She was an elderly frail lady wrapped in a blanket. She clearly had no comprehension of the court’s proceedings. Based on the medical report and my own observation



I find that the subject does suffer from a mental disability rendering her incapable of managing her own affairs.

10. The subject four (4) adult children have all signed consents confirming that they are aware of and have no objection to this petition.
11. Three of the subjects children namely:-AMMKMMVNM all testified in court. They all confirmed that their mother is unwell and is not in a position to manage her estate. They all gave consent to this petition filed by their father.
12. Finally I do find merit in this petition and hereby make the following orders:-
 - (1) The subject JMM is declared to be a person suffering from a mental disorder within the terms of section 26 of the *Mental Health Act*, Cap 248 Law of Kenya.
 - (2) The petitioner SWM is appointed as the “guardian of the subject and manager of her estate.”

DATED IN NAIROBI THIS 23RD DAY OF JUNE 2023.

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MAUREEN A. ODERO

JUDGE

