



**In re DWT (A Person Suffering From Mental Illness) (Miscellaneous Application E028 of 2023) [2024] KEHC 14365 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS APPLICATION E028 OF 2023**

**A MSHILA, J**

**NOVEMBER 15, 2024**

**IN THE MATTER OF SECTIONS 2, 26 AND 27(B) OF THE  
MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA**

**AND**

**IN THE MATTER OF DWT (A PERSON SUFFERING FROM MENTAL ILLNESS)**

**IN THE MATTER OF**

**RWT ..... 1<sup>ST</sup> APPLICANT  
LWT ..... 2<sup>ND</sup> APPLICANT  
PNWT ..... 3<sup>RD</sup> APPLICANT**

**JUDGMENT**

**Introduction**

1. Before the court for determination is the application dated 19<sup>th</sup> September, 2023 brought by way of Certificate of Urgency under the provisions of Sections 26 and 29 of the [Mental Health Act](#); the Petitioner seeks the following orders:
  - a. Spent.
  - b. That this Honourable Court be pleased to declare the subject DWT of these proceedings to be adjudged to be a person suffering from a mental illness within the meaning of Section 26 of the [Mental Health Act](#) Cap 248 Laws of Kenya.
  - c. That this Honourable Court be pleased to determine that DWT is unable to handle his own affairs.



- d. That this Honourable Court be pleased to appoint the Applicants RWT, LWT and PNWT as the joint legal guardians and managers of the estate and all affairs of DWT with power to do all that he is entitled to do all that he is entitled to do himself.
  - e. That this Honourable Court be pleased to grant the Applicants herein RWT, LWT and PNWT special permission to mortgage charge or transfer by sale gift surrender exchange or otherwise any immovable property belonging to DWT to assist with offsetting the cost of DWTs care.
2. The Application was supported by a Supporting Affidavit sworn by RWT, LWT AND PNWT the Applicants herein made on 19<sup>th</sup> September, 2023 and in which they deponed that the 1<sup>st</sup> Applicant was the wife of the subject and the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are the biological children of both the subject and the 1<sup>st</sup> Applicant; they were competent to make this affidavit and that they had the authority and the respective consents of the children of the subject to make the Affidavit.
  3. As a result of the mental condition the subject is unable to do any physical chores for himself and other day-to-day activities and requires assistance; he is mute, unable to communicate and manage his affairs and requires round the clock care and assistance; he is unable to understand formal documents and or make rational decisions on his own or take care of his affairs; At the hearing of the Application Dr.Johnson Kilonzo Mutiso a professional psychiatrist who was attending to the subject testified on the subjects mental stability and incapacity and medical treatment and produced the medical report marked as PExh.1;
  4. The Application was unopposed and the Applicants urged the court to adjudge the subject as a person suffering from a mental disorder and to appoint them as his guardians over the subject to enable them protect his estate from waste;

### **Issues for Determination**

5. Having perused the application and upon hearing the medical expert evidence this court finds that the only issue framed for determination is whether the orders sought are merited.

### **Analysis**

6. Section 2 of the *Mental Health Act* Cap 248 provides that: -

“A person suffering from a 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.”
7. Further on the issue relating to custody, management and guardianship is provided 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.”
8. The Applicants have produced medical evidence that the subject is suffering from a mental disorder characterized by lack of insight and is unable to take care of himself and his day to day business and affairs; the subject is mute and incommunicado and that his decision making process is non existent; This condition has been confirmed by the medical expert evidence;
  9. Upon observing the subject at the hearing hereof, it is evident the subject is elderly; he was seated on a chair but could only hear but was not able to communicate or express himself; he was also non-cognitive in time and space and persons; he had difficulty responding to simple greetings and instructions;
  10. The doctor formed the opinion that the subjects condition arose from dementia; the subject was totally dependent on others and his affairs would have to be handed over for management by others;
  11. Going by the medical evidence and the subjects current mental stability this court is satisfied that the subject is unable to make any rational decision and needs assistance.
  12. This court is satisfied that granting the Applicants the orders sought would be in the best interest of the subject whom this court finds to be a person who requires to be managed as he suffers from a mental disorder;
  13. This court is also satisfied that this is a suitable case for the issuance of the orders sought as the subject is found to be a person who needs his affairs to be managed.

### **Findings and Determination**

14. For the foregoing reasons this court makes the following findings and determinations;
  - i. The Application is found to have merit and it is hereby allowed.
  - ii. The subject herein DWT is hereby adjudged to be a person suffering from a mental disorder pursuant to Section 26 of the [Mental Health Act](#);
  - iii. This court hereby appoints the Applicants RWT, LWT AND PNWT to be the guardians of the subject DWT
  - iv. This Order shall not include distribution of the estate of the Subject as set out in the Inventory and the Petitioners shall in particular do the following:-



- a. Manage the subject's health care;
- b. Receive proceeds from the estate;
- c. Utilize these proceeds to cater for the subject's medical expenses and maintenance;
- d. To render to family members and other beneficiaries regular yearly accounts on the status of the estate of the subject.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Joyce Gathoni – Applicants

