



REPUBLIC OF KENYA



**In re KWG (Miscellaneous Application E165 of 2022)
[2023] KEHC 19539 (KLR) (Family) (4 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19539 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E165 OF 2022

EKO OGOLA, J

JULY 4, 2023

**IN THE MATTER OF SECTION 26 (1) & (3), AND 28(1) OF
THE MENTAL HEALTH ACT CAP 248, LAWS OF KENYA**

AND

**IN THE MATTER OF THE KWG (AN INCAPACITATED
PERSON ALSO SUFFERING FROM DEMENTIA)**

AND

**IN THE MATTER OF AN APPLICATION BY JWG AND AWG TO BE APPOINTED
GUARDIANS FR THE MANAGEMENT OF THE AFFAIRS OF THE ESTATE OF THE SAID
KWG WHO IS INCAPACITATED AND SUFFERING FROM VASCULAR DEMENTIA**

JUDGMENT

1. Before this Court is the Amended Petition dated 19th August 2022 by which the Applicants JWG and AWG pray this court for the following orders: -
 - a. That KWG be and is hereby adjudged to be a person suffering from dementia under Section 26 of the *Mental Health Act*, Cap 248 Laws of Kenya
 - b. The petitioners be appointed Guardian in respect of KWG
 - c. The Petitioners as the appointed guardians be allowed access and given lawful and valid instructions for the administration of all properties and funds held in the name of the subject herein and in general management of the affairs of her estate
 - d. The petitioners be granted such further relief as this Honorable court may deem fit and just in the circumstances.
2. According to the Petitioners who are daughters of the Subject patient, the Subject patient is 83 years old and lives with JWG (1st Petitioner) under her care, protection and maintenance. The subject patient



has suffered two strokes, one in October, 2018 and the other in November 2020. As a result, the Subject patient's cognitive functions have deteriorated and she has suffered vascular dementia. The Subject is bed ridden and does not have the ability to physically and mentally attend to any of her needs.

3. The subject is unable to properly administer and manage her affairs yet her medical expenses need to be met. The petitioners aver that the subject's property is in immediate need of management to avoid wasting away. The 1st Petitioner who lives with the subject and who is also the subject's primary caregiver is in need of funds to meet the subject's medical and personal needs.
4. I have carefully considered this Petition, the Affidavit and submissions by the Petitioners 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 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 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]
5. The Petitioners have sought to be declared as the Guardians and Managers 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 Petitioners stated that the Subject suffered stroke twice in 2018 then again in 2020 leading to vascular dementia. As a result, the Subject's cognitive functions are grossly impaired and is unable to attend to her affairs or interests. Therefore, the Petitioners seeks guardianship order to protect the interest of the Subject and to provide for medical and other needs of the subject.
 6. The Petitioners have produced medical records for the Subject. One report marked “JWG-2a” is from the Coptic Hospital prepared by Dr. Mary Gaber a Neurologist who diagnosed the subject



diagnosed with dementia. The second report marked “JWG-2b” was prepared by Dr. Silvanus Wabwire a Consultant Physician and Neurologist. The report in regard to the Subject stated that: -

“The above named was initially seen at our clinic in mid-November 2020 with acute onset of confusion, vomiting and weakness. Further evaluation and imaging revealed that she had suffered from a stroke. Further history revealed that she had suffered a previous stroke and admitted at Kenol Hospital.

At this initial review and subsequent review, she had difficulties with memory/recall, concentration, abstract thinking and judgment which all point towards dementia.

During her last review, she had knee pains and swelling and was subsequently diagnosed with osteoarthritis.

She requires assistance/supervision with her activities of daily living.”

7. 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](#). I am satisfied of the merit of this Petition and I hereby allow the Amended Petition dated 19th August, 2022 as prayed. The Petitioners JWG and AWG are appointed as Guardians and Managers for the Subject KWG .
8. In the discharge of her duties as the Guardian and Manager of the Subject, the Petitioner shall be governed by the Provisions of Section 27 of the [Mental Health Act](#) Cap 248 Laws of Kenya.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

M/s. Kiru for the Petitioners

Ms. Gisiele Court Assistant

