



REPUBLIC OF KENYA



**ASB (Petition E019 of 2023) [2023] KEHC 23241 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23241 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MOMBASA**  
**PETITION E019 OF 2023**  
**G MUTAI, J**  
**SEPTEMBER 29, 2023**  
**IN THE MATTER OF SECTIONS 26 AND 27 OF THE MENTAL HEALTH ACT**  
**(CAP 248 OF THE LAWS OF KENYA)**  
**AND**  
**IN THE MATTER OF ABDULHALIM AHMED SALIM AND ABDULMUIN**  
**AHMED SALIM (PERSONS SUFFERING FROM MENTAL DISORDER)**  
**AND**  
**IN THE MATTER OF AN APPLICATION BY ABDILAH SALIM BADRI TO BE**  
**APPOINTED GUARDIAN AD LITEM OVER THE AFFAIRS AND**  
**MANAGEMENT OF THE ESTATE OF THE SAID ABDULHALIM AHMED**  
**SALIM AND ABDULMUIN AHMED SALIM**  
**AND**  
**IN THE MATTER OF SUBDIVISION OF PLOT NOS. 16334 (ORIGINAL NO.**  
**661/2) AND 16337 (ORIGINAL 661/5) IMN-CR NO 6996/29**  
**IN THE MATTER OF**  
**ASB ..... PETITIONER**

**JUDGMENT**

**Introduction**

1. The petitioner is the paternal uncle of Abdulhalim Ahmed Salim (Abdulhalim) and Abdulmuin Ahmed Salim (Abdulmuin) (hereafter together referred to as “the Patients”). Abdulhalim and Abdulmuin are aged 44 and 42 years respectively. It is alleged in the petition before me that they suffer from mental disorders.



2. The petitioner filed the instant petition on March 20, 2023 seeking the following prayers:-
  1. This honourable court do appoint the petitioner as the guardian of the affairs of Abdulhalim and Abdulmuin, in accordance with the *Mental Health Act*, with power to sign and file Court documents, enter into a deed of settlement on their behalf and to carry out other incidental and general functions of Abdulhalim and Abdulmuin;
  2. This honourable court do appoint him as a manager of the estate of Abdulhalim and Abdulmuin in accordance with the *Mental Health Act*, with permission pursuant to sections 26 and 27 of the said *Act*, to subdivide, mortgage, charge, or transfer by way of sale or exchange for the interests of the said Abdulhalim and Abdulmuin, all those parcels of land known as subdivisions Nos 16334 (Original No 661/2) and 16337 (Original No 661/5) IMN-CR No 6996/29.
  3. The petitioner avers that Abdulhalim and Abdulmuin have had mental disorders since birth. Although they received treatment at Port Reitz Mental Hospital Mombasa they did not respond well. Consequently, treatment, in respect of both patients, was discontinued. The Patients were subsequently treated by Dr. Ernest H. O. Mahero. This latter treatment was however discontinued at the behest of their mother.
  4. The Petitioner is concerned that the estate of his father, Salim Bader Abdulbaqui Al- Amry, in which the Patients and their deceased father are beneficiaries, has not been fully distributed. The father of the Patients, Ahmed Salim Bader (deceased) is entitled to two subdivisions to wit Plot No 16334 (Original No 661/2) and 16337 (Original 661/5) IMN-CR No 6996/29. The Petitioner is afraid that if the titles to the said parcels of lands are handed over to the Patients they might be defrauded by unscrupulous persons. He is afraid that the patients' mother, Asya Omar Bader, is not keen on helping the patients nor is the patients' maternal uncle, Swaleh Omar Bader.

### **Proceedings in Court**

5. The matter was filed as a petition before the Constitutional and Human Rights Division of the High Court. Vide the directions of Lady Justice O. Sewe on May 15, 2023 the matter was referred to the Family Division. On May 24, 2023 I issued directions. Vide the said directions I asked the applicant to provide an inventory of the assets of the patients, to serve all interested parties, including the patients and also for the examination of the patients by a psychiatrist at the Coast General Hospital.
6. Being satisfied that the directions I had issued were complied with, I heard the case on July 25, 2023. Despite being served the patient's mother and uncle were absent. The applicant testified that he is the step brother of the deceased father of the patients. He sought to be appointed as the Manager/Guardian ad litem of the patients as their mother is unsuitable. The Applicant averred that he was trying to help the patients. He undertook to take good care of them.
7. In her two reports the Consultant Psychiatrist at the Coast General Hospital Dr. Janbibi Y. Mohamed was of the opinion that Abdulhalim has chronic Schizophrenia and is actively psychotic. She recommended treatment and monthly reviews. Regarding Abdulmuin she found that he has schizophrenia and is currently symptomatic. She recommends treatment and follow-up.

### **The Applicable Law**

8. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the *Mental Health Act*, as amended in 2022. A manager's duty is to safeguard the property of the Patient.



The appointment of a Manager must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said Act provides that:-

“ a manager shall perform the manager’s duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness”

9. Under the Mental Health Act the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Abdillahi Salim Badri is not a “supporter” of any of the patients as he wasn’t appointed in writing as such. It is however my finding that being an uncle of the two patients he is a “representative” within the meaning of the Act and therefore has the locus to bring the instant petition.

### **Analysis of the Facts and the Law**

10. In re CWN (a person suffering from mental disorders) [2022]eKLR the Court stated:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders the petitioners must adduce evidence sufficient to satisfy the Court, firstly that the patient is a person suffering from a mental disorder under the Mental Health Act and secondly that the patient is incapable of managing her own affairs.”

11. I would add that the third test is whether the application is in the best interest of the patient. People with mental illnesses have diminished capacities to manage their affairs. Their situation is analogous to that of children. The court must therefore be sure that the application was filed in the interest of the patients. In addition the orders that the court issues must be aimed at achieving the said goal.
12. The patients own the two properties to wit Plot No 16334 (Original No 661/2) and 16337 (Original 661/5) I MN-CR No 6996/29, both measuring 5 acres, situated within the County of Mombasa. In my respectful view these are prime properties. I agree with the petitioner that the Patients might be taken advantage of by unscrupulous people, if indeed they suffer from mental illness.
13. The mother of the Patients did not enter appearance despite being served. Her brother, Swaleh Omar Bader also failed to appear. The only inference I can draw from their conduct is that they are not opposed to the Petition.
14. I have read the reports of Dr. Ernest Mahero and Dr. Janbibi Mohammed. I am satisfied that Abdulhalim and Abdulmuin have mental illnesses. From the testimony of the petitioner and the reports of the medical professionals, the patients are unable to manage their own affairs. It will therefore be in their best interest that a manager/guardian-ad-litem is appointed to manage their respective estates. The manager/guardian ad litem will ensure that they receive the most appropriate care possible and that their estates are not wasted.

### **Disposition**

15. I am therefore satisfied that a case has been made for the appointment of the Applicant as the manager/guardian ad litem of the patients. I, therefore, order and direct as follows:-
  1. The Applicant, Abdilahi Salim Badri, is hereby appointed as the manager/guardian ad litem of the patients, Abdulhalim Ahmed Salim and Abdulmuin Ahmed Salim;
  2. The manager/guardian ad litem shall manage the estates of the patients in particular their interests in: -



- a. Plot No 16334 (Original No 661/2); and
- b. 16337 (Original No 661/5) I MN-CR No 6996/29.

For the best interest of the Patients. He shall however not have the power to sell, charge or otherwise alienate immovable property of the patients without leave of Court;

3. Pursuant to section 27 (4) of the *Mental Health Act*, the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette by the Court;
4. The manager/guardian *ad litem* shall file the Inventory/statement of Account of the estate of the patients within 6 months of his appointment; and
5. I make no order as to costs.

Orders accordingly.

**Delivered and dated at Mombasa this 29<sup>th</sup> day of September 2023 via Microsoft TEAMS**

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**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr. Odongo for the Petitioner; and

Mr. Arthur Ranyondo – Court Assistant

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