



REPUBLIC OF KENYA



**In re FWNK (Subject) (Miscellaneous Civil Application E242 of 2023)
[2024] KEHC 14606 (KLR) (Family) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CIVIL APPLICATION E242 OF 2023
PM NYAUNDI, J
NOVEMBER 21, 2024
IN THE MATTER OF THE MENTAL HEALTH ACT
IN THE MATTER OF FWNK
AND
IN THE MATTER OF AN APPLICATION BY MWN FOR
APPOINTMENT AS A PERSONAL REPRESENTATIVE OF FWNK**

JUDGMENT

1. *Vide* Originating Summons dated 30th October, 2023 supported by an affidavit by the Applicant seeks that she be appointed as a Guardian Ad Litem of FWNK, whom it is stated that on account of mental malady is incapable of protecting her interests.
2. The subject is suffering from a condition known as Organic 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 proceeded by way of *viva voce* evidence on the virtual platform on 18th July, 2024. The Applicant testified as the first witness. She is a daughter of the subject. The subject was diagnosed as suffering from Dementia. The subject is unable to manage her affairs. She has presented this application so that she can access the subject's bank accounts and make decisions regarding her treatment.
4. The Applicant's family nominated her to as Guardianship. The father to the Applicant and husband to the Subject, AN, was present in Court and confirmed that he supports the Application. In addition, the other children of the subject; VNG, GN and JN were present in Court. The Court interviewed them they each confirmed that their mother is ill and expressed support for the Application.
5. The Court interviewed the subject and observed that the Subject was disoriented.



6. The Application is supported by the report of Dr. Frederick R. Owili, Consultant psychiatrist who confirms that the subject was diagnosed with dementia and that she has poor memory and with personality change, resulting from organic disease of the brain.
7. The Doctor surmises the Subjects condition as follows-

F has dementia, her condition is characterized by progressive or persistent loss of intellectual functioning especially with impairment of memory, abstract thinking and often with personality change, resulting from organic disease of the brain therefore not fit to operate her account and to be assisted by Court to protect her affairs.

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. From the evidence provided to this court the Applicant's request for appointment as personal representative is to be able to provide adequate care to the subject and ensure her wellbeing. The Applicant is the daughter of the subject authorized by other siblings of the subject to obtain orders appointing her personal representative of the subject. The Applicant has demonstrated through medical evidence from doctors who attended to the subject that she is not in proper mental position to take care of her affairs and her welfare.
10. It is in the subject's best interest that the Applicant is appointed as her personal representative to ensure that funds are available for her 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. FWNK is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
 - b. MWN is hereby appointed under section 27 of the [Mental Health Act](#) as the Guardian of FWNK.



- c. MWN is hereby appointed manager of the estate of FWNK 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 MWN shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging FWNK.
- 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 her appointment as the manager of the estate FWNK.
- f. As Manager of the Estate of FWNK 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 AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2024.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

