



In re LWN (A Person Suffering from Mental Disorder) (Miscellaneous Civil Application E148 of 2023) [2023] KEHC 24897 (KLR) (Family) (13 October 2023) (Judgment)

Neutral citation: [2023] KEHC 24897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CIVIL APPLICATION E148 OF 2023
PM NYAUNDI, J
OCTOBER 13, 2023
IN THE MATTER OF LWN (A PERSON SUFFERING FROM MENTAL DISORDER)**

IN THE MATTER OF

FMN APPLICANT

JUDGMENT

1. Before this Court is a Petition dated 12th July 2023 by which the Petitioner FMN seek the following orders: -
 - i. That the court appoints FMN as the guardian manager of LWN, the patient herein suffering from mental disorder.
 - ii. That in the interim pending the hearing and determination of this matter, the court be pleased to appoint FMN as guardian of LWN for the purpose of managing and directing the company, Dofran Trade Labels Ltd, to enable it to remain a going concern.
2. The Petition was supported by an Affidavit dated 12th July 2023 sworn by the Petitioner. The matter was canvassed by way of viva voce evidence on the online platform.
3. The Petitioner who testified and told the Court that he is the husband of the Subject Patient and they have been married since 1977. They have two children who are BN and SKN.
4. The Petitioner stated that he was seeking to be appointed as Guardian of the subject manage and directing the company Dofran Trade Labels Limited. He told the court that the patient started experiencing a state of forgetting things, events and persons around 2011. She was diagnosed with senile dementia. He has annexed the Supporting Affidavit, a copy of the medical report of the patient dated 10th December 2010 by Dr. Daksha Hirani Ba, MSc, Dclin Psy, MAPS Clinical Neuropsychologist.



5. The Order of guardianship will enable the Petitioner handle the Subject's affairs including signing documents of Dofran Trade Labels Ltd where the subject, applicant and one other are directors of the said company.
6. BN And SKN are the children of the subject and have fully consented to petitioners being appointed as guardians. They have signed a consent dated 10th August and 14th August 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 Petitioner testified that the Patient was diagnosed with Senile dementia the petitioner testified that the patient started experiencing a state of forgetting things, events and persons around 2011. She does not communicate and is totally dependent on the applicant.
 9. A Medical Report dated 7th December 2010 prepared by DR. Daksha Hirani Ba, MSc, DclinPsy, MAPS Clinical Neuropsychologist was produced as an exhibit. The Doctor diagnosed the subject with Dementia. The report stated inter alia that: -

“Evidence of organic damage was indicated from the neuropsychological tests. Mrs. W may want to try and retain only the jobs within her work that she is efficient and able in to ensure responsible work practice and to ensure she is not open to exposed vulnerability.



For Mrs. W, her husband and carers to go through the booklet, ‘Coping with memory problems- a guide for patients carers and family’ to help manage Mrs. W’s current memory difficulties (given to Mrs. W and her husband).

It was advised that Mrs. W is a vulnerable adult who may be at risk of financial deception and that it may be advisable for Mr. N to contact a lawyer with regards to obtaining a power of attorney. This concept was explained to Mrs. W as she grasped it given her relative strength in language comprehension. She stated that this may be good idea as she had difficulty placing money and remembering what was kept where often forgetting amounts and places kept safely.’

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. LW (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. FMN is hereby appointed the legal guardian to LW.
 - iii. FMN is hereby appointed manager of the estate of LW 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. FMN is hereby appointed guardian of LW for the purpose of managing and directing the company, Dofran Trade Labels Ltd.
 - v. 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 manager of the estate LW.
 - vi. Matter to be mentioned on 14th March 2024 to confirm compliance

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 13th DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

In the presence of:

Libertine Court Assistant

