



**In re PNG (Subject) (Miscellaneous Application E214 of 2024)
[2024] KEHC 14218 (KLR) (Civ) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14218 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E214 OF 2024

SN RIECHI, J

NOVEMBER 7, 2024

IN THE MATTER OF PNG (SUBJECT)

IN THE MATTER OF

JWG PETITIONER

JUDGMENT

1. The Petitioner Judy Wanjiru Gikonyo is biological daughter of the subject . The petitioner in her application dated 26th September ,2024 is seeking orders;
 - i. That, the Petitioner be appointed as interim guardian of Priscilla Njoki Gikony (hereinafter the Subject) pending the hearing and determination of the Application.
 - ii. That, the Petitioner be appointed as interim guardian of the Subject pending the hearing and determination of the Petition.
 - iii. That, the Petitioner be appointed as interim manager of the estate and over the affairs of the Subject and to thereupon access, make enquiry, take inventory, take control and manage all the estate of the Subject and in addition take all preservatory measures thereto pending the hearing and determination of the Application.
 - iv. That, the Petitioner be appointed as interim manager of the estate and over the affairs of the Subject and to thereupon access, make enquiry, take inventory,take control and manage all the estate of the Subject and in addition take all preservatory measures thereto pending the hearing and determination of the Petition.
 - v. That, the Petitioner be granted access to Kenya Commercial Bank Account No. 1103293842 belonging to the Subject for the benefit of the Subject's health and for her sustenance pending the hearing and determination of the Application



- vi. That, the Petitioner be and is hereby granted access to Kenya Commercial Bank Account No. 1103293842 belonging to the Subject for the benefit of the Subject's health and for her sustenance pending the hearing and determination of the Petition.
 - vii. That, the costs of this application be provided for.
2. This Petition is premised on the grounds;
- i. That, the Subject has been in good health until sometime in the year 2018 when she was diagnosed with hypertension when she started managing the condition.
 - ii. That, over time the Subject's medical condition deteriorated and on 22nd October 2018, she was accompanied to hospital for medical treatment by her daughter, the Petitioner, and was admitted to Lifebridge Hospital where she was diagnosed and found to be suffering from dementia and hypertension by Dr. Rodgers.
 - iii. That, during the hospital visit, she was treated for Hypertension and Dementia as per the discharge summary from said hospital.
 - iv. That, consequently, upon the Subject's return home, the illness continued to affect her mental capacity. In particular, the patient seemed forgetful and aggressive, often disappearing from her home and is to That extent incapable of managing and administering her property, business matters, legal and financial transactions and other dealings and affairs of a similar kind, and as set out under the *Mental Health Act*.
 - v. That, the Subject has been undergoing regular treatment and observation by a medical Specialist under the continued care of her immediate family members including the Petitioner at her home. That, the Subject now requires 24-hour nursing care and is unable to do anything for herself.
 - vi. That, as a result, the Subject's personal affairs and estate require immediate care, attention and preservation.
 - vii. That, in the circumstances, the Petition is merited to be heard urgently as the Petitioner is not able to meet the Subject's financial need needs as well as the necessary treatment of the Subject, whose health continues to deteriorate.
 - viii. That, the Petitioner is the daughter of the Patient and in the interest of justice she is appointed as her guardian to safeguard her Estate.
 - ix. That, the Petitioner understands her legal obligations once appointed guardians to the patient in line with the provisions of the *Mental Health Act*.
 - x. That, unless this Honourable Court issues the guardianship order and the consequent orders sought on the face of the application to the Applicant, the Subject's health and well-being will be adversely affected.
 - xi. That, the application will not in any way prejudice or occasion injustice to anybody.
3. The Petition is also supported by petitioner's affidavit sworn on even date. The petitioner reiterated the averments in her grounds of the application. She further briefly deponed That she wishes to be appointed as guardian of the subject who is 80 years old. She deponed the subject medical condition deteriorated and on 22nd October 2018, she was admitted to Lifebridge hospital where she was



- diagnosed and found to be suffering from dementia as evidenced by a copy of discharge summary attached to the application,
4. The petitioner deponed further That the subject has been undergoing regular treatment by a medical specialist under continued care of her immediate family members including the Petitioner at Home as evidenced by a copy of Medical Report by Dr.Mbugua P attached to the application.
 5. This petition was canvassed by viva voce evidence. The Petitioner Judy Wanjiru Gikonyo testified That the subject is her mother and married to Julius Gikonyo Ngotho.
 6. Julius Gikonyo Ngotho testified That the subject is his wife. They are married since 1955 and she is noe 80 years old and he is 89 years old. He testified they stay together in Nyahururu. The subject had dementia since 2018. He testified That they took her to hospital in Nairobi where she was x-rayed. He testified dementia is progressive. She does not remember his name. He stated they have four children who are alive. She has money in KCB at Nyahururu Branch. She testified That she was a teacher and her pension from TSC is banked at KCB. He testified That he wants Judy to take responsibility as she is the one who pays their expenses.
 7. Beth Muthoni Gikonyo, Jane Njeri Gikonyo and Geoffrey Macharia Gikonyo testified That the subject is their mother and they support the Petition.
 8. This court also observed the subject virtually and the court tried to engage the subject but she is not coherent.
 9. The court has exhaustively considered all the material placed before it, the main issue for determination is whether the court should grant the guardianship and management orders as sought in the application herein.
 10. 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. The authority to manage affairs of an estate of a subject 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 court in Re N M K [2017] eKLR considered what should guide the court when applying Section 26 and 27 of Cap 248. The held as follows:

“In considering an application brought under sections 26 and 27 of the [Mental Health Act](#), the Court is guided by three main factors:

 - i. There must be medical evidence warranting the determination by the Court That the Subject suffers from mental disorder;
 - ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
 - iii. The Court must be satisfied That a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”
14. Before this court there is a medical report dated 24th September 2024 prepared by Dr.Mbugua P, Mental health and Psychosocial support services from Health,Wellness and Nutrition Nairobi County who stated That;

“ She was diagnosed with a neurocognitive disorder 8 years ago,characterized by progressive decline in memory and decision making....”
15. From the evidence and medical report, I am satisfied That the subject suffers from mental illness under section 2 of the Mental Act, the same has adversely affected her cognitive and the ability to take care of her affairs. The Subject lacks the mental capacity to manage her affairs which my view falls within the definition of Section 2 of the [Mental Health Act](#) Cap 248.
16. Having settled the issue of whether the subject should be declared as a person suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248, and That, she is suffering from mental disorder to such an extent as to be incapable of managing her affairs,the court is tasked with determining whether the petitioner should be appointed as guardians/ managers to the subject .
17. Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative. This court thereof under section 26 of the [Mental Health Act](#) appoints the petitioner Judy Wanjiru Gikonyo as guardian to Priscilla Njoki Gikonyo Caroline (Subject).The Petitioner is also appointed to manage the subject's estate.
18. The Petitioner Judy Wanjiru Gikonyo is hereby granted access to Kenya Commercial Bank Account No. 1103293842 belonging to the Subject for the benefit of the Subject's health and for her sustenance pending the hearing and determination of the Petition.
19. The duties of the managers are as stipulated in Section 27 of the Act as:-



27.

- (1) The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including—
 - (a) an order making provision for the maintenance of the person;
 - (b) an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and
 - (c) an order making provision for the payment of the person's debts.
- (2) The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of That person.
- (3) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
- (4) The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.
- (5) Within fourteen days of the Gazette Notice under subsection (4), any person may lodge an objection to the person appointed as manager.

20. In their duties they must comply with Section 28 and 29 of the Act.

- (1) Where a manager is appointed under this Part, the court may, upon considering the nature of the property whether movable or immovable, and subject to subsection (2), make such orders as die court may consider necessary for the management of the estate by the manager.
- (2) The manager shall not, without the approval of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
 - (b) lease any such property for a term exceeding five years; or
 - (c) invest in any securities other than those authorized under the [Trustee Act](#).
- (3) A manager shall not invest any funds or property belonging to the estate managed under this section—
 - (a) in any company or undertaking in which the manager has an interest; or
 - (b) in the purchase of immovable property under the authority of section 4 (1) (d) of the [Trustee Act](#) without prior consent of the court.
- (4) A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.
- (5) Every conveyance or other instrument made pursuant to an order of the court under this Part shall be valid.

“29. Inventory of property



1. A person appointed to be a manager of the estate of a person with mental illness under this Part shall, in the prescribed form, within six months of the date of appointment, deliver to the court and to the Public Trustee an inventory of—
 - a. the property belonging to the person in respect of whose estate the manager has been appointed;
 - (b) all sums of money, goods and effects the manager receives on account of the estate; and
 - (c) a statement of debts owed by or due to such person with mental illness.

21. In accordance with the provisions of Section 33 of the *Mental Health Act*, the petitioner will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2024

S N RIECHI

JUDGE

