



**In re PMN (Patient) (Family Miscellaneous Application
E022 of 2023) [2024] KEHC 8747 (KLR) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY MISCELLANEOUS APPLICATION E022 OF 2023**

PN GICHOHI, J

JULY 22, 2024

IN THE MATTER OF

JWN PETITIONER

RULING

1. PMN is herein referred to as “the Patient.” Through the firm of Nancy Njoroge, Kairu & Company Advocates, JWN (Petitioner) filed the petition on 11th April 2023 under Section 26 and 28 of the *Mental Health Act*, Cap 248 Laws of Kenya seeking orders that:-
 1. The Petitioner be appointed a Guardian of the Patient.
 2. The costs be in the cause.
2. The grounds are on the face of the petition which are that the Petitioner is a sister to the Patient who is mentally unstable after he was involved in a grisly road traffic accident on 16th December 2022 along Nakuru -Nyahururu Road.
3. The Petitioner states due to that mental status, the Patient cannot file a civil suit for compensation against the beneficial owner of motor vehicle registration number KCF XXXX that knocked him down. She therefore seeks to be appointed as a Guardian of the patient to enable her file a suit on his behalf for purposes of seeking compensation from the lawful owner of the subject motor vehicle.
4. In support of the petition is the Affidavit she swore on 27th March 2023 to further expound the grounds and attached the Police Abstract dated 10/01/2023, Medical - Legal Report by Dr. Wellington K. Kiamba dated 20/01/2023, Patient- Out Patient Consultation Sheet from Subukia Sub- County Hospital 16/02/2022, Discharge Summary from Nakuru Level 5 Hospital dated 17/12/2021 and an Out -Patient Card from Nakuru Leve- 5 Hospital.



Determination

5. This Court has considered the petition and the annexures thereto. The Discharge Summary dated 17/12/2021 from Nakuru Level 5 Hospital shows that the Patient was admitted there on 31/08/2021 and discharged on 17/12/2021. The history, physical examination and treatment are contained in the said discharge summary with the final diagnosis being Schizophrenia.
6. The Patient's medical report shows that he was aged 57 years as at the time of examination by Dr. Wellington K. Kiamba on 20/1/2023 concerning the accident which occurred on 16/12/2022.
7. As directed by this Court, the Patient was availed virtually and the Court was able to talk to him. He looked frail and could not say much. He stated that he was in Subukia with his children.
8. There is no reason for this Court to doubt that he needs a guardian. Section 26 of the *Mental Health Act* gives this Court jurisdiction to deal with such an application as the one presented before this Court as it provides as follows:
 - (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.”
9. This Court has power to make orders as regards the patient herein under Section 28 of the *Act* which provides that:
 - (1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.”
10. This court is therefore satisfied that by reason of his mental illness, the patient requires a *Guardian Ad Litem* in accordance with the law and in the circumstances, the Court makes the following orders:-
 1. PMN be and is hereby declared by this Court as a person suffering from mental disorder.
 2. JWN (Petitioner) be and is hereby appointed as *Guardian Ad Litem* for purposes of filing the intended suit arising from the alleged road traffic accident.
 3. There are no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF JULY, 2024.

PATRICIA GICHOCHI

JUDGE

In the presence of;

Mr. Kairu for the Petitioner/Applicant

Ruto- Court Assistant

