



GGW & another v Ad Litem for FGK (Family Miscellaneous Civil Case E015 of 2024) [2024] KEHC 15249 (KLR) (8 November 2024) (Judgment)

Neutral citation: [2024] KEHC 15249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS CIVIL CASE E015 OF 2024**

MA ODERO, J

NOVEMBER 8, 2024

**IN THE MATTER OF AN APPLICATION FOR AN
APPOINTMENT OF GUARDIAN AD LITEM FOR FRANCIS
GATANG'I KABIRU (A PERSON WITH SEVERE MENTAL
INCAPACITY/SENILITY DEMENTIA**

BETWEEN

GGW 1ST APPLICANT

HNG 2ND APPLICANT

AND

AD LITEM FOR FGK RESPONDENT

JUDGMENT

1. Before this Court is the Originating Summons dated 10th July 2024 by which the Applicants Grace Gakenia Waihenya and Henry Nduhiu Gatang'i seek the following orders:-
 1. That this Court do make a determination that Francis Gatang'i Kabiru (the subject person) herein has degenerated into senility and or dementia or severe cognitive impairment and requires guardianship for the management of his affairs.
 2. That the applicants be authorized to act as guardians, agents and or managers of the estate of Francis Gatang'i Kabiru with full power and authority to manage all the affairs of the subject person including receiving payments into and paying out of Bank account or accounts of the subject person in particular Account Number 607/59880/12792 at Baraka Sacco Limited.
 3. That costs of the application be provided for.



2. The summons was premised upon Sections 26(1), 27 and 28 of the *Mental Health Act*, Cap 248 Laws of Kenya Order 31 Rule 15 and Order 37 (Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and was supported by the Affidavit of even date sworn by the 1st Applicant.
3. The matter was canvassed by way of Vive Voce evidence on the virtual platform.
4. The 1st and 2nd Applicants told the court that they are the biological children of the subject Francis Gatang'i. They state that the subject has been suffering from Dementia for the past five (5) years and as a result is not in a position to manage his own affairs.
5. Pw3 Jane Muthoni Gatang'i is also a daughter of the subject. She states that she currently lives with the subject in her home in Ruiru, Kiambu County.
6. The Applicants pray to be appointed as legal Guardians and managers of the subjects estate.

Analysis and Determination

7. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of patient (subject) 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. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent 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. [own emphasis]
8. I have considered the application before this court, the evidence adduced by the witnesses as well as the documents annexed to the Petition. In order to warrant the appointment of a legal guardian, it must be shown that the subject suffers from a mental disorder which renders him/her incapable of managing his/her own affairs.
9. I have perused the Medical report dated 9th July 2024 prepared by Dr. Dt Ndirangu General Physician. The report indicates that the subject is an 87 year old widower who has been suffering from senile



dementia for past ten (10) years. That the patient is therefore intellectually incapacitated and is unable to make important decisions.

10. I was able to see the subject via the online platform. He was as elderly gentlemen who appeared nervous and frail. He identified his caregiver as his daughter Jane Muthoni. However the subject stated that he did not know why he was before the court.
11. It was obvious to me that the subject was not well.
12. The other children of the subject namely
 - (1) Charles Kabiru Gatang'i
 - (2) Jane Muthoni Gatang'i
 - (3) Simon Peter Munyiri Gatang'i
 - (4) Naftali Migwo Gatang'i
 - (5) Samuel Kamwenyi Gatang'i

all indicated that they were aware of and had no objection to this petition. They have all signed a consent dated 10th July 2024.

13. "In the case of RE N. M. K. (2017) eKLR the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

"In considering an application brought under section 26 and 27 of the *Mental Health Act* the court is guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [own emphasis]

14. The Applicants are the biological children of the subject. I have no doubt that they have at heart the best interests of their ailing father. The subjects other children have no objection to this application.
15. Finally I find that this application has merit. Accordingly this court makes the following orders
 - (1) The subject Francis Gatang'i Kabiru is declared to be a person suffering from a mental disorder within the terms of Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya.
 - (2) The Applicants Grace Gakenia Waihenya and Henry Nduhiu Gatang'i are hereby appointed as joint legal guardians for the subject and managers of the subjects estate.
 - (3) In particular the Applicants Grace Gakenia Waihenya and Henry Nduhiu Gatang'i are authorised to manage the Account of the subject Francis Gatang'i Kabiru held at Baraka Sacco Limited being Account Number 607/59880/12792.



(4) No orders costs.

DATED IN NYERI THIS 8TH DAY OF NOVEMBER 2024

MAUREEN A. ODERO

JUDGE

