



REPUBLIC OF KENYA



In re NNN (A Person Suffering from Mental Disorder) (Miscellaneous Civil Application E137 of 2023) [2023] KEHC 24899 (KLR) (Family) (13 October 2023) (Judgment)

Neutral citation: [2023] KEHC 24899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CIVIL APPLICATION E137 OF 2023
PM NYAUNDI, J
OCTOBER 13, 2023**

JUDGMENT

1. Before this court is a Petition dated June 20, 2023 by which the petitioner JKN seeks the following orders: -
 - I. That the subject NNN be adjudged to be person suffering from mental incapacity.
 - II. That JKN be appointed Guardian of NNN.
 - III. That JKN be appointed Manager of the affairs of NNN.
 - IV. That JKN, be allowed to carry out responsibilities arising from being a guardian and manager.
2. The Petition was supported by an affidavit dated June 20, 2023 sworn by the petitioner. The matter was canvassed by way of *viva voce* evidence on the online platform. The petitioner who testified and told the court that she is the wife of the Subject Patient. The patient is a 74-year-old.
3. The petitioner stated that she was seeking to be appointed as Guardian of her husband's affairs and manager of his estate. She told the court that the patient has been unwell since 2019 and that he is dependent on her support at their home in Runda, Nairobi, and is therefore not in a position to manage his affairs. That the subject suffers from Dementia, which has progressively affected his decision-making process, judgment, attention and concentration since 2019. She has annexed to her supporting affidavit, a copy of the medical report of the patient dated June 3, 2021 by Dr. Sylvia Kimathi G.Mbugua (Annexure "jkn-19"). And medical report dated May 10, 2023 (Annexure "JKn-20").
4. The Order of guardianship will enable the petitioner handle the Subject's affairs including safeguarding his interest in his estate.
5. EMN, DKN, and IMN are the children of the subject and confirmed that they had no objection to the petitioner being granted guardianship of their father. They consented vide affidavit dated June 20, 2023.



6. 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]

7. The petitioner has sought to be declared as Guardian and Manager 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 his own affairs. The petitioner testified that the Patient was diagnosed with Dementia. She testified that the patient started to present symptoms of decreasing memory, general slowing and cognitive decline with impaired calculation, delayed recall and reduced verbal fluency making him unable to independently take care of his personal affairs.

8. Medical Reports dated February 18, 2019 prepared by Prof. Paul G.Kioy(Deceased), at Upper Hill Neurology Services, another by Doctor, Dr. Sylvia Kimathi G. Mbugua a Neurologist based at Aga Khan University Hospital in 2021 were produced as an exhibit. The Doctors diagnosed the subject with Lewy Body Dementia. The report stated inter alia that:-

“Njage, 74 years right handed male, was first seen in the Aga Khan University Hospital Neurology Clinic on 25/03/2021, with history of memory decline since 2018.Had been on follow-up by a private neurologist. He was losing his way in familiar environments, had become withdrawn and less engaging and communicative.

He has now developed parkinsonian features. He has commenced on levodopa after a DAT scan revealed features suggestive of Lewy Body Dementia.

Opinion: He needs help with most of his activities of daily living (ADL). His decision making, judgment and executive function are impaired.”



9. The Subject's children are all in agreement with this Petition for Guardianship and have signed consent to the Petition and confirmed their consent to the court. The Subject currently lives with the petitioner at their home and the petitioner has always cared for him.
10. 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. NNN (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. JKN is hereby appointed the legal guardian to NNN.
 - iii. JKN is hereby appointed manager of the estate of JKN 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 NNN.
 - v. 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 her appointment as the manager of the estate of NNN.
 - vi. As Manager of the Estate of NNN, the petitioner may dispose of the property only with the sanction of the court.
 - vii. The matter will be mentioned before the court on 14TH March 2024 to confirm compliance
 - viii. Costs to be met out of the Estate of the Subject

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

P. NYAUNDI

JUDGE

In the Presence of:

Libertine Court Assistant

