



**In Re ESM (Mental Health) (Miscellaneous Application E029 of 2024)  
[2024] KEHC 15812 (KLR) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15812 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E029 OF 2024  
AN ONGERI, J  
DECEMBER 13, 2024  
IN THE MATTER OF ESM  
AND  
IN THE MATTER OF MENTAL HEALTH ACT CHAPTER 248 OF THE LAWS OF KENYA**

**BETWEEN**

**ESM ..... PATIENT**

**AND**

**JK ..... APPLICANT**

**JUDGMENT**

1. The Applicant in this case JK filed the application dated 27<sup>th</sup> September 2024 under Section 27(1)(a) of the *Mental Health Act* Cap 245 of the Laws of Kenya and also Section 26(3), 1A, 1B, 3A and 63(c) and (e) of the *Civil Procedure Act* seeking for orders of appointment as the legal guardian of the subject (ESM).
2. The application is based on the following grounds:-
  - i. That ESM, the patient is the registered land owner of the subject property known as Title Deed Number Mbololo/Tausa/4XX9 measuring approximately 1.62Ha of Registry map Sheet No. 50 situated within Mbololo Location in Taita Taveta County.
  - ii. That ESM, the patient sold the said property to JMM on 4<sup>th</sup> January 2019 while in good status.
  - iii. That on or about 2021 ESM started the process of transferring the said property to the Purchaser and she was unable to proceed because she became restless and started wondering around and that is when the Applicant noticed the mental disorder and she was diagnosed with Schizo-affective disorder and Pre-senile Dementia.



- iv. That since before she has been well and has never been treated and/or diagnosed with Schizo-effective disorder despite her current poor reasoning and concentration hence Doctor's report "Dr. Shem Jeremiah" from Moi County Referral Hospital, Voi that ESM is a patient suffering from senile dementia.
  - v. That the Applicant asserted that from the professional reports that ESM, the patient is suffering from mental disorder and urge the court to find as so.
  - vi. That ESM, the patient is suffering from mental disorder to such an extent as to be incapable of managing her own affairs independently or responsibly and is not dangerous to herself or to others or likely to act.
  - vii. That around September 2024 while on Land Control Board, ESM, the patient was also unable to execute a transfer of the said property to JMM, the Purchaser and the Applicant was advised by the concerned authority to obtain an order of guardianship so as to proceed with the execution and transferring of the said property in favour of the purchaser, JMM on behalf of ESM.
  - viii. That if the orders sought herein are not granted by this Honourable Court, the Applicant will suffer as he will not proceed with the execution and transferring of the said property in favour of the Purchaser on behalf of ESM, the patient who is of mental disorder.
  - ix. That it is in the best interest of the patient, ESM that the orders sought herein are granted to enable the Applicant proceed with the process of transferring a property known as Title Deed Number Mbololo/Tausa/4XX9 to JMM, the purchaser.
3. The application is supported by the affidavit of the Applicant sworn on 27<sup>th</sup> September 2024.
  4. The Applicant stated that the subject who is his biological mother sold land to one JMM on 4<sup>th</sup> January 2019 while still in good health.
  5. That subsequently the subject fell sick and is currently suffering from senile dementia and was unable to complete the exercise of transferring the said property being land Parcel No. Mbololo/Tausa/4XX9 measuring 1.62Ha situated at Mbololo Location in Taita Taveta County.
  6. The Applicant has availed a report from Dr. Shem Jeremiah from Moi County Referral Hospital confirming that the patient is suffering from senile dementia.
  7. The Applicant was asked to avail a Chief's letter confirming he is the son of the subject and a letter of consent from his siblings that they have no objection to his appointment.
  8. I allow the application dated 27<sup>th</sup> September 2024 in the following terms;-
    - i. That the subject is declared a person suffering from senile dementia.
    - ii. That the Applicant JK be and is hereby appointed Guardian under the [Mental Health Act](#) of the subject to handle all her affairs.

**DATED, SIGNED AND DELIVERED THIS 13<sup>TH</sup> DAY OF DECEMBER 2024 IN OPEN COURT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-



Court Assistants: Trizah

The Applicant present

