



**In re GWK (Subject) (Petition E008 of 2024)
[2024] KEHC 6030 (KLR) (27 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PETITION E008 OF 2024**

MA ODERO, J

MAY 27, 2024

**IN THE MATTER OF SECTIONS 26, 27, 28, 29, 32 AND 33 OF THE MENTAL HEALTH ACT
IN THE MATTER OF A PETITION FOR ORDERS OF CUSTODY
MANAGEMENT AND GUARDIANSHIP OF GWK AND HER ESTATE**

BETWEEN

LNK PETITIONER

AND

GWK SUBJECT

JUDGMENT

1. Before this court is the Petition dated 7th March, 2024 by which the Petitioner LNK seeks the following orders
 - “1. A declaration that GWK be and is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#), Cap 248.
 2. This Honourable court be pleased to appoint LNK the Guardian of GWK in accordance the [Mental Health Act](#) Cap 248, with powers to sign access, withdraw, execute and/or carry out any act incidental to the affairs of the subject.
 3. This Honourable court be pleased to appoint LNK as manager of the estate of the subject GWK with special permission pursuant to section 27 of the [Mental Health Act](#), Cap 248 to change, sell, surrender, transfer, exchange or otherwise deal with property known as Comprised in the subject estate.
 4. The costs of this Petition be provided for.



5. Any other reliefs that the court may deem fit and just to grant”
2. The Petition was brought under Sections 26 and 28 of the *Mental Health Act*, Cap 248, Laws of Kenya and was supported by the Affidavit of even date sworn by the Petitioner. The Petition was canvassed by way of Vive Voce evidence on the virtual platform.
3. The Petitioner is the biological son of the subject GWK. He states that his father, the subjects husband passed away in May 2005.
4. The Petitioner states that the subject who is an elderly lady is currently suffering from several ailments including mental illness. That she is currently bedridden and is no in any position to take care of her own affairs.
5. The Petitioner seeks to be appointed by the court as Guardian of the subject and manager of her affairs.

Analysis and Determination

6. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of patient (subject) 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. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent 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 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]
7. I have considered the petition before the court, the evidence adduced before the court as well as the documents annexed to the Petition. In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental disorder rendering her incapable of managing her own affairs.
8. I have considered the evidence on record in this matter. I have perused the medical report dated 22nd February, 2024. (Annexure LNK ‘2’) which was prepared at Kiburi Dispensary. It indicates that the subject suffers from Diabetes and Hypertension. That she also suffers Dementia and Alzheimers disease. That the subject tis not coherent and cannot make any such reasonable decisions.



9. I was able to see the subject online. She was an elderly woman lying on a bed. She appeared semi-conscious and had tubes running from the nose and mouth. It was clear that the subject was ailing and would not be in a position to manage her own affairs.
10. The other children of the subject namely
 - a. JMK
 - b. JMK
11. Both testified in this matter. They confirmed that they were aware of and had no objection to the Petition. The two also signed a consent to the appointment of the Petitioner as Guardian which consent is dated 7th March, 2024.
12. In the case of *RE NMK* (2017) eKLR, the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

“In considering an application brought under section 26 and 27 of the *Mental Health Act* the court is guided by three main factors.

 - a. There must be medical evidence warranting the determination by the court that the subject suffers a mental disorder.
 - b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
 - c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [Own emphasis]
13. The Petitioner is the son of the subject. He has annexed a copy of his Birth Certificate Serial Number xxxxxx. I have no doubt that he has the best interest of the subject at heart. The other children of the subject have no objection to this petition.
14. Finally I find merit in this petition and allow the same. This court makes the following orders.
 1. The subject GWK is declared to be a person suffering from a mental disorder within the terms of Section 26 of the *Mental Health Act*, Cap 248 laws of Kenya.
 2. The petitioner LNK is hereby appointed as Guardian for the subject and manager of her Estate.
 3. No orders on costs.

DATED IN NYERI THIS 27TH DAY OF MAY, 2024

MAUREEN A. ODERO

JUDGE

