



In re PKM (A Person Suffering from a Mental Disorder) (Miscellaneous Application E174 of 2023) [2023] KEHC 23256 (KLR) (Family) (22 September 2023) (Judgment)

Neutral citation: [2023] KEHC 23256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E174 OF 2023
PM NYAUNDI, J
SEPTEMBER 22, 2023
IN THE MATTER OF: THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF: SECTIONS 2, 26 AND 27 OF THE
MENTAL HEALTH ACT, CHAPTER 248 LAWS OF KENYA
AND
IN THE MATTER OF: PKM (A PERSON SUFFERING FROM A MENTAL DISORDER)
AND IN THE MATTER OF: AN APPLICATION BY APM
AND AM TO BE APPOINTED AS GUARDIANS OVER THE
AFFAIRS AND MANAGERS OF THE ESTATE OF THE SAID PKM**

IN THE MATTER OF

APM 1ST APPLICANT

AM 2ND APPLICANT

JUDGMENT

1. Vide summons presented under sections 2,26 and 27 of the [Mental Health Act](#), the applicants herein seek the following orders
 - a. Spent
 - b. That PKM be declared to be suffering from a mental disorder as defined in the [Mental Health Act](#), chapter 248 Laws of Kenya.



- c. That this honourable court be pleased to appoint APM and AM as the guardians of PKM
 - d. That this honourable court be pleased to appoint APM and AM as the managers of the estate and all the affairs of PKM
 - e. That costs of this application be borne by the estate of the said PKM
2. The application is supported by affidavits sworn on August 16, 2023 by APM and RM , the spouse and daughter of the subject respectively.
 3. The matter proceeded by *viva voce* evidence on the virtual platform.
 4. PW1, APM , testified that she is the wife of the subject having solemnised their marriage on June 6, 1965 at Lenin in Bulgaria as per civil certificate of marriage issued by the Lenin District People’s Council and certified copy of entry of marriage serial number 17xxxx dated December 28, 1987. The couple has lived together since solemnisation of their marriage to date. They currently reside in Loresho, Nairobi.
 5. The marriage was blessed with 2 children, the younger of whom is the 2nd applicant herein.
 6. She further testified that in recent years the subject’s health has continued to deteriorate, both physically and mentally. He has been diagnosed with dementia, has suffered multiple strokes, and suffers from hallucinations. The family has employed a care giver to attend to the subject.
 7. PW2 AM , she is daughter to the subject and lives close by to her parents. She has observed the subject’s health deteriorate over the years, currently he is wholly dependant on the care giver. She supports her mother in taking care of and attending to the subject.
 8. The subject has been diagnosed with alzheimer’s along with dementia.
 9. PW3 is RM, she is the eldest daughter of the subject and supports the application made by her mother and sister.
 10. PW4 TNG is the care giver of the subject. She is a trained nurse aid. In her opinion the subject is not able to manage his own affairs.
 11. The applicants made available to court medical report by Dr Juzar Hooker dated June 27, 2023. In the report the doctor observes that the subject was born in 1943. In the report the doctor states that the subject has moderately advanced dementia of mixed aetiology (vascular dementia/ vascular cognitive and gait disorder and alzheimer’s disease), with significant functional impairment in the setting of hypertension.
 12. The doctor concludes

This is to certify that he is therefore unable to discharge his own affairs, sign documents, operate bank accounts, and/ or ably look after his financial or business affairs and would be deemed to lack testamentary capacity at this point. We would strongly recommend that he have a court appointed guardian in his best interests.
 13. The court had an opportunity to see and observe the subject via the virtual platform and noted that he was hallucinatory, for the duration of the call, he kept warning the family of their imminent arrest by the police.

Determination

14. From the foregoing, the issue(s) that are to be determined by the court are: -



1. Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, cap 248.
 2. Whether the petitioner should be appointed as guardian to the subject as well as manager of the estate of the subject.
15. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. Section 26 1 (a) and (b) of the Act grants the court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
16. Section 28 (1) of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene, and upkeep. The applicant will require to access funds from the subject's bank account Equity Bank of Kenya and funds from Sanlam for the purpose of maintaining the subject to the best possible medical condition. Under section 26(3) of the Act it provides,
- “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 persons, including proper provision for his maintenance...”
17. From the evidence produced by the applicant, the medical report on record, it is not disputed that the subject is suffering from a mental disorder; a medical condition envisaged under section 26 of the *Mental Health Act*.
18. In light of the above, the court holds that: -
- i. PKM (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. APM and AM are hereby appointed the legal guardians to PKM .
 - iii. APM and AM are hereby appointed manager of the estate of PKM 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. Pursuant to this appointment the petitioner shall deliver to court and the public trustee, within 6 months, an inventory of the property belonging PKM .
 - v. In accordance with section 27(4) of the *Mental Health Act*, 2022 the applicants shall cause within 30 days the publication of notice in the gazette, informing the public of their appointment as the manager of the estate PKM .
 - vi. As manager of the estate of PKM the applicants may dispose of the property only with the sanction of the court.
 - vii. The matter will be mentioned before court on December 7th 2023 to confirm compliance.
 - viii. Costs to be met out of the estate of the subject.



SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 22nd DAY OF SEPTEMBER 2023.

P M NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

