



**In re MWN (Miscellaneous Case E096 of 2024)
[2024] KEHC 13605 (KLR) (4 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CASE E096 OF 2024
MA ODERO, J
NOVEMBER 4, 2024**

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS NEXT
FRIEND, GUARDIAN AND MANAGER OF THE AFFAIRS AND ESTATE OF MWN
AND**

**IN THE MATTER OF SECTION 26(1) OF THE MENTAL
HEALTH ACT CHAPTER 248 LAWS OF KENYA AND ORDER
32 RULES 1 TO 15 OF THE CIVIL PROCEDURE RULES 2010**

AND

IN THE MATTER OF MWN(A PERSON OF UNSOUND MIND)

BETWEEN

RWN PLAINTIFF

AND

MWN DEFENDANT

JUDGMENT

1. The Applicant RWN has filed a Notice of Motion dated 27th August 2024 seeking the following orders:-
 - “1. That RWN be and is hereby appointed as the next friend and guardian of MWN (a person of unsound mind)
 2. That RWN be and is hereby appointed the manager of the affairs of MWN (a person of unsound mind)
 3. That there be no orders on costs”



2. The application which was premised upon Section 26 (i) of the *Mental Health Act* Chapter 248 Laws of Kenya and order 32 Rules 1 to 15 of the Civil Procedure Rules was supported by the Affidavit of even date sworn by the Applicant.
3. The matter was canvassed by way of Vive Voce evidence on the virtual platform.
4. The Applicant who is the biological daughter of the subject MWN told the court that her mother fell ill with a mental disorder (depression) in the year 1997. The Applicant lives with the subject and takes care of all her needs as the subject's husband PNK passed away on 16th June 2020. Annexed to the supporting Affidavit is a copy of the husband's Death Certificate Serial No. 1156158.
5. The Applicant told the Court that the subject is not able to manage her own affairs and that in fact the subject burnt all her certificates and documents. The Applicant prays to be appointed as legal guardian for the subject and manager of her affairs.

Analysis And Determination

6. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of patient (subject) as follows:-

“ Order for custody, management and guardianship.

 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. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent 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. [own emphasis]
7. In order to warrant the appointment of a legal guardian it must be demonstrated that the subject suffers from a mental disorder rendering her incapable of managing her own affairs.
8. All the witnesses who testified in this matter who were the children of the subject stated that their mother has been afflicted with a depressive disorder since the year 1997. The court was told that as a result of her condition the subject even burnt all her belongings including her official documents.



9. Letters dated 14th August 2024 from the chief of Giachugu Location, Mukurwe-ini Sub-County and 19th December 2022 from the same chief confirm that the subject suffers from a mental disorder which caused her to destroy all her own belongings.
10. I have perused the Medical report dated 19th December 2022. The report indicates that the subject has been under treatment for depressive illness since the year 1999. That her condition has deteriorated due to her refusal to take the prescribed medication.
11. A follow up medical report dated 13th August 2024 was prepared by DR NYAGA a consultant Psychiatrist based at Mukurwei-ini Hospital. He confirms that the subject has been ill since 1999 and that her condition became worse following the demise of her spouse in the year 2020. The doctor opined that the subject was not in a position to manage her own affairs.
12. I was able to see the subject via the online platform. She was an elderly lady who appeared apprehensive. She refused to face the camera or to respond to any questions. I am satisfied that the subject shows clear signs of a mental disorder.
13. The other children of the subject, who are the siblings of the Applicant namely
 - (a) PJGN
 - (b) RWN
 - (c) JKN
 - (d) RWNN

all indicated that they were aware of this application for Guardianship and had no objection to the same. The siblings have signed a consent dated 27th August 2024.

14. “In the case of RE N. M. K (2017) eKLR, the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

“In considering an application brought under section 26 and 27 of the *Mental Health Act* the court is guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [own emphasis]

15. The Applicant is a daughter to the subject. I have no doubt that she will act in the best interest of her mother. No objection has been raised to this petition.
16. Finally I find merit in this application for Guardianship. The same is allowed and the court makes the following orders:-
 - (1) The subject MWN is declared to be a person suffering from a mental disorder within the terms of Section 26 of the *Mental Health Act* Cap 248 Laws of Kenya.



- (2) The Applicant RWN is hereby appointed as legal Guardian for the subject and Manger of her Estate
- (3) No orders on costs.

DATED IN NYERI THIS 4TH DAY OF NOVEMBER 2024

MAUREEN A. ODERO

JUDGE

