



**In re HWT (Miscellaneous Case 11 of 2022)
[2023] KEHC 21781 (KLR) (14 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21781 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE 11 OF 2022
PM NYAUNDI, J
JULY 14, 2023**

IN THE MATTER OF

TKT PETITIONER

JUDGMENT

1. Before this Court is a Petition dated May 23, 2022 by which the Petitioner T K T seeks the following orders: -
 - i. That a declaration to the effect that the Subject is a person suffering from a mental disorder within the definition of the *Mental Health Act*.
 - ii. That the Petitioner be appointed as the Guardian on behalf of the Respondent.
 - iii. That the petitioner be appointed as the general manager of the estate of the subject.
 - iv. That the cost of this application be in the cause.

2. The Petition was supported by an Affidavit dated May 23, 2022 sworn by the Petitioner. The matter was canvassed by way of viva voce evidence on June 29, 2023 on the online platform.

3. The Petitioner who testified as PW3 told the Court that he is the son of the Subject Patient, he is a farmer and he resides in Olkalau, Nyandarua County.

4. The Petitioner stated that he was seeking to be appointed as Guardian of the subject's affairs and manager of her estate.

He told the court that the subject is an elderly citizen and is incapable of managing her affairs. That the subject also suffers from age related dementia. They have annexed to the Supporting Affidavit, a copy of the medical report of the patient dated February 2, 2022 by Dr Francis Kaara.

5. The Order of guardianship will enable the Petitioner handle the Subject's affairs.



6. Rose Wanjiku Thuita, Leah Wairimu Macharia, Samuel Ng'ang'a Thuita, Freshia Warigia Thuita, Nelly Njoki Kaniu, Ruth Muthoni Thuita, Moses Kuria Thuita are the children of the subject and Peter Thuita Ng'ang'a who is the grandson have fully consented to petitioner being appointed as guardian. They have signed a consent dated May 23, 2022.

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: -

“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 Petitioner have sought to be declared as Guardian 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 her own affairs. The Petitioner testified that the Patient was diagnosed with age related dementia and is incapable of managing her affairs.

9. A Medical Report dated February 2, 2022 prepared by DrFrancis Kaara a Senior House Officer, Kenyatta National Hospital, Nairobi was produced as an exhibit. The Doctor diagnosed the subject with Dementia. The report stated inter alia that: -

“The above patient is a ninety-four-year-old elderly patient currently under management for age related Dementia.

This is a chronic condition that impairs an individual’s mind in carrying out duties of higher function with no documented effective therapy or cure.

She is currently dependent on her family for daily care including carrying out of her basic daily activities. She has severe impairment in her intellectual, cognitive and memory functions which are long term and irreversible.



Opinion: She is mentally not able to carry out any administrative functions with sound mind hence any such duties should be done on behalf of her.

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. HWT(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. TKT is hereby appointed the legal guardian to Hanah Wanjiru Thuita.
 - iii. T K T is hereby appointed manager of the estate of HWT 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. TKT to access funds from the subject's 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 HWT.
 - 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 HWT
 - vii. As Manager of the Estate of HWT, the Petitioner may dispose of the property only with the sanction of the court.
 - viii. The matter will be mentioned before the court on December 7, 2023 to confirm compliance.
 - ix. Costs to be met out of the Estate of the Subject.

Signed, Dated and Delivered Virtually in NAIROBI on 14th DAY OF July, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Court Assistant Doreen

3

MISC. APPL NO. 11 OF 2022

