



REPUBLIC OF KENYA



**In re MKN (Person Suffering From Mental Disability) (Miscellaneous Case E219 of 2024) [2025] KEHC 267 (KLR) (Family) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 267 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS CASE E219 OF 2024**  
**H NAMISI, J**  
**JANUARY 23, 2025**  
**IN THE MATTER OF MKN (PERSON SUFFERING FROM MENTAL DISABILITY)**  
**IN THE MATTER OF**  
**IWK ..... APPLICANT**

**RULING**

1. Before the Court is a Notice of Motion dated 3 September 2024 filed by the Applicant, daughter to the Ward, MKN According to the documentation provided, the Ward is 74 years old. The Application is filed under provisions of the [Civil Procedure Act](#) as opposed to the [Mental Health Act](#), and is supported by the Affidavit sworn by the Applicant.
2. The Application seeks the following orders:
  - i. That IWK ID No 26xxxxxx be appointed the Guardian *ad litem* of MKN, the Administrator of the Estate of his Mother, HNN (Deceased) in H.C.F.P&A 17 of 1987 who has lost capacity due to reason of dementia;
  - ii. That the Honourable Court do grant any other such orders as it may fit;
  - iii. That the costs of the Application be borne by the estate
3. The Applicant avers that the Ward's health has deteriorated over the years progressively and it has now been confirmed that he is suffering from dementia. The Applicant states that the Ward has no capacity to prosecute the Summons for Confirmation of Grant in Succession Cause No 71 of 1987 where Grant of Letters of Administration Intestate was issued to the Ward.
4. The Applicant further avers that she is the only member of the Ward's number family now surviving. The Applicant has also filed a Further Affidavit dated 11 December 2024, attaching a letter from the Chief, Thogoto Location, confirming that she is a daughter to the Ward.



5. The Court had a chance to hear from the Ward himself, who did not seem to recall much. He did not recognise the Applicant, but indicated that he had seen her around the neighbourhood, occasionally. The Ward could barely express himself, and had a hard time responding to questions from the Court. From my examination of the Ward, I am convinced that he is not capable of prosecuting and/or defending any law suit.
6. Additionally, the Applicant presented a Psychiatrist Report dated 20 August 2024 prepared by Dr. Dorcas Wanjiru Mwangi of St. Teresa Maternity and Nursing Home. In the Doctor's assessment, the Ward is aloof, thinks illogically and has poor insight into what is going on around him. The Doctor's opinion is that the Ward is suffering from dementia, and is totally dependent on family members for care and support.
7. Section 26 of the *Mental Health Act* states that:
  - 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.
  - (2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
  - (3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder
8. I have also considered all the material placed before me. It is apparent that the subject suffers from a mental disorder and that he is incapable of managing his own affairs, although he is not dangerous to himself.
9. The definition in Section 2 of the Act provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
10. In the circumstances, the Court hereby appoints the Applicant as the Ward's Guardian *ad litem*. For the avoidance of doubt, Guardian *ad litem*'s powers will not include the power of alienation, sale or transfer of the Ward's immovable assets but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the Ward in respect of any of the assets forming part of his estate.

**DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF JANUARY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**



Delivered on virtual platform in the presence of:

Mr. Nguyai .....for the Applicant

Libertine Achieng.....Court Assistant

