



**In re KOG (Subject) (Miscellaneous Case E216 of 2023)
[2025] KEHC 2123 (KLR) (Civ) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CASE E216 OF 2023

SN RIECHI, J

FEBRUARY 6, 2025

IN THE MATTER OF KOG (SUBJECT)

IN THE MATTER OF

WG & MAO PETITIONER

JUDGMENT

1. The Petitioners, WFG and MAO are biological sisters of the subject KOG The petitioners in their application dated 9th October,2023 are seeking orders;
 - i. That the applicants be appointed as the next friend,Guardians and managers of the Estate of KOG a person of unsound mind.
 - ii. That the applicants be allowed to administer the entire estate and affairs of KOG.
 - iii. That the court makes an order that the applicants do execute consent on mode of distribution for the Estate of JGO and all conveyances in relation to the homestead and matrimonial home on parcel of land L.R. No.853X/X on behalf of KOG .
2. The petition is premised on the grounds that the subject is of unsound mind and he has become incapable of handling his own estate and affairs. That the applicants as the executrix of the estate of their late father are unable to complete its administration without the consent of the subject. That the matrimonial home and homestead on parcel of land known as L.R. NO. 853X/X was bequeathed to him by applicants' late father JGO in his last Will and Testament. That the respective identities and shares of all persons beneficially entitled have been ascertained and determined. That it is in the interest of justice and fairness the applicants be made the next of friend, Guardians and the Managers of the Estate and affairs of their brother as he is not in a capacity to execute any document.
3. The application is further supported by a joint affidavit sworn by the applicants in which they reiterated averments in the grounds of the application.



4. The applicants averred further that the subject has been mentally sick since 1990 and was diagnosed with schizophrenia a severe mental illness and due to his advanced age and perceived mental incapacity is not therefore in a position to manage his estate and affairs. The applicants in support annexed a copy of Medical report dated 22nd September, 2021 prepared by Prof. O.E. Omolo, Md, MPM, DPM, MMed(Psych) from Jaramogi Oginga Odinga Teaching and Referral Hospital.
5. The applicants averred that their father passed away on 3rd August, 2001 and bequeathed his estate to his children. The applicants averred further that their father bequeathed KOG his matrimonial home and homestead in Kital village, Kendu Bay standing on property known as L.R. NO. 853X/X in his last will and testament. The applicants in support attached a copy of the Will.
6. The applicants stated their brother is not able to make any sound decisions and has no logical and commercial comprehensive or capacity to manage the properties left out to him by our late father. It is the applicants contention that their brother is not in a capacity to sign or execute documents due to his mental incapacity which hinders him from understanding or participation in the pending Milimani Succession Cause No. 2743 of 2002. The applicants stated the said Milimani Succession Cause No. 2743 of 2002 is pending the hearing and determination of an application dated 4th June, 2012 for rectification of the Certificate of Grant dated 28th January, 2004 to include Land parcel no. Kabodo/ Kowidi/ 1XX4 which was omitted.
7. The applicants stated further that the consent of their brother KOG is mandatory to the Application for rectification but due to his status he cannot consent.
8. The applicants stated the subject has no known issues or wife and is currently living under the care of their stepmother, SOG at their late father's home in Kendu Bay in the County of Homabay in the property known as L.R. No. 853X/X bequeathed to him by their late father.
9. The applicants stated they are seeking to be appointed as the next of friend, Guardians or Managers of all the affairs of the Estate of KOG to enable us concluded the administration our late father's Estate and further protect the interest of our brother.
10. This petition was canvassed by viva voce evidence. WF the petitioner testified that the subject is her last-born brother. She stays in Nyayo Embakasi. The subject stays in Kendu Bay. He is Schizophrenia, HIV and prostate cancer. He is on medication. The applicants pay for his medical bills. The home where he is staying was bequeathed to him. They pray to be given custody.
11. MAO the 2nd Petitioner testified that the subject is her brother. She supports the petition.
12. The Subject KOG testified as follows;

I am at Kendu Bay Town. I am 56 years old. I do not work. I have not married. I stay with my step mother SAG. My mother is LOG. She is deceased. I have a brother PEG. He went to America where we got lost. He went when I was in standard one in 1970s. I studied upto form 4 and dropped out in 1986. I do small-scale farming. I take HIV drugs since early 90s. Okuomo is our Mp.”



13. The court has exhaustively considered all the material placed before it, the main issue for determination is whether the court should grant the guardianship and management orders as sought in the application herein. Section 2 of the [Mental Health Act](#) Cap 248 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.”

14. The court is empowered to grant orders sought by the application in relation to custody, management and guardianship under Section 26 of the [Mental Health Act](#) Cap 248 which provides:

“(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
- c. 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.
- d. Where upon inquiries 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 just 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.”

15. The authority to manage affairs of an estate of a subject is donated under Section 27 of the [Mental Health Act](#) whereas Section 28 of the same Act provides for management of the subject's estate.

16. The court in *Re N M K* [2017] eKLR considered what should guide the court when applying Section 26 and 27 of Cap 248. The held as follows:

“In considering an application brought under sections 26 and 27 of the [Mental Health Act](#), the Court is guided by three main factors:

- i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
- ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
- iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”



20. Before this court there is a medical report dated 22nd September,2021 prepared by Prof.O.E.Omolo,Md,MPM,DPM,MMed(Psych) from Jaramogi Oginga Odinga Teaching and Referral Hospital in which he stated;

- “a. Psychological domain:
- i. He has chronic schizophrenia
 - ii. Has somatic and nihilistic delusions
 - iii. His judgement is poor
 - iv. He has HIV and is on regular medication”

21. From the evidence and medical report, I am satisfied that the subject suffers from mental illness under section 2 of the Mental Act, the same has adversely affected his cognitive and the ability to take care of his affairs. The Subject lacks the mental capacity to manage his affairs which my view falls within the definition of Section 2 of the *Mental Health Act* Cap 248.

22. Having settled the issue of whether the subject should be declared as a person suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248, and that, he is suffering from mental disorder to such an extent as to be incapable of managing his affairs,the court is tasked with determining whether the petitioners should be appointed as guardians/ managers to the subject .

23. Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.

24. This court thereof under section 26 of the *Mental Health Act* appoints the petitioners WFG and MAO as guardians to KOG (Subject).The Petitioners are also appointed as managers to manage the subject’s estate.

25. In accordance with the provisions of Section 33 of the Mental Act, the petitioners will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

DATED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2025.

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S. N. RIECHI

JUDGE

