



**In re JNM (Family Miscellaneous Application E002 of 2024)
[2024] KEHC 8143 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E002 OF 2024**

FN MUCHEMI, J

JUNE 28, 2024

**IN THE MATTER OF SECTION 26 & 28 OF THE MENTAL HEALTH ACT
(CAP 248) LAWS OF KENYA, ORDER 32 RULE 15 & 51 OF THE CIVIL
PROCEEDURE RULES, SECTIONS 1A, 1B & 3A OF THE CIVIL PROCEDURE ACT.**

IN THE MATTER OF

MNN PETITIONER

AND

JNM SUBJECT

JUDGMENT

Brief Facts

1. By a Petition dated 7th March 2024 the petitioner invoked Sections 26, 27 and 28 of the *Mental Health Act*, Cap 248 Laws of Kenya and sought the following prayers:-
 - a. This Honourable Court be pleased to declare that Justice Njuguna Mbau, herein referred to as J.N.M., an adult male as a person suffering from acute congenital defects and is mentally incapacitated.
 - b. Upon prayer (a) being granted, this Honourable Court be pleased to declare that J.N.M. as a person mentally incapacitated and/or a person suffering from mental disorder by reason of acute congenital defects and a person in need of care, protection and guardianship.
 - c. This Honourable court be pleased to appoint the petitioner as Guardian of J.N.M.
 - d. This Honourable Court be pleased to authorize the petitioner to pursue, protect and manage the estate and/or inheritance due to J.N.M from his deceased father Stephen Mbau Njuguna estate through succession proceedings.



- e. Any benefits, profits and/or proceeds that may arise or accrue from such inheritance be utilized for the benefit and upkeep including but not limited to medication of J.N.M.
2. The petitioner is an aunt of the subject for she is a sister to his deceased father Stephen Mbau Njuguna. The petitioner states that her late brother, Stephen Mbau Njuguna died on 22nd February 2022 and that her brother and herself were the only children of their late mother one Joyce Njeri Njuguna.
3. The petitioner states that Stephen Mbau Njuguna was married to one Ruth Wanjiru Wanuthua with whom they were blessed with one child, the subject herein. He was born on 26/4/2005 with severe physical and mental disabilities. The petitioner further states that Ruth Wanjiru Wanuthua died on 15th May 2005. After the demise of the subject's mother, J.N.M was taken care of by his grand mother Joyce Njeri Njuguna. After Joyce's death, the petitioner took over the care and custody of the subject.
4. The petitioner states that after the demise of Ruth Wanjiru Wanuthua, the father of the subject Stephen Mbau Njuguna married one Mary Wanjiku with whom they were blessed with two children. However, the said Mary Wanjiku declined to take care of the subject. The petitioner states that the patient's father left property being LR Makuyu/Makuyu Block 1/373 to which the subject is entitled to share by way of inheritance. It is therefore, necessary that a guardian to be appointed to pursue the interests of J.N.M. in the said estate so that she can help to follow up on the succession proceedings for the subject to benefit from his share in the estate.
5. The petitioner testified that she has five children of her own who interact well with the subject. The petitioner further states that the subject was diagnosed with cerebral palsy and has been registered by the national government as a person living with disability after being so declared by the Ministry of Health in the report dated 18/12/2023 petitioner stated that the subject was on a wheel chair, he could neither talk nor take care of himself.
6. The petitioner stated that she communicates with the subject through gestures in order to capture his personal needs. It was further stated that the petitioner could not afford to take the subject to a physically and mentally handicapped school due to her limited income earned from small scale farming.

Issues for determination

7. The main issues for determination are as follows:-
 - a. Whether the patient should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 - b. Whether the petitioner should be appointed as guardian to the patient as well as manager of the interests of the subject in the succession of his late father Stephen Mbau Njuguna.

The Law

Whether the patient should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.

8. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.



9. Section 2 of the Act defines “person suffering from mental disorder” as follows:-

“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”

10. Section 26 provides 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 of the 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 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 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.

11. The Assessment report for physical disabilities by Dr. Kairo Kimende shows that the subject has been suffering from cerebral palsy since birth. The doctor concluded that the said disability is permanent and recommended a special wheelchair for the patient.

12. It is my considered view that the petitioner has satisfied this court that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing his personal hygiene, financial, property and other affairs. The said cerebral palsy has made the subject physically handicapped to an extent that he cannot take care of himself.

Whether the petitioner should be appointed as guardian to the patient as well as a manager of the Estate of the patient.

13. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable and giving preference to a close relative.

14. It is not in dispute that the petitioner is the aunt of the patient whose parents are deceased. The petitioner further stated that although her brother married another wife, she was not interested in taking care of the subject. After the death of the subject’s father, the petitioner took over the care of the subject. The petitioner annexed a letter from the area chief dated 27/11/2023 confirming that the patient is totally incapacitated and has been under the care of the petitioner since his father died. It is noted that this petition is unopposed.

15. It is my considered view that the petitioner has satisfied the court that she is the best suited person to be appointed guardian and manager for the subject who is physically and mentally handicapped.



16. The application dated 7th March 2024 is successful and it is allowed in the following terms:-
- a. That the petitioner Margaret Nyambura Njuguna is hereby appointed the legal guardian of the subject herein to take care of him in his personal needs and to handle his legal affairs.
 - b. That the petitioner is hereby appointed Manager for the management of the petitioner's share in the estate of his deceased father Stephen Mbau Njuguna.
 - c. That there shall be no order as to costs.
17. There shall be no order as to costs.
18. It is hereby so ordered

JUDGMENT DELIVERED, DATED AND SIGNED AT THIKA THIS 28TH DAY OF JUNE 2024.

F. MUCHEMI

JUDGE

