



**In re PMG (Subject) (Miscellaneous Application E257 of 2024)  
[2024] KEHC 14647 (KLR) (Family) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14647 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS APPLICATION E257 OF 2024**  
**PM NYAUNDI, J**  
**NOVEMBER 21, 2024**  
**IN THE MATTER OF SECTION 26,27,28,29 AND 32 OF THE**  
**MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF PMG (A PERSON SUFFERING FROM**  
**MENTAL DISORDER)**  
**AND**  
**IN THE MATTER OF AN APPLICATION BY JNM TO BE**  
**APPOINTED GUARDIAN OVER THE AFFAIRS OF PMG AND**  
**ADMINISTRATOR OF HIS ESTATE**  
**IN THE MATTER OF GUARDIANSHIP OF SUBJECT -PMG**  
  
**IN THE MATTER OF**  
**JNM ..... PETITIONER**

**JUDGMENT**

1. The Applicant filed Notice of Motion dated 6<sup>th</sup> November 2024 and presented under Sections 26,27,28,29 and 32 of the [Mental Health Act](#), Order 32 Rules 15 of the Civil Procedure Rules, Section 1A, 1B and 3A of the [Civil Procedure Act](#), Article 43 (1) (a), (b) of [the Constitution](#) of Kenya 2010 the Application is supported by her affidavit seeking that she be appointed as a Legal Guardian for PMG (PNM) whom it is stated that on account of critical illness is prevented him from discharging his affairs and protecting his interests.



2. JNM (JNM) (Petitioner herein) is the wife of the subject having been married for 32 years as per the Marriage Certificate annexed to the Application. The couple has been blessed with two adult children namely; PVGM and VAM .
3. It is the Petitioner's statement that on 1<sup>st</sup> October, 2024 the subject was admitted at the Nairobi West Hospital for one month as a result of Ischemic stroke with brain edema which weakened the subject entire left side, caused mouth deviation to the right rendering him incoherent and unconsciousness.
4. The Petitioner stated that the doctor informed her that the subject's left side of the brain was seriously ailing impeding the subject's decision making process, mobility and coordination thus concluding that the subject is suffering from a mental disorder.
5. On the recommendation by the doctor the subject is receiving specialized medical care at home which according to the Petitioner is expensive since the resources required resemble setting up an intensive care unit at home complete with medical personnel who monitor his condition daily and the Petitioner and her children are not capable to cater for the medical care and general upkeep of the patient. The Petitioner has tabulated the anticipated expenses.
6. The matter came up for a hearing by way of viva voce evidence on the virtual platform on 14<sup>th</sup> November, 2024.
7. The Court interviewed the subject, who upon explanation was able to understand that he was in Court. The Court further informed him the nature of the proceedings and the orders sought by the Applicant. The Subject stated that he understood and consented to the application. The Court was able to observe that the Subject was confined to the bed.
8. In her evidence Applicant further averred that the two children; PVGM and VAM consented to this Application. The Court also interviewed them and both confirmed that their father is ill and expressed support for the Application.
9. The Applicant, wife of the subject averred that being appointed as legal guardian and manager of the estate of the subject will have authority to utilize affairs including subject's properties and make decisions regarding his treatment.
10. The Application is supported by the report of Dr. Sure Brian Steve dated 29<sup>th</sup> October, 2024 together with Dr. Mufaddal Shokat Fakhruddin a Consulting Doctor dated 30<sup>th</sup> October, 2024. The reports confirmed that the subject was diagnosed with Ischemic stroke. The doctors also confirmed that the subject has not been able to resume oral feeding and is on PEG tube feeding also the subject has remained in the HDU under strict neurological monitoring.
11. The Doctor surmises the Subjects condition as follows-  
The subject has remained to have neurological deficits. He has been on mechanical ventilator support due to respiratory involvement. The subject's left side of the brain is seriously ailing impeding his decision making process, mobility and coordination.
12. Despite patient discharged from the hospital, he is unable to speak, feed himself, take care of his hygiene, walk, make decision affecting his personal needs, pay his hospital bills and other related expenses as well as managing his affairs.
13. The Petitioner have annexed a well tabulated hospital bill, medical report dated 29<sup>th</sup> October, 2024 as well as discharge from hospital with a recommendation that the subject continues to receive specialized medical care at home.



## Determination

14. 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.
15. I have considered the evidence adduced in Court by the Applicant in support of her application for appointment as personal representative and I am persuaded that she is best placed to provide adequate care to the subject and ensure his wellbeing. I have also noted the signed consent by the subject's children dated 6<sup>th</sup> November, 2024, as well as medical evidence from doctors all of which confirm that the Subject is not in a position to independently manage his affairs.
16. 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.
17. In the circumstances the Notice of Motion dated 6<sup>th</sup> November 2024 is allowed and with the following orders:
  - a. PMG is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
  - b. JNM is hereby appointed under section 27 of the [Mental Health Act](#) as the Guardian of PMG.
  - c. JNM is hereby appointed manager of the estate of PMG 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 JNM shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging PMG.
  - 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 PMG.



- f. As Manager of the Estate of PMG 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 20<sup>th</sup> 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 21<sup>ST</sup> DAY OF NOVEMBER, 2024.**

**P. M NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

Ngethe Advocate for Petitioner

