



REPUBLIC OF KENYA



**In re Estate of DNM (Deceased) (Miscellaneous Civil Application  
E090 of 2023) [2023] KEHC 19991 (KLR) (Family) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19991 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**MISCELLANEOUS CIVIL APPLICATION E090 OF 2023**

**PM NYAUNDI, J**

**JUNE 2, 2023**

**IN THE MATTER OF DNM**

**JUDGMENT**

1. Before this Court is a Petition dated April 20, 2023 by which the Petitioner PNN seeks the following orders: -
  - i. That the Petitioner be appointed as the manager, attorney, guardian, legal representative, and agent of the Estate and all the affairs of the said DJM.
  - ii. That the cost of this application be in the cause.
2. The Petition was supported by an Affidavit dated 20th April 2023 sworn by the Petitioner. The matter was canvassed by way of viva voce evidence on the online platform. The Petitioner who testified as PW2 told the Court that she is the wife of the Subject Patient, who is 61 years old.
3. The Petitioner stated that she was seeking to be appointed as Guardian of her husband's affairs and manager of his estate. She told the court that the patient has been unwell for the past three (3) years and that he is currently housebound at their home in Kahawa Sukari, Nairobi, and is therefore not in a position to manage his affairs. That the subject suffers from global atrophy and mild Leukoaraiosis. She has annexed to her Supporting Affidavit, a copy of the medical report of the patient dated 30<sup>th</sup> January 2023 by Dr K. Ndege (Annexure "D").
4. The Order of guardianship will enable the Petitioner handle the Subject's affairs including safeguarding his interest in his deceased's father's estate.
5. JMN, DWN, and SKN are the children of the subject and confirmed that they had no objection to the Petitioner being granted guardianship of their father. A sister to the Subject, MK corroborated the Petitioner's account of the health status of the Subject and that a guardianship order would be in his interests.



6. I have carefully considered this Petition, the Affidavit filed in Court as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs 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) 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 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]

7. The Petitioner has sought to be declared as Guardian and Manager of the Patient. To merit the above orders the Petitioner must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the Patient is incapable of managing his own affairs. The Petitioner testified that the Patient was diagnosed with global atrophy and mild leukoaraiosis. She testified that the patient has been unable to remember things and he cannot perform activities of daily living for example bathing, grooming, and feeding himself.

8. A Medical Report dated 20th April 2023 prepared by DR.K. Ndege of The Neurologist Fortis Suites, Hospital Road was produced as an exhibit. The Doctor diagnosed the subject with advanced Dementia. The report stated inter alia that: -

“The above has been unwell since the 15th of September 2021. he had progressive cognitive slowing, distractibility, loss of concentration, physical slowing, disorientation, and depression.

He is slow both physically and cognitively, He has developed tremors and stiffness of the right arm and some urinary incontinence.

Opinion: it is my opinion that he has fairly advanced dementia and is not able to manage his personal and financial affairs.”

9. The Subject’s children are all in agreement with this Petition for Guardianship and have signed consent to the Petition and confirmed their consent to the Court. The Subject currently lives with the Petitioner at their home and the Petitioner has always cared for him.



10. Based on the material availed to this Court I am satisfied that the Subject suffers from a mental illness under the terms of the *Mental Health Act*,2022. I am satisfied with the merit of this Petition and order as follows;

- i. DNM (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. PNN is hereby appointed the legal guardian to DNM
- iii. PNN is hereby appointed manager of the estate of DNM 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.
- iv. PNN to access funds from the subject's Bank Accounts.
- v. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging DNM.
- 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 her appointment as the manager of the estate DNM.
- vii. As Manager of the Estate of DNM the Petitioner may dispose of the property only with the sanction of the court.
- viii. The matter will be mentioned before court on November 30, 2023 to confirm compliance
- ix. Costs to be met out of the Estate of the Subject

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 2<sup>ND</sup> DAY OF JUNE, 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

**In presence of:**

D. Karani Court Assistance

