



REPUBLIC OF KENYA



**In re AGN (Subject) (Miscellaneous Case 235 of 2023)  
[2024] KEHC 2972 (KLR) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
MISCELLANEOUS CASE 235 OF 2023  
PM NYAUNDI, J  
MARCH 22, 2024**

**IN THE MATTER OF**

**CNM ..... PETITIONER**

**JUDGMENT**

1. Before this Court is Petition dated 20<sup>th</sup> October 2023 presented the [Mental Health Act](#) in which the Petitioner seeks the following orders: -
  - a. The Honourable Court be pleased to issue an order permitting the Petitioner herein, the family caregiver being Ms Jackline Awino Weimi, the Area Assistant Chief for Jamhuri Sub- Location and/ or any other agents of the Petitioner to enter Amy George Nnyagah's house on a regular basis to deliver food and household items, to clean the house and to check on Amy George Nnyagah's welfare and hygiene whenever she barricades herself and refuses assistance.
  - b. The Honourable Court be pleased to direct that a psychiatric medical evaluation be undertaken on Amy George Nnyagah by a qualified medical practitioner under the guidance of the Petitioner herein.
  - c. Such further orders as this Honourable Court may be pleased to make.
2. The matter proceeded by way of viva voce evidence on 7<sup>th</sup> March, 2024 on the online platform. The Petitioner (PW1) is the only son of the Subject Patient, he resides in Los Angeles California. The Subject is an elderly citizen of about 80 years and lives alone in Jamhuri Estate. The Petitioner has organised for a caretaker to take care of her.
3. The Petitioner observed that soon after the Subject broke her leg in an accident in 2019 her physical and mental health have deteriorated. That Petitioner is now concerned by the Subject's self-harming behaviours and for this reason proposes that the Subject be evaluated by a qualified medical practitioner to enable the right care and protection to be accorded her.



4. It is his evidence that on occasion the Subject has locked herself in the house thereby necessitating the intervention of the local administration to force entry into the house. The Subject has exhibited hostile and repulsive behaviour making it difficult for the caregiver to attend to her.
5. This is corroborated by letter of Catherine Wawira, Assistant Chief, Jamhuri Sub location dated 13<sup>th</sup> December 2018 and 17<sup>th</sup> October 2023 in which she documents the intervention she has had to make to ensure that the Subject accesses treatment, food and care. There are also photographs taken of the house of the Subject showing the unhygienic standards she was living in that forced the local administration to intervene.
6. The medical assessment will enable the Petitioner take appropriate steps to accord her care and protection.
7. The Petitioner submitted report by Dr. Lavine of Nairobi Women's Hospital dated 20<sup>th</sup> September 2018. Upon examining the Subject, the Doctor made the following observations, that the patient had 'no insight, had para acid delusion, pressure of speech and auditory hallucination'. The Doctor observed that the Patient has been suffering from schizoaffective disorder for a long time and had been treatment for the same and recommended that she be admitted in a psychiatric ward for follow up and evaluation account of her ill health. The Petitioner has asserts that he has furnished the Court with medical records on his mother's health status.
8. The Petitioner further averred that he seeks orders to enable his Agents the Caretakers (Jackline Awino Weimi and Local Chief Jamhuri) to enable them avail medical and pay urological attention as needed to by the subject herein Amy George Nnyagah.
9. I have carefully considered this Petition, the Affidavit filed in Court as well as the evidence adduced in the matter. The Petitioner seeks that there be a medical assessment of the Applicant. I discern though that it has already been determined that the Subject is suffering from mental illness and the Court is obligated to take measures that safeguard her well being
10. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya provides for the circumstances under which a Court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs 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) Whereupon inquiry 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 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]

11. The Petitioner need to be declared as Guardian of the Patient. This will enable him make decisions as pertains to the medical treatment of the Subject. As stated I am satisfied that the Subject is a person suffering from a mental disorder under the *Mental Health Act* and secondly that based on the evidence she is incapable of managing her treatment and affairs. The Doctor’s report showed that the Patient was diagnosed with schizoaffective disorder.
12. Based on the material availed to this Court I am satisfied that the Subject suffers from a mental illness under the terms of the *Mental Health Act*, 2022. Guided by Article 159 (d) of the *Constitution* of Kenya, 2010 I order as follows;
  - \*\*i. AGN (the Subject) is hereby adjudged to be suffering from mental disorder pursuant to Section 26 of the *Mental Health Act*, Cap 248 Laws of Kenya.
  - ii. CNM is hereby appointed the legal guardian to AGN. By virtue of this Appointment the Petitioner is authorized by himself or through his agents to access the Subjects residence to deliver food and household items, clean the house and maintain the subject’s welfare and hygiene.
  - \*\*iii. CN is hereby appointed manager of the estate of AGN under Section 28 of *Mental Health Act* to manage her estate including any such description of moveable or immoveable property, money, debts, and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
  - iv. Pursuant to this appointment the Petitioner shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging AGN
  - v. In accordance with Section 27(4) of the *Mental Health Act*,2022 the Petitioner shall cause within 30 days the publication of notice in the Gazette, informing the public of his appointment as the manager of the estate AGN.
  - vi. As Manager of the Estate of AGN, the Petitioner may dispose of the property only with the sanction of the court.
  - vii. Costs to be met out of the Estate of the Subject.

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 22<sup>ND</sup> DAY OF MARCH, 2024.**

**P. NYAUNDI**

**JUDGE**

**In the presence of:**

Sylvia Court Assistant

