



**In re AMA (Person Suffering from Mental Disorder) (Miscellaneous Application E021 of 2024) [2024] KEHC 9503 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9503 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS APPLICATION E021 OF 2024**

**TA ODERA, J**

**JULY 31, 2024**

**IN THE MATTER OF AN APPLICATION UNDER SECTION  
2,26,27 AND 28 OF MENTAL HEALTH ACT CAP 248  
IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE  
ACT CAP 21 LAW OF KENYA AND THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF ANDREW MOKAYA ANGWENYI  
(PERSON SUFFERING FROM MEANTAL DISORDER)**

**IN THE MATTER OF AN APPLICATION BY:**

**BETWEEN**

- SM ..... 1<sup>ST</sup> PETITIONER**
- MKM ..... 2<sup>ND</sup> PETITIONER**
- JNM ..... 3<sup>RD</sup> PETITIONER**
- IMM ..... 4<sup>TH</sup> PETITIONER**
- ENM ..... 5<sup>TH</sup> PETITIONER**
- JKM ..... 6<sup>TH</sup> PETITIONER**
- LBM ..... 7<sup>TH</sup> PETITIONER**
- AKM ..... 8<sup>TH</sup> PETITIONER**

**AND**

- BAM ..... 1<sup>ST</sup> RESPONDENT**
- LBM ..... 2<sup>ND</sup> RESPONDENT**



## RULING

1. I have perused the mediation report dated 30.7.24 filed herein today. It indicates that parties have reached a partial settlement on some issue but the same is signed by only 3 parties out of 8. Even the subject who is alleged to have participated in the proceedings has not signed. I therefore cannot adopt it as an order of the court till all parties sign it. Mr. Nyambati filed his response late and Miss Nyaenya for the subject is yet to file any documents as she has just been appointed. Counsel for the applicants seek that pending interpartes hearing of the application and or mediation, the parties be allowed to deposit proceeds of the business of the applicant in Cooperative Bank Account No. 011XXXXXX held in the names of BA,MK, IMM and AKM account. This has been vehemently opposed by Miss Nyaenya for the subject and Mr. Nyambati for the respondents. Miss Nyaenya told this court that her client has not been adjudged insane and wishes to run his own accounts. Mr. Nyambati also opposed the application saying that the orders will prejudice the mediation proceedings and that parties had agreed to engage a manager to open and run a petty cash account with the approval of the family members. Also that the subject was examined by the court and it proceeded to stay the orders relating to the said account.
2. I have carefully listened to the parties herein. It is not denied that the subject's mental capacity is under investigations and that the said Cooperative account was opened pursuant the orders granted on 6.3.24.
3. On 10.6.24 this court stayed the orders dated 6.3.24 and the power of Attorney dated 3.6.22 to pave way for expeditious mediation but the mediation has taken longer than expected. The estate of the subject is now left bare and is at risk of wastage. It is now 1 ½ months down the line and no party is telling this court who is collecting the proceeds of the businesses of the subject and rent and the safety of the same or if at all they being collected or not. I see no prejudice to be occasioned to the subject, his estate or any party if the said Co-operative Bank Account No. 011XXXXXX is operationalized pending interpartes hearing and determination of this application as this would secure the estate and ensure transparency and accountability as rightly submitted by Miss Okal, I allow prayer 3 in the interim. The monies in the said account be utilized towards treatment and general the welfare of the subject.
4. Counsel for the subject is granted leave to file an affidavit within 7 days from today and counsel for applicants is also granted leave to file a supplementary affidavit within 7 days of receipt of the reply of the subject.
5. The matter to proceed by way of written submissions.
6. Counsel for the applicant to file and serve submissions with the supplementary affidavit.
7. Respondents and the subject to file submissions within 7 days of receipt of applicant's submissions.  
Interpartes Hearing on 28.8.24.
8. In the meantime, parties to continue to pursue mediation and it is the hope of this court that the same will succeed as this is a family matter which ought to be settled amicably.

**T.A ODERA**

**JUDGE**

**31 .7.24**

**Delivered virtually in the presence of: -**



**Miss Okal for Applicants,**

**Miss Nyaenya for the subject and Mr. Nyambati for the Respondents.**

