



REPUBLIC OF KENYA



**In re EMN (Subject) (Miscellaneous Case E001 of 2024)  
[2024] KEHC 5253 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5253 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
MISCELLANEOUS CASE E001 OF 2024  
AK NDUNG’U, J  
APRIL 30, 2024**

**IN THE MATTER OF**

**MWM ..... PETITIONER**

**RULING**

1. By way of a petition dated 15<sup>th</sup> February, 2024 Mary Wambui Mugo (hereinafter, the Petitioner) moved this court for orders;
  - a. That the court finds and do make a declaration that Esther Muthoni Ndirangu is incapable of protecting her interests with regard to her affairs due to chronic mental illness under the [Mental Health Act](#).
  - b. That the Petitioner be appointed as the legal guardian of Esther Muthoni Ndirangu and that she be allowed to manage all the affairs of the Petitioner.
  - c. That Esther Muthoni Ndirangu’s estate including any proceedings accruing to the estate from any source and/or any property forming part of her estate be held by the Petitioner on behalf of Esther Muthoni Ndirangu and other beneficiaries.
  - d. Any other or further relief that this honourable court may deem fit and just to grant.
2. The brief factual background to the petition is that the Petitioner is the first born of Esther Muthoni Ndirangu (hereinafter, the Subject). Her siblings are Beth Wangari Mugo, Dorcas Muringe Mugo and Lydia Nyaguthie Mugo.
3. It is stated that due to a chronic mental illness, the Subject has become incapable of managing her affairs to the extent that she is unable to make sound decisions regarding her welfare.



4. The subject owns land Ref. Laikipia/Marmanet/6179 measuring 2 acres which she inherited from her late mother vide Nakuru Succession Cause No. 434 “B” of 2010.
5. It is the Petitioner’s case that one Wilson Ngatia Ndirangu, a brother to the Subject, has misled the subject knowing very well her mental incapacity into attempting to sell the aforementioned land. A suit, being CM ELC No. 40 of 2023, has been instituted whereby the Subject is named as the Defendant.
6. It is urged that the Subject is incapable of defending herself in court and she does not comprehend what is going on. It is therefore in the interest of justice that the Petitioner be appointed as the Guardian of the Subject and be in control of her estate for its preservation.
7. In support of the petition are exhibited a bundle of treatment notes and a medical report and a letter from the Chief. The medical report by Dr. Bahati Standa of Nyahururu County Referral Hospital concludes that the Subject has been followed up for mental illness for over 15 years and defaulted 5 years ago. She is currently not stable to make sound decisions regarding herself.
8. On his part, the Chief in his letter dated 2<sup>nd</sup> July, 2023 confirms the history of mental retardation of the Subject.
9. I have considered the petition, the affidavit, evidence and submissions filed. Of determination is whether the orders sought are merited.
10. The starting point would be whether the Subject falls under the ambit of a person suffering from a mental disorder within the meaning of Section 2 of the *Mental Health Act*. That section provides that;

“A person suffering from 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.”
11. Before court is a person who upon examination by Dr. Bahati Standa was found to have been followed up for mental illness for 15 years and defaulted 5 years ago. She is currently not stable to make sound decision regarding herself.
12. There is therefore medical proof that the subject suffers from mental disorder. The Petition for the appointment of a manager of her estate and for a guardian is thus well grounded.
13. Having so found, the next question relates to the suitability of the Petitioner to be appointed the legal guardian and manager of the Subject’s estate. The court has to make a finding whether the Petitioner is fit to be so appointed and that she would effectively and efficiently manage the Subject’s property for the benefit of the estate and welfare of the subject.
14. The Petitioner is the 1<sup>st</sup> born of the Subject. She is therefore a known near relative of the subject and is acknowledged as such by the local Chief. She has dutifully named her siblings Beth Wangari Mugo, Dorcas Muringe Mugo and Lydia Nyaguthie Mugo who she asserts may be left destitute of the estate of the subject is not preserved. She has moved in the interest of the estate to defend a suit against the subject on her behalf. She is in my view a suitable person for appointment.
15. The court’s powers to grant orders in respect of management and guardianship are donated under Section 26 of the *Mental Health Act*. The section provides;

“Section 26 (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 of 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.”

16. Having satisfied myself that the Subject is a person suffering from mental disorder and in exercise of the powers of this court, under Section 26 of the *Mental Health Act* and having made a finding that the Petitioner is a suitable person for appointment under the said section, the result is that the petition herein has merit. It is allowed and I make the following orders;

- a. That a declaration be and is hereby made that Esther Muthoni Ndirangu is incapable of protecting her interests with regard to her affairs due to chronic mental illness under the *Mental Health Act*.
- b. That the Petitioner be and is hereby appointed as the legal guardian of Esther Muthoni Ndirangu and that she be allowed to manage all the affairs of the Petitioner.
- c. That the estate of Esther Muthoni Ndirangu including any proceedings accruing to the estate from any source and/or any property forming part of her estate be held by the Petitioner on behalf of Esther Muthoni Ndirangu and other beneficiaries.
- d. That there be no orders as to costs.

**Dated signed and delivered virtually this 30<sup>th</sup> day of April, 2024**

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**A.K. NDUNG’U**

**JUDGE**

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