



In re AKW (A Person Suffering from Mental Disorder) (Miscellaneous Civil Application E004 of 2023) [2024] KEHC 3073 (KLR) (22 March 2024) (Judgment)

Neutral citation: [2024] KEHC 3073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E004 OF 2023**

A MSHILA, J

MARCH 22, 2024

**IN THE MATTER OF SECTIONS 26, 27 AND 28 (1) & (2)
AND 32 OF THE MENTAL HEALTH ACT (CAP 248) LAWS OF
KENYA**

AND

**IN THE MATTER OF AKW - A PERSON SUFFERING FROM A
MENTAL DISORDER**

AND

**IN THE MATTER OF AN APPLICATION BY GWK- MRK – RNK
AND PNK FOR APPOINTMENT AS GUARDIANS &
MANAGERS OVER THE AFFAIRS OF THE ESTATE OF AKW**

IN THE MATTER OF

RWK APPLICANT

JUDGMENT

Introduction

1. Before the court for determination is the Notice of Motion dated 22nd March, 2023 brought by way of a Certificate of Urgency under the provisions of Sections 26, 27, 28 and 32 of the [Mental Health Act](#); Order 51(1) of the [Civil Procedure Rules](#), Section 3A and Section 63(e) of the [Civil Procedure Act](#). The Petitioners/Applicants seek the following orders:
 - a. Spent.



- b. That the Honourable Court do make orders for the appointment of the Petitioners as joint guardians and managers to manage all the estate and affairs of AKW the said subject with general and special powers including powers to continue and complete existing and future transactions and to operate bank accounts existing in the name of AKW and deal with his assets.
 - c. That the subject of these proceedings be adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act* Cap 248 Laws of Kenya.
 - d. That GWK, MRK, RNK and PNK be empowered to appear defend prosecute and otherwise handle shall act as the guardians *ad litem* for purposes of appearing, defending, prosecuting and otherwise handle the ongoing court case ELC No. 71 OF 2020 *Tbika Samuel Njiraini Ngabia Vs Andrew Kigathi Wachiuri & 2 Others* in the same capacity and manner as AKW would have done save for his mental incapacity.
 - e. Applicants be appointed Guardian ad litem to the subject for purposes of lodging pleadings/proceedings on his behalf to claim damages arising from personal injuries suffered in a Road Traffic Accident that occurred on 17th December, 2019 between himself and Motor Vehicle Kxx xxx as the subject is unable to take care of his affairs owing to his mental disorder.
 - f. Any further order that this Honourable court may deem fit and just to grant.
2. The Application was supported by a Supporting Affidavit sworn by MRK for and on behalf and with the authority of the other Petitioners herein made on 21st March, 2023 and Supplementary and 2nd Supplementary Affidavit made on the 6th June, 2023 and 26th February, 2024 respectively in which he deponed that the subject is his father who had been diagnosed with a number of ailments namely advanced dementia from Alzhemers disease with significant functional impairment, an on setting of diabetes, prostatism and inactive asthma which over time have affected his mental health with resultant loss of memory.
 3. The subject has been receiving psychiatric care under Doctor JH at Aga Khan University Hospital due to his condition the subject is not able to discharge his own affairs make rational decisions on his own and/or understanding formal documents; as a result of the mental condition the subject is unable to take care of himself and is thus fully dependent on the Petitioners. He urged the court to grant them joint guardianship over the subject for better management of his affairs.
 4. At the hearing of the Petition the Doctor who was attending to the subject testified on the subjects incapacity and medical treatment and produced the medical report marked as PExh.1; all the siblings of the subject consented to all the Petitioner/Applicants being appointed as joint guardian and managers of the subject's affairs. The consent dated 21st March, 2023 and is annexed to the Application.
 5. The Application was unopposed

Issues For Determination

6. Having perused the Petition, the application and upon hearing the expert evidence this court finds that the only issue framed for determination is whether the orders sought are merited.



Analysis

7. Section 2 of the [Mental Health Act](#) Cap 248 provides that: -

“A person suffering from a 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.”
8. Further on the issue relating to custody, management and guardianship is provided 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.”
9. The Petitioner has adduced medical evidence that the subject is suffering from advanced dementia from Alzheimers disease and is unable to take care of his affairs and in particular unable to fully participate meaningfully in court proceedings and engage as a witness or party in the sessions. This condition has been confirmed by Dr JH a practicing Consulting Neurologist from Aga Khan University Hospital.
10. The Petitioner submits the subject is his father and the siblings have consented to all of them being granted the orders of joint guardianship and managers of the estate of the subject as per the consent attached to the Petition.
11. Upon observing the subject at the hearing hereof, it is evident the subject appeared coherent due to medication and was able to comprehend and respond to simple greetings but was disoriented in time and place; going by the doctors evidence the subjects current mental stability was managed by daily use of drugs otherwise the subject is unable to make any rational decision and needs assistance.
12. This court is satisfied that granting the Petitioners the orders sought would be in the best interest of the subject whom this court finds to be a person who requires to be managed as he has a mental disorder; this court is satisfied that this is a suitable case for the issuance of the orders sought as the subject is



found to be a person who needs his affairs to be managed with specific reference to the ongoing court case.

Findings And Determination

13. For the foregoing reasons this court makes the following findings and determinations;
- i. The Application is found to have merit and it is hereby allowed.
 - ii. The subject herein AKW is hereby adjudged to be a person suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act*;
 - iii. This court hereby appoints the Petitioners GWK- MRK- RNK & PNK to be the legal guardians of the subject AKW.
 - iv. The Petitioners shall act as the guardians ad litem for purposes of appearing, defending, prosecuting and otherwise handle the ongoing court case ELC NO. 71 OF 2020 Thika *Samuel Njiraini Ngabia Vs Andrew Kigathi Wachiuri & 2 Others* related to ownership of LR No. 13537/233 (measuring approximately 0.61 hectares being a sub-division of LR No.13537/99 situated South West of Thika Municipality).
 - v. This Order shall not include distribution of his estate and the Petitioners shall in particular do the following:-
 - a. Manage the subject's health care;
 - b. Execute and sign documents on behalf of the subject related to the ELC NO. 71 of 2020 Thika *Samuel Njiraini Ngabia Vs Andrew Kigathi Wachiuri & 2 Others*;
 - c. Receive proceeds from the court case;
 - d. Utilize these proceeds to cater for the subject's medical expenses and maintenance;
 - e. To render to family members and other beneficiaries regular yearly accounts on the status of the estate of the subject.
 - vi. This being a family matter there shall be no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 22ND DAY OF MARCH, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

N/A – for the Applicant

