



In re NMM (A person with Disability) (Miscellaneous Application E001 of 2023) [2023] KEHC 19935 (KLR) (22 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E001 OF 2023
GMA DULU, J
JUNE 22, 2023
IN THE MATTER OF A PERSON WITH DISABILITY
AND
IN THE MATTER OF THE MENTAL HEALTH ACT CAP. 248 LAWS OF KENYA
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP OF NMM
IN THE MATTER OF
HRM PETITIONER**

RULING

1. Before me is an application brought by way of Notice of Motion dated 27th March 2023 by HRM through Counsel M/s Mwinzi & Associates under the [Mental Health Act](#) (Cap.248) as well as Section 2 and 20 of the Person with Disabilities Act No. 4 of 2003, as well as Article 22, 28 and 43 of [the Constitution](#).
2. The application has six (6) prayers, some of which have been spent as follows:-
 1. (Spent).
 2. That NMM be and is hereby declared a person with disability as defined under the Persons with Disabilities Act.
 3. That the petitioner/applicant herein be appointed a legal guardian of NMM.
 4. That the income and money of the said NMM namely the monthly pension Kshs. 7,000/= be paid to the petitioner and Kshs. 215,420.81 held at NSSF be released to the petitioner with powers to access the money and apply the same to the maintenance and medication of the said NMM.



5. That the costs of this petition be borne by the estate of the said NMM.
6. Such or further orders do issue necessary to preserve the interests and well being of the said NMM.
3. The application has grounds on the face of the Notice of Motion that the applicant is the brother of NMM who is aged and ill, that NMM is unable to manage himself without supervision of another as a result of mental illness, that the applicant and other family members were taking care of the NMM who has never been married in his life, that the said NMM has a mental illness that is not likely to heal, and that there was no existing guardian or Power of Attorney.
4. The application was filed with a supporting affidavit sworn by the applicant HRM on 27th March 2023 which amplifies the grounds of the application and annexes several documents on the said NMM (NMM), including a psychiatrist report from Moi County Referral Hospital Voi dated 15th March 2023, in which it is recorded that NMM suffers from schizophrenia with dementia, signed by Doctor Shem Jeremia.
5. On orders from this court, a written consent to the requests in the application dated 22nd May 2023 signed by LMM the mother and DWE the sister of NMM respectively was filed.
6. Having considered the application, documents filed and the provisions of the law, I am of the view that this is a case where this court should grant the orders sought in order to serve the best interests of NMM who is now seriously mentally challenged and cannot manage his own affairs.
7. I thus allow the application and order as follows:-
 1. NMM 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. HRM is hereby appointed legal guardian in respect of the affairs of NMM.
 3. The income and money of the said NMM namely monthly pension of Kshs. 7,000/= be paid to the applicant HRM and Kshs. 215,420.81 held at the NSSF be released to the applicant HRM with powers to access the money and apply the same to the maintenance and medication of the said NMM.
 4. I make no order as to the costs of this application.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF JUNE, 2023 IN OPEN COURT AT VOI.
HON. GEORGE DULU
JUDGE

