



**In re RWM (Subject) (Family Miscellaneous Application
E003 of 2023) [2023] KEHC 19248 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
FAMILY MISCELLANEOUS APPLICATION E003 OF 2023
GL NZIOKA, J
JUNE 29, 2023
IN THE MATTER OF RWM (SUBJECT)**

IN THE MATTER OF

FMW APPLICANT

RULING

1. By a notice of motion application dated January 30, 2023 premised on the provisions of section 26, 27 of the [Mental Health Act](#), section 1A, 3, 3A of the [Civil Procedure Act](#), Order 32 Rule 14 of the [Civil Procedure Rules 2010](#), and all the enabling provisions of the law, the applicants prays for orders that;-
 - a. This honourable court be pleased to appoint the applicant, FMW, as the guardian and next friend of the subject herein, RWM for purpose of filing suit to recover damages for injuries sustained in a road traffic which occurred on December 14, 2021.
 - b. This honourable court be pleased to appoint applicant herein, FMW, be appointed as the manager of the Subject's Estate.
 - c. The costs of this application be provided for.
2. The application is supported by the grounds thereto and an affidavit of even date sworn by the applicant. He avers that, the subject was involved in a traffic road accident on December 14, 2021 and sustained severe body injuries. However she suffers from mental illness and is incapable of managing her own affairs. Hence the application herein avers that he be appointed to manage her affairs and properties and in particular to file a civil suit to recover damages for the injuries the subject suffered in the subject road accident.
3. The court considered the application and ordered that, the subject would undergo mental assessment and a report be filed in court before the final decision was made. Subsequently the applicant has filed a supplementary affidavit and annexed thereto is a medical report dated June 6, 2023 from Engineer County Hospital.



4. The report indicates that the subject is of relatively slow mentation, restricted speech and a flat affect with an unpredictable outcome when under pressure. Therefore she needs legal representation. I also note that, the applicant annexed to his original affidavit a document which includes
- a. A letter dated February 1, 2023 from the assistant chief Kiandeg Sub-location indicating that, the subject hails from the sub-location and is well known to him.
 - b. A police abstract issued on April 20, 2022 issued at Kiandeg sub-base, in North Kinangop which shows that, the subject who was a pedestrian was involved in a road traffic accident on December 15, 2021.
 - c. A P3 form filed by Dr. Wakahiu indicating the injuries the subject sustained in the road traffic accident.
 - d. A document dated December 30, 2021 from Engineer County Hospital which states that, the subject is a patient on follow up at mental health clinic.
5. The provisions of section 26 and 27, of *Mental Health Act* under which the application is brought provides as follows:-
- (1) An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—
 - (a) a supporter of the person with mental illness; or
 - (b) the representative of the person where the person with mental illness has not appointed a supporter.
 - (2) An application under subsection (1) shall be submitted together with an affidavit setting out—
 - (a) the grounds upon which the application is made;
 - (b) the full particulars as to the property and relatives of the person to whom it relates; and
 - (c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
 - (3) A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the—
 - (a) person in respect of whom the application is made; or
 - (b) where an application is made by a supporter to the representative of the person with mental illness.
 - (4) Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.
 - (5) The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.
 - (6) The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—
 - (a) court to examine the person; or



- (b) person to be examined by a qualified registered mental health practitioner.
6. Further, section 27 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. In compliance with the aforesaid provisions I note that, the Sub-Chief's letter confirms that, the applicant is the son of the subject. He has produced a police abstract to prove that she was involved in a road traffic accident, and a P3 form indicating the nature of injuries sustained. Lastly the medical reports prove that, the subject is not capable of managing her affairs and needs legal representation.
7. I however, note that the applicant has not given the court any details or particulars of any property the subject owns. He cannot be appointed to manage what does not exist. The only reason given and supported is the need to file civil suit as stated herein. Therefore the application herein is allowed to the extent that the applicant is appointed under the provisions of section 26 and 27 of the Act purely and solely for the purposes of filing the subject intended.
8. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 29TH DAY OF JUNE 2023

GRACE L. NZIOKA

JUDGE

In the presence of

Mr. Muturi for Wanjohi for the Applicant

Ms Ogutu -Court assistant

