



**In re JWK (Miscellaneous Civil Application E261 of 2022)  
[2023] KEHC 20238 (KLR) (Civ) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20238 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E261 OF 2022  
PM NYAUNDI, J  
JUNE 2, 2023**

**IN THE MATTER OF**

**FC ..... 1<sup>ST</sup> PETITIONER  
AMK ..... 2<sup>ND</sup> PETITIONER**

**JUDGMENT**

1. Before this court is a petition dated November 16, 2022 by which the Petitioners FC and AMK seek the following orders: -
  - i. That a declaration to the effect that the Respondent is incapable of running her affairs and requires a Guardian to be appointed.
  - ii. That the petitioners be appointed as the guardian on behalf of the respondent.
  - iii. That the cost of this application be in the cause.
2. The petition was supported by an affidavit dated November 16, 2022 sworn by the petitioners. The matter was canvassed by way of viva voce evidence on the online platform on March 29, 2023.
3. The 1st petitioner who testified as PW1 told the court that she is the daughter of the Subject Patient and she resides in the United Kingdom. The 2nd petitioner PW2 is the grandson of the subject patient. He is the son of PK who is one of the subject's children. The other children are IM and NN.
4. The Petitioners stated that they were seeking to be appointed as Guardians of the subject affairs and manager of her estate. They told the court that the patient has an ongoing chronic illness that makes her lack capacity her own affairs and care for herself. That the subject suffers from medical dementia. They have annexed the Supporting Affidavit, a copy of the medical report of the patient dated November 11, 2022 by Dr. Franklin G. Ndirangu.



5. The Order of guardianship will enable the Petitioner handle the Subject's affairs including safeguarding her interest in the ongoing matrimonial case.
6. IWK, PNK, and NN are the children of the subject and have fully consented to petitioners being appointed as guardians. They have signed a consent dated 9th May 2023.
7. 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]
8. The Petitioners have sought to be declared as Guardians of the Patient. To merit the above orders the Petitioners 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 Petitioners testified that the Patient was diagnosed with medical dementia the 1st petitioner testified that the patient has an ongoing chronic illness that makes her lack capacity to manage her affairs and care for herself and her memory is becoming worse. The 2nd petitioner testified that the subject has been ill for a long time thus impeding her cognitive abilities and she cannot attend to her matters.
9. A Medical Report dated November 16, 2022 and February 20, 2023 prepared by DR.Franklin G.Ndirangu of Mamlaka Medical Centre was produced as an exhibit. The Doctor diagnosed the subject with Dementia. The report stated inter alia that:-

“The above patient is on follow-up at our facility and is being managed for Type II Diabetes Mellitus, Hypertension, Osteoarthritis, Bronchial Asthma, and Parkinsonism.

She has recently developed features of dementia with short-term memory loss, occurring on and off.



Opinion: She will require assistance from a trusted guardian in managing or administering her affairs.”

10. The Subject’s children are all in agreement with this Petition for Guardianship and have signed consent to the Petition.
11. 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. JWK (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. FC AND AMK are hereby appointed the legal guardian to JWK
  - iii. FC AND AMK are hereby appointed manager of the estate of JWK under section 28 of [Mental Health Act](#) to manage her 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. FC AND AMK to access funds from the subject's Accounts.
  - v. Pursuant to this appointment the Petitioners shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging JWK.
  - vi. In accordance with section 27(4) of the [Mental Health Act, 2022](#) the petitioners shall cause within 30 days the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate JWK.
  - vii. As Manager of the Estate of JWK, the Petitioners may dispose of the property only with the sanction of the court.
  - viii. The matter will be mentioned before the 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

