



REPUBLIC OF KENYA



**Karumba & another v Waithuki & 2 others (Miscellaneous Case E019 of 2024) [2024] KEHC 13423 (KLR) (4 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13423 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CASE E019 OF 2024  
MA ODERO, J  
NOVEMBER 4, 2024**

**BETWEEN**

**CHRISTINE WAMBUI KARUMBA ..... 1<sup>ST</sup> APPLICANT**

**JOSEPH KARIUKI KARUMBA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REGINA WANGUI WAITHUKI ..... 1<sup>ST</sup> RESPONDENT**

**JAMES MAINA KARUMBA ..... 2<sup>ND</sup> RESPONDENT**

**ROSE NYAMBURA MWANGI ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Applicants herein Christine Wambui Karumba and Joseph Kariuki Karumba have filed the Notice of Motion application dated 18<sup>th</sup> September 2024 seeking the following orders:-
  - “ 1. That the Court do appoint the Applicants herein as guardians for the person (subject) namely WKN(aged mother)
  2. That this Honourable Court gives further directions it may deem necessary for the welfare of the aforesaid aged person
  3. That the cost of this application be provided for.
2. The petition was supported by the Affidavit of even date sworn by the 1<sup>st</sup> Applicant Christine Wambui Karumba. The matter was canvassed by way of Vive Voce evidence on the virtual platform.
3. The Applicants are the biological children of the subject WKN. They told the court that their mother has been ailing having developed dementia about four (4) years ago.



4. That the subject is an elderly woman of approximately 81 years and currently resides with the 1<sup>st</sup> Applicant in her home. The Applicants told the court that the subject who is unable to manage her own affairs and has been named as a party in Nyeri High Court Succession Cause No. 18 of 2018.
5. The applicants pray to be appointed as legal Guardians for the subject in order to enable them represent her in the court case and to manage the affairs of the subject.

### **Analysis and Determination**

6. I have considered the application before this court, the evidence adduced by the witnesses as well as the documents annexed to the application.
7. 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 a person suffering from mental, a disorder. [own emphasis]
8. In order to merit the orders of Guardianship being sought it must be shown that the subject suffers from a mental disorder which renders her incapable of managing her own affairs.
  9. I have perused the medical report dated 11<sup>th</sup> September 2024 (Annexure ‘CWK 1’) prepared by Dr. Ian M. Kanyanya a consultant Psychiatrist. The Report indicated that the subject has been under the care of the Psychiatrist for the past five (5) years. That the subject was extremely forgetful and dull and suffered from confusion, irritability as well as disorientation in time and place. The subject had difficulty communicating.
  10. The Doctor opined that the subject suffers from ‘Dementia’ and is unlikely to make a full recovery. As such she will have to depend on her family for day to day care as well as to make decisions for her.
  11. I was able to see the subject online. She was an elderly lady seated in a chair. She was unable and/or unwilling to answer any questions put to her by the court. The subject appeared dull and disinterested in her surroundings. It was clear to me that the subject was not well.



12. The other children of the subject who are the siblings of the Applicants namely

- Regina Wangui Waithaka

- James Maina Karumba

- Rose Nyambura Mwangi

all indicated to the court that they were aware of this application and had no objection to the same. The siblings all signed a consent dated 23<sup>rd</sup> October 2024.

13. “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]

14. The Applicants are the biological children of the subject. I have no doubt that they will uphold best interests of their mother. All the other siblings have consented to this application.

15. Finally I find merit in this motion and make the following orders.

- (1) The subject WKN 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 Applicants Christine Wambui Karumba and Joseph Karumba and Joseph Kariuki Karumba are hereby appointed as joint legal guardians for the subject and managers of her Estate.
- (3) No orders on costs.

**DATED IN NYERI THIS 4<sup>TH</sup> DAY OF NOVEMBER 2024**

**MAUREEN A. ODERO**

**JUDGE**

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