



**In re Orders of Guardianship of VWG (A Person Suffering from a Mental Disorder)
(Miscellaneous Petition E007 of 2024) [2024] KEHC 15091 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS PETITION E007 OF 2024
AK NDUNG’U, J
NOVEMBER 20, 2024**

**IN THE MATTER OF SECTION 26(1), 27(1) AND 28 OF THE MENTAL
HEALTH ACT CAP. 248 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP
OF VWG (A PERSON SUFFERING FROM A MENTAL DISORDER)**

IN THE MATTER OF

HARUN GITAU GICHUHI PETITIONER

RULING

1. By way of a petition dated 1st September, 2024 Harun Gitau Gichuhi (hereinafter, the Petitioner) moved this court for orders;
 - a. This honourable court declares Veronica Wangui Gichuhi a person suffering from a mental disorder within the meaning of *Mental Health Act*.
 - b. This honourable court be pleased to issue orders appointing the Petitioner as a guardian of the affairs of Veronica Wangui Gichuhi and a manager of all her properties.
 - c. This honourable court do issue orders authorizing the Petitioner to do all things that the ward as a proprietor would be entitled to under law, including but not limited to executing all deeds and instruments, evidencing the title or right to the property, to receive or pay out and/or deliver any money or goods, to take over and/or institute any litigation and/or claims relating to the properties.
2. The application is based on grounds that;



1. Veronica Wangui Gichuhi (herein referred to as the Ward) is an adult female aged 71 years suffering from Dementia which is a mental disorder within the meaning of the *Mental Health Act*.
 2. The Petitioner is a child of the Ward.
 3. The Ward started experiencing a state of forgetting things, events and persons in 2022 and was diagnosed with Dementia in January 2023 and later in August 2023 she was diagnosed with Parkinson Disease.
 4. The condition has rendered the Ward incapable of handling her own affairs and managing herself.
 5. The Ward is dependent on the Petitioner and his siblings who have been her caregivers since she began ailing, and is unable to perform her day-to-day activities without their assistance.
 6. The Ward has rental properties which in 2020 she had engaged an agent to collect rent on her behalf and being aware of her condition he has since the month of March, 2024 not remitted rent which is used to cater for her upkeep. Efforts by the Petitioner and his siblings to have the agent remit the rent collected have borne no fruits.
 7. It is for these reasons that the Petitioner has approached this honourable court for orders appointing the Petitioner as guardian of the affairs and a manager of all the Ward's properties so as to protect her estate.
 8. It is in the interest of justice that this honourable court be pleased to appoint the Petitioner as guardian and a manager of the Ward's estate for the purpose of preservation of his properties.
 9. That this honourable court has the jurisdiction to grant orders as prayed.
3. The petition is further supported by the supporting affidavit of the Petitioner sworn 1st September, 2024 stating that he is the son of the Ward seeking to be appointed as the guardian to enable him manage the affairs of his ailing mother who requires round the clock care at this time that she cannot without proper comprehension manage herself and her estate needs a manager.
 4. That the Ward has other children namely;
 - a. Ann Wanjira Gichuhi
 - b. Martin Maina Gichuhi
 - c. Catherine Wambui Njuguna
 - d. Faith Wanjiku Gichuhi
 5. The Petitioner's siblings have given consent for him to be appointed as their mother's guardian and manager of her estate, as the agent who the Ward had engaged has not been remitting rent which is used for her upkeep, and tracing him has become futile.
 6. In view of the foregoing, the Petitioner seeks to be allowed to manage his mother's affairs and be authorized to manage all her properties, bank accounts, and other assets by collecting, maintaining and doing all that appertaining the same in order to protect the Ward's estate.
 7. Section 26(1) of the *Mental Health Act* gives the court jurisdiction to issue orders appointing a person of close relation or public trustee manager and guardian of another where such a person suffers from a mental disorder.



8. Section 27(1) of the *Mental Health Act* empowers the court to order specific or general powers as it may deem fit to the manager of the person declared to be suffering from a mental disorder.
9. Section 28 of the *Mental Health Act* states that the application for orders of guardianship or management of a mentally incapacitated person by a person of close relation is through a Petition.
10. I have considered the material placed before court. The main issue for determination is whether the court should grant the guardianship and management orders as sought in the application herein. Section 2 of the *Mental Health Act* Cap 248 provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”

11. The court is empowered to grant orders sought by the application in relation to custody, management and guardianship under Section 26 of the *Mental Health Act* Cap 248 which provides:

“(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
- c) 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.
- d) Where upon inquiries 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 just 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. Moreover, the authority to manage affairs of an estate of a patient is donated under Section 27 of the *Mental Health Act* whereas Section 28 of the same Act provides for management of the subject’s estate.
13. The condition precedent to the grant of the order in this category were correctly put in Re N M K [2017] eKLR where it was stated;

“In considering an application brought under Sections 26 and 27 of the *Mental Health Act*, the Court is guided by three main factors:

There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;



The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;

The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”

14. Similarly, in re Estate VFM (Patient) [2020] eKLR, the court held that:

- “ a) For the court to grant the application for appointment of a manager of the estate and guardian to the patient, the Petitioner/Applicant is duty bound to prove that:
- b) There exists medical proof by show of evidence confirming that the subject suffers from mental disorder.
- c) The petitioner/Applicant seeking to be appointed as manager or guardian must be legally fit to be so appointed.
- d) That due to the subject’s mental disorder, he or she is incapable of managing his/her own affairs independently and responsibly.
- e) That the proposed manager/guardian will manage the subject’s property effectively and efficiently for the benefit of the estate and welfare of the subject.”

15. The overall objective in an application of this nature must always be the welfare and best interests of the subject.

16. I have scoured through the affidavit in support of the petition and despite an averment at paragraph 4 thereof that the subject was diagnosed with dementia and later Parkinson disease, no medical evidence is annexed.

17. The omission of the medical evidence is fatal to the application. The same fails and is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF NOVEMBER, 2024.

A.K. NDUNG’U

JUDGE

