



**In re TKM (Miscellaneous Application E027 of 2023)
[2023] KEHC 21619 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E027 OF 2023
G MUTAI, J
AUGUST 3, 2023
IN THE MATTER OF THE MENTAL HEALTH ACT
AND
IN THE MATTER OF AN APPLICATION BY VSS
TO BE APPOINTED AS THE MANAGER AND GUARDIAN AD LITEM OF
TKM (PERSON WITH MENTAL ILLNESS)**

RULING

Introduction

1. The applicant, Dr. VSS is a successful medical practitioner based in Mombasa. He is a senior member of the Sikh Community within the said city. He has 2 sons both of whom are medical professionals. Dr. VSS has applied to be appointed as the manager and guardian ad litem of Ms. TKM, a person with mental illness, so that he can take care of her and ensure that she receives good care. For brevity Ms. TKM will hereafter be referred in this ruling as “the Patient”.
2. The Patient is a Kenyan of Punjabi origin. Her father, the former municipal engineer of Mombasa town is deceased. Her mother, the primary caregiver of the Patient hitherto, is KM. She is 87 years old and is presently sickly and bed ridden. The Patient has one brother, BKM and sister, AKM. Both siblings suffer from mental illness. The closet relative of the patient, other those aforementioned, is Mr. IM, a cousin. IM and the Patient have not been particularly close. He has signed a letter of consent vide which he agreed to the application now before the Court for the appointment of Dr.VSS as the Manager and guardian ad litem of the patient.
3. The applicant filed a petition dated 7th July 2023. He attached to his application a medical report prepared by Dr. Nawal Mbarak Khamis. Dr. Khamis works full-time with the Applicant. In his report



dated 29th June 2023 Dr. Khamis wrote that the patient was on psychotic medication until 2002 when she stopped. In his opinion, contained in his letter of 29th June 2023, he stated as follows: -

“her mental well being has significantly deteriorated over the years, and Ms. TKM is in my professional opinion not mentally stable to take proper care of herself and make any sound financial, social and political decisions. She is not able to read or understand any documents or consequences flowing from her action.”

4. The matter came before me on 26th July 2023. On the said date I made the following directions: -
 1. I ordered that the patient be taken to the Coast General Hospital for purposes of psychiatric examination; and
 2. I fixed the matter for hearing on 2nd August 2023. I directed that the petitioner and the examining doctor do attend court for hearing. I also ordered and the Patient be brought to Court so that the Court could make its own determination.
5. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the [Mental Health Act](#), as amended in 2022. A manager’s duty is to safeguard the property of the Patient. An appointment once made must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice of appointment in the Kenya Gazette. Section 28 (4) of the said Act provides that: -

“a manager shall perform the manager’s duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness”
6. Under the [Mental Health Act](#), the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Dr. VSS is not a “supporter” of the Patient as he wasn’t appointed in writing as such by the Patient. It is however my finding that being a person who has been taking care of the Patient as a senior member of the Sikh community he is a “representative” within the meaning of the Act and therefore has the locus to bring the instant application.
7. I have seen the particulars of the properties of the Patient. I have previously listed the names of her close relatives. I have had sight of the medical reports.
8. The patient was brought to Court. During the Court session, which was held in camera, the patient kept on mumbling gibberish and gesticulating wildly. She was unkempt and appeared to be grossly underweight for a person of her age. When questioned by the Court she was unaware of her age nor the place she was in at that time.
9. Dr. VSS testified that he had been the family doctor of Patient’s family for a long time. He had treated the Patient since 1995. They are members of his community. Dr. VSS is the Vice Chairman and a Trustee of the Sikh Community in Mombasa. He stated that the patient had been under the care of her mother. The mother is now old. Her two siblings also have a mental illness. The Applicant testified that there had been an occasion when the patient was lost for week week. During the said period she lived in the streets of Mombasa as a tramp. He prayed that the Court allows the application.
10. Dr. VSS listed the assets of the Patient as being: -
 1. A bank account number xxxx with Prime Bank, Dedan Kimathi Street, Mombasa in the name of KPM and TKM; and



2. Share of a house in Kizingo, Mombasa.
11. The second witness was Dr. Mwangome. He testified that he had examined her and found that she was aloof and that she talked with imaginary people. She heard imaginary voices and was responding to them. In his opinion the Patient is schizophrenic and cannot manage her estate due her permanent mental disability.
12. In re *CWN(a person suffering from mental disorders)* [2022] eKLR the Court stated: -

“The Petitioners have sought to be declared as guardians and managers 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 her own affairs.”
13. I would add that the third test is whether the application is in the best interest of the Patient. People with mental illnesses have diminished abilities to manage their affairs. Their situation is analogous to that of children. The court must be sure that the application was filed in the interest of the Patient. The orders that the court issues must be aimed at achieving the said goal.
14. I have read the reports of Dr. Nawal Mbarak Khamis and Dr. Charles Mwangome. I had the opportunity to observe the Patient in Court in very close quarters. I am satisfied that she has a mental illness. From the testimonies of the witnesses, the patient is unable to manage her own affairs. It will therefore be in her best interest that a manager/guardian ad litem is appointed to manage her estate. The manager/guardian ad litem will ensure that she receives the most appropriate care possible.
15. I am therefore satisfied that a caser has been made for the appointment of the Applicant as the manager/guardian ad litem of the patient. I, therefore, order and direct as follows: -
 1. The Applicant, Dr. VSS is appointed as the manager/guardian ad litem of the patient, Ms. TKM;
 2. The manager/guardian ad litem shall manager the estate of the patient in particular: -
 - a. Bank account number xxxx, Prime Bank, Dedan Kimathi Street branch; and
 - b. The Patient’s share of the house in Kizingo, Mombasa.

For the best interest of the Patient. He shall however not have the power to sell, charge or otherwise alienate immovable property of the patient without leave of Court;
 3. Pursuant to section 27 (4) of the *Mental Health Act*, the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette by the Court;
 4. The manager/guardian ad litem shall file the Inventory/statement of Account of the estate of the Patient within 6 months of his appointment;
 5. No order as to costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA THE 3RD DAY OF AUGUST 2023 VIA MICROSOFT TEAMS

GREGORY MUTAI

JUDGE



In the presence of: -

Ms. Kasmani for the Applicant

