



**In re NWM (Miscellaneous Application E242 of 2022)  
[2023] KEHC 20305 (KLR) (Family) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20305 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E242 OF 2022  
PM NYAUNDI, J  
JUNE 15, 2023**

**IN THE MATTER OF**

**JWM ..... PETITIONER**

**RULING**

1. The Applicant JWM is the biological son of the subject NWM who has filed a Petition dated August 28, 2022 under Section 26 and 28 (1) (2) of the [Mental Health Act](#), Cap 248 laws of Kenya and he sought that he be appointed legal guardian of NWM and manager of her estate. The Petition is supported by the Affidavit of the Petitioner sworn on the same date.
2. The matter proceeded by viva voce hearing on the virtual platform on April 27, 2023.
3. The Petitioner depones that subject NWM is suffering from (Scizoffective Disorder and Comorbid early onset Dementia and Edentulism) and her rights are protected under the [Mental Health Act](#) Chapter 248 laws of Kenya.
4. The Petitioner avers that his mother was employed by TSC and retired on health grounds in 1995 as indicated in a letter dated June 13, 1995.
5. The Petitioner states that the said NWM, despite being of the age of majority is unable to communicate and comprehend effectively. The subject is unable to make decisions or act reasonably and also suffers memory lapses and thus unable to manage her affairs.
6. The subject NWM suffers from mental incapacity that hinders decision making and conduct of her affairs independently and ensuring her wellbeing.



7. This is supported by the Report dated July 13, 2022. The Doctor testified in Court, in his expert opinion stated she is not capable of managing her own affairs. The Doctor observes that her condition is  
  
' Chronic relapsing and usually lifelong and her symptoms are likely to get worse with time for various reasons including but limited to poor response to treatment, poor compliance to medication and long period prior to seeking treatment and socioeconomic stressors and has poor judgment thus fully dependent on her children to support her in all aspect as she is unable to engage in any viable economic activity nor seek treatment for her condition.'
8. In conclusion the Doctor diagnosed the Subject with Schizoaffective Disorder and comorbid early onset dementia and Edentulism
9. In addition, a letter from chief Ndeiya location states that NWM got medical illness on 1995 and she has been on medication.
10. The Petitioner attached an affidavit in support of petition by her sisters MWW and CNW consenting the Petitioner who is their brother to be appointed guardianship. The two also testified in Court.

### **Determination**

11. 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 guardian to the Subject as well as manager of the estate of the Subject.
12. 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 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
13. Section 28 (1) 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. The Petitioner/ Applicant will require to access funds from the subject's bank account Equity Bank of Kenya and funds from Sanlam for the purpose of maintaining the subject to the best possible medical condition. 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.'
14. From the evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition envisaged under Section 26 of the *Mental Health Act*.



## **Disposition**

15. In light of the above, the Court holds that: -

- i. NWM (the Subject) is hereby adjudged to be suffering from mental disorder pursuant to Section 26 of the *Mental Health Act*, Cap 248 Laws of Kenya.
- ii. JWM is hereby appointed the legal guardians to NWM
- iii. JWM is hereby appointed manager of the estate of NWM under Section 28 of *Mental Health Act* to manage her estate including any such description of moveable or immoveable 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.
- iv. JWM to access funds from the subject's Equity Bank and funds from Sanlam.
- v. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging NWM.
- vi. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of his appointment as the manager of the estate NWM.
- vii. As Manager of the Estate of NWM the Petitioner may dispose of the property only with the sanction of the court.
- viii. The matter will be mentioned before court on December 6, 2023 to confirm compliance
- ix. Costs to be met out of the Estate of the Subject

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 15<sup>TH</sup> DAY OF JUNE, 2023.**

**P M NYAUNDI**

**JUDGE**

**In the presence of:**

**Karani Court Assistant**

**Ruling**

