



**In re JNK (A Person Suffering from a Mental Illness) (Miscellaneous Application E266 of 2023) [2024] KEHC 15505 (KLR) (Family) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 15505 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**MISCELLANEOUS APPLICATION E266 OF 2023**

**EKO OGOLA, J**

**APRIL 30, 2024**

**IN THE MATTER OF THE MENTAL HEALTH ACT CHAPTER 248 OF LAWS OF KENYA**

**-AND-**

**IN THE MATTER OF JNK (A PERSON SUFFERING FROM A MENTAL ILLNESS)**

**IN THE MATTER OF**

**LGK ..... 1<sup>ST</sup> APPLICANT**

**ENK ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. The application before this court is dated 4<sup>th</sup> December 2023. The applicants pray for the following prayers:-
  - a. Spent
  - b. That this honorable court do declare that the subject patient JNK does suffer from a mental disorder as defined under the [Mental Health Act](#).
  - c. That this Honorable Court be pleased to appoint LGK and ENK as the guardians of JNK.
  - d. That this Honorable Court be pleased to appoint LGK and ENK the applicants herein as the managers of the estate and all affairs of JNK and be authorized to administer the finances and properties of the subject
  - e. That the applicants be granted access to the funds in the estate of JNK to help offset the high costs incurred in the continued treatment and management of her estate.
  - f. That the cost of this application be borne by the estate of the said JNK.



2. The application was based on the grounds set out therein and the applicants' joint affidavit. The applicants are the subject's daughters. They deposed that their father, the subject's husband has since died. The subject had 8 children, 6 of whom are still alive. All have consented to the prayers being sought in this application. Currently, the subjects reside with the 2<sup>nd</sup> applicant in her home in Nairobi. Before this, she resided with the 1<sup>st</sup> applicant in Gilgil for four years. The subject is 89 years of age and suffers from hypertension, diabetes and cognitive decline. According to the applicants, the subject has memory issues and is frequently paranoid. The applicants deposed that the subject's children have always catered for the subject's medical expenses which are approximately Kshs. 88,000/- per month.
3. The applicants deposed that the subject owns four properties namely; Residential plot No. 2XX-Gilgil Site and service scheme; Gilgil/Gilgil Block 1/XXX; Commercial plot No. Q at Leleshwa; and plot No. 3XX. The subject holds shares domicile in the Central Depository and Settlement Corporation Account No. 0000003902XXXX/L1-0.
4. On record is a Medical Report dated 21<sup>st</sup> September 2023 by Dr. David E. Bukusi. The report confirms the applicants' statements. The doctor stated that the subject requires assistance to bathe, to stand, and feed herself. The subject, therefore, requires the assistance of a nurse/caregiver.

### **Determination**

5. I have considered all the material placed before me. Section 27 of the [Mental Health Act](#) states that:

- “1) The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including —
  - (a) an order making provision for the maintenance of the person;
  - (b) an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and
  - (c) an order making provision for the payment of the person's debts.
- (2) The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
- (3) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
- (4) The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.
- (5) Within fourteen days of the Gazette Notice under subsection (4), any person may lodge an objection to the person appointed as manager.”

6. The definition in Section 2 of the Act provides that:

- “person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—
- (a) a person diagnosed with alcohol or substance use disorder; and



(b) a person with suicidal ideation or behaviour;”

7. Based on the medical report and affidavit on record, I am satisfied that the subject suffers from a mental disorder and that the disorder has occasioned the diminution of her mental capacity and adversely affected her cognition and therefore ability to take care of her affairs or herself.
8. In the circumstances, the application dated 4<sup>th</sup> December 2023 is allowed and I make the following orders:-
  - a. That JNK is a person suffering from a mental disorder within the definition of the *Mental Health Act*.
  - b. That LGK and ENK are appointed to be the guardian of JNK
  - c. That LGK and ENK are appointed to be the manager of the estate of JNK.
  - d. There will be no orders as to costs

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2024**

**E.K. OGOLA**

**JUDGE**

In the presence of:

Ms. Murage for the Applicant

Gisiele Muthoni Court Assistant

