



**In re James Boro Karugu (Miscellaneous Petition 31 of 2015)  
[2024] KEHC 10362 (KLR) (Family) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10362 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS PETITION 31 OF 2015**

**SN RIECHI, J**

**AUGUST 23, 2024**

**IN THE MATTER OF SECTION 26 AND 28 OF THE  
MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF JBK**

**BETWEEN**

**VNK ..... 1<sup>ST</sup> PETITIONER  
EMK ..... 2<sup>ND</sup> PETITIONER  
RGK ..... 3<sup>RD</sup> PETITIONER**

**AND**

**HWM (SUING AS NEXT FRIEND OF AC AND AJM (MINORS) .... APPLICANT**

**AND**

**LMK ..... PROPOSED INTERESTED PARTY  
YNK ..... PROPOSED INTERESTED PARTY  
AWK ..... PROPOSED INTERESTED PARTY**

**RULING**

1. VNR, EMK and RGK were children of the subject James Boro Karugu. On 3<sup>rd</sup> March, 2016 they filed petition seeking:
  - i. That the Petitioners being VNR, EMK and RGK in respect of JBB (hereafter referred to as the ward)



- ii. That the Petitioners shall jointly act as managers and guardians in accordance with the directions and orders of the court and in particular to jointly have access and operate the Ward's bank accounts.
  - iii. That the Costs and legal fees of the Petition be provided from the ward's estate.
2. LMK, VNK and AWK who are from the 2<sup>nd</sup> house of the subject filed an application dated 22<sup>nd</sup> November, 2025 seeking to be included as managers and guardians of the subject. Protracted litigation proceeded which included the submissions of DNA reports and the issue of access to the subject while some of the filed applications were pending for hearing the court was informed that the subject died on 20<sup>th</sup> November, 2022.
3. Upon the death of the subject M/s Irundi for Petitioners sought leave to withdraw the petition which was granted on 20<sup>th</sup> May, 2024. The petitioner was their hereby marked as withdrawn.
4. Mr. Mugo holding brief for Wambugu representing HWM informed court that upon the withdrawal the only issue pending was a determination on costs. M/s Ndirangu for VNK confirmed that this was the only issue pending. By consent directions were issued that the issue at costs be canvassed by way of written submissions. Both parties complied.
5. M/s Judy Thongori for LMK, VNK and VNK in her submissions dated 12<sup>th</sup> February, 2024 submitted that generally the costs follow the event. She submitted that her clients were drawn into this matter to challenge the involvement of the guardians and managers; the managers had continued to deny her clients' access to the subject and were mismanaging the subject's funds. Counsel, therefore, submitted that upon withdrawal of their petition, thought this is a family matter her clients should be awarded costs.
6. M/s Hamilton, Harrison and Matthews Advocates for VNR, EMK and RGK filed submissions dated 15<sup>th</sup> July, 2024. Counsel submitted that these were proceedings under the [Mental Health Act](#) for appointment of Guardians and Managers of a subject who was suffering from a Mental Illness. The petitioners do only seek to be guardians of the subject and are not parties to the suit. These proceedings ended when the subject died and that the court has no power to order costs against and persons who is not a party. Counsel submits that the petition was only filed in the interest of the ward seeking orders to take care of him.
7. Counsel, therefore, urges the court to direct that each party bears his own costs. Counsel refers this court to the position in the United Kingdom, in the Court Protection Rules 2007.
8. The [Mental Health Act](#) was enacted with the object of: -
  - “ An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals; and for connected purposes.”
9. Proceedings under the Act were designed to be motivated by the objective of taking care of the personal welfare of the subject and that the court will not be required to make an order as to costs. However, where the proceedings involve the property of the subject, the same shall be charged on the property or estate. However, fees to the Public Trustees is provided for under Section 33 (1) of the Act.
10. On Costs, Section 27 of the [Civil Procedure Act](#) provides: -
  27. Costs



- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

11. This is a matter which was filed by petitioners to be appointed guardian of the subject and manage his affairs as he was a person who was diagnosed to be suffering from mental illness. Their objective was to manage the welfare of the subject, which included provisions for care-giving, medical attention and general welfare of the subject. They were also to manage the estate of the subject to prevent wastage and manage resources to be used for the welfare of the subject. They were to exercise this mandate under the directions of the court to which they were accountable to under Section 33 of the [Mental Health Act](#) which provides:

Section 33.

- (1) Every person appointed Manager to furnish inventory and annual accounts jointed by the court to be manager of the estate of a person under this Part shall, within six months of the date of his appointment, deliver to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) an inventory of the property belonging to the person of whose estate he has been appointed manager and all such sums of money, goods and effects as he receives on account of the estate, together with a statement of all debts owed by or due to such person, and every such manager shall furnish to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) annually, within three months of the 31<sup>st</sup> December, an account of the property in his charge showing the sums received and disbursed on account of the estate during the year and the balance; such inventory, statement and account shall be in the prescribed form.
- (2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the court and to the public Trustee under subsection (1).
- (3) The Public Trustee shall report to the Minister annually on all accounts delivered to him under subsection (2).
- (4) Where any person, by petition to the court, impugns the accuracy of any inventory or statement or of any annual account made under this section, the court may summon the manager and inquire summarily into the matter, and make such order as it thinks proper or the court may refer the petition to a magistrate having jurisdiction in the place where the property belonging to the estate concerned is situated, for inquiry and report, and upon receipt of the magistrate's report the court may make such order as it thinks fit."

12. Hellen Mwaura and LMK filed applications in this matter seeking to be provided for from the estate. Orders were issued by this court for provisions. Other issues they raised had not been determined by the time the subject died on 10<sup>th</sup> November, 2022. This matter, therefore could not proceed as the subject



in whose interest the petition was filed died. They cannot, therefore submit that they are a successful party to whom costs would follow events. In *Jasbir Singh Rai & 3 Others Vs Tarlochan Singh Rai & 4 Others* (2014) eKLR which cited *Kuloba J (Rtd)* in *Judicial Hints on Civil Procedure*, 2<sup>nd</sup> edition as follows:

the object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made early as a penal measure. Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.

13. In this case it is not disputed that the petition was filed for the general welfare of the subject. The general rule is that there is no successful party and there will be no order as to costs of the proceedings that concern the subject's personal welfare.

"159 Departing from the General Rule

- (1) The court may depart from rules 156 to 158 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances, including:
- (a) the conduct of the parties;
  - (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
  - (c) the role of any public body involved in the proceedings.
- (2) The conduct of the parties includes–
- (a) conduct before, as well as during, the proceedings;
  - (b) whether it was reasonable for a party to raise, pursue or contest a particular issue;
  - (c) the manner in which a party has made or responded to an application or a particular issue;
  - (d) whether a party who has succeeded in his application or response to an application, in whole or in part, exaggerated any matter contained in his application or response;"

14. This is a matter between family members who are connected to the subject who is now deceased. The general rule is that each party would bear his own costs, unless they demonstrate exceptions. I do not see any conduct to invite the application of the exceptions.

15. Upon considering the applications, I find that the appropriate orders to make which I hereby do is that each party to bear his/her own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF AUGUST, 2024.**

.....

**S N RIECHI**

**JUDGE**

