



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re PKM (Miscellaneous Civil Application 4 of 2020)  
[2022] KEHC 18093 (KLR) (10 February 2022) (Judgment)**

Neutral citation: [2022] KEHC 18093 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
MISCELLANEOUS CIVIL APPLICATION 4 OF 2020**

**J WAKIAGA, J**

**FEBRUARY 10, 2022**

**BETWEEN**

**IN THE MATTER OF MRS PKM ..... PLAINTIFF**

**AND**

**JMM ..... PETITIONER**

**JUDGMENT**

1. By a petition dated January 23, 2020 the petitioner moved the court for grant of the following orders;-
  - a. PKM be declared to be suffering from mental disorder as defined in the *Mental Health Act*, Cap 248 of the Laws
  - b. The petitioner be appointed the manager of the estate of the said PKM
  - c. The petitioner be appointed as guardian of the patient PKM
  - d. The petitioner be appointed as the Administrator of the estate of WNM in place of the said PKM in Murang'a Succession Cause Number 604 of 2014.
2. The petition was supported by an affidavit sworn by James Muturi Mantu in which he depones that the subject was his mother and that she suffers from a disease Semile dementia disease for which she had completely lost her physical and congenital functions and in support thereof produced medical records from her Doctor.
3. It was contended that she had started suffering from the disease and resultant mental disorder during the year 2018 and that with passage of time had lost ability to manage her personal affairs and was effectively dependent on her children for her financial, medical and personal care and upkeep.



4. It was deponed that she had been appointed as the Administrator of the estate of WNM Vide Murang'a Succession Number 604 of 2014 and therefore change had been unable to undertake the duties of administration of the estate in view of her mental incapacity.
5. It was concluded the Honourable Court had power of powers to appoint a manager to the estate of a person suffering from a mental disorder and also to appoint a guardian to assist a person suffering from mental disorder to conduct her matters and as such the petitioner should be so appointed.
6. On February 6, 2020 the Court (Kimondo) gave directions that all the beneficiaries of the estate to attend court together with certified copies of original medical report by Dr. Kanyange and consent from the beneficiaries of the subject estate which was complied with.
7. On November 17, 2021 when the matter was placed before me I declined to grant the orders sought based on the fact that as could be seen from the pleadings the petitioner herein main ground for petitioning this court was that the subject was unable to execute the estate of her husband and their father and directed the petitioner to file a further affidavit in respect thereof, which was duly done.
8. It was deponed therein that the subject PKM was currently admitted at Alpine Prestige Homes Ltd where she was receiving around the clock professional care and was unable to execute the grant.

### **Hearing**

9. When the matter came up for hearing before me, all the children of the subject appeared in court and confirmed having signed consent thereon and confirmed that they were in support of the petition.

### **Determination**

10. The following issues are identified for determination;-
  - a. Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act* Cap 248
  - b. Whether the petitioner should be appointed as guardian to the subject as well as manager to the estate of the subject.
  - c. Whether this court can appoint the petitioner as an Administrator of the estate of WNM in place of PKM in Murang'a Succession Cause No 604/2014.
11. The *Mental Health Act* provide for the care of persons who are suffering from mental disorder, custody of their person and for the management of the estate under Section 26 of the act which gives the court powers to grant such orders for management of the estate and guardianship. In the following terms;

“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”.
12. Section 27 provides for the appointment of a manager who for the purposes of the *Act* and *Penal Code* Under Section (4) it deems to be a trustee.



13. Section 28 of the Act proves for the management of the subject estate in details.
14. From the medical report provided to court by the petitioner, his siblings account and from the way the subject appeared before the court, there is no doubt in my mind and I find and hold that the same is suffering from a mental disorder, a condition contemplated under Section 26 of the Mental Health Act and is in need of special care and attention and I therefore hereby declare the subject to be so suffering pursuant to Section 26 of the Act.
15. Having so decided the subject to be suffering from a mental disorder, I hereby appoint the petitioner the manager of the estate of the subject Under Section 28 of the Act and further appoint the same as a guardian to the subject.
16. On the issue of Appointment of the petitioner as Administrator of the estate of WNM the in place of the subject I am of the considered view and hold that this Court does not have jurisdiction to grant the said orders. I take the view that the petitioner, having been appointed the manager of the estate of PKM (the subject herein) ought to move the Succession and Probate Court for appropriate orders.
17. In view of the matter herein, I make the following orders;-
  1. The subject PKM is hereby declared to be suffering from mental disorder
  2. The petitioner is hereby appointed manager of the estate of the subject within the marking of Section 28 of the Mental Health Act with powers to manage her estate and affairs
  3. The petitioner is hereby appointed as the legal guardian to the subject.
  4. The orders for the appointment of the petitioner as an Administrator of the estate of W.M.M in place of the subject is declined.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT MURANG'A THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**J. WAKIAGA**

**JUDGE**

