



REPUBLIC OF KENYA



**In re Estate of HGM alias HGMN (Been a Person with Mental Illness
Namely - Dementia (Miscellaneous Civil Application E010 of 2024)
[2024] KEHC 14578 (KLR) (Family) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS CIVIL APPLICATION E010 OF 2024

PM NYAUNDI, J

NOVEMBER 21, 2024

**IN THE MATTER OF THE ESTATE OF HGM ALIAS HGMN (BEEN
A PERSON WITH MENTAL ILLNESS NAMEDLY – DEMENTIA)**

**APPLICATION FOR GUARDINASHIP AD LITEM BY MMN SUIING AS A SON AND NEXT
FRIEND TO HGM (A PERSON SUFFERING FROM A MENTAL ILLNESS – DEMENTIA)**

JUDGMENT

1. By Notice of Motion dated 8th May 2024, the Applicant M MN is seeking that he be appointed as a Legal Guardian for his father HGMN, whom it is stated that on account of mental malady is incapable of protecting his interests.
2. The subject is suffering from dementia (mental illness) disease of the brain and in the circumstance the subject has low capacity to comprehend issues, resulting to poor memory and lacks sound judgment and reasoning.
3. The matter was canvassed by way of viva voce evidence on the virtual platform on 21st August, 2024. The Court interviewed the subject and observed that he was disoriented.
4. The Applicant being the eldest son of the subject averred that he is a signatory of his subject's bank accounts where he has been handling affairs including subject's properties and it is his desire to access the subject's bank accounts legally and make decisions regarding his treatment.
5. Consequently, the Applicant further averred that the other four (4) siblings namely; CWM, DMM, TM and ATW have consented to this Application. The Court interviewed all the siblings and they all confirmed that they consented to the Application.
6. The Application is supported by the report of Dr. Kirtee B. Patel a Consultant Surgeon dated 15th February, 2024 who confirms that the subject was diagnosed with dementia for the last 15 years and currently his dementia has worsened to an extent that he does not recognize family members



7. The Doctor surmises the Subject's condition as follows-

H has dementia, his cognitive functions are severely impaired. His brain will shrink further affecting all his vital centers affecting his health severely thus need a full time nurse aid to help the subject with his daily activities.

Determination

8. The provisions of the *Mental Health Act* ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The *Mental Health Act*, at Section 26 provides that:

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 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.

9. The Court is satisfied from the evidence adduced in Court by the Applicant's request for appointment as personal representative to be able to provide adequate care to the subject and ensure his wellbeing. The Applicant is the eldest son of the subject authorized by other siblings of the subject through the viva voce evidence as well as signed consent dated 8th May, 2024 to obtain orders appointing his personal representative of the subject. The Applicant has demonstrated through medical evidence from doctor who attended to the subject that he is not in proper mental position to take care of his affairs and his welfare.

10. It is in the subject's best interest that the Applicant is appointed as his personal representative to ensure that funds are available for his upkeep and further medical attention in the future.

11. In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:

- a. HGM Alias HGM N is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
- b. M M N is hereby appointed under section 27 of the *Mental Health Act* as the Guardian of HGM Alias HGM N.
- c. MMN is hereby appointed manager of the estate of HGM ALIAS HGM N 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.

- d. Pursuant to this appointment MMN shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging HGM Alias HGMN.
- e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Applicant shall cause within 30 days the publication of notice in the Gazette, informing the public of his appointment as the manager of the estate HGM Alias HGM N.
- f. As Manager of the Estate of HGM Alias HGM N the Applicant may dispose of the property only with the sanction of the court.
- g. The matter will be mentioned before court on Mention on 27th March 2025 to confirm compliance.
- h. Costs to be met out of the Estate of the Subject.

SIGNED, DATED DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2024.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

