



**GWM v DWM (Miscellaneous Application E131 of 2024)
[2025] KEHC 4910 (KLR) (Family) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4910 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E131 OF 2024

CJ KENDAGOR, J

APRIL 7, 2025

**IN THE MATTER OF SECTION 2, 26, 27, 28 & 29 OF THE
MENTAL HEALTH ACT, CAP. 248 OF THE LAWS OF**

KENYA

AND

IN THE MATTER OF DWM ALLEGEDLY SUFFERING FROM MENTAL DISORDER

AND

**IN THE MATTER OF AN APPLICATION FOR THE
MANAGEMENT OF THE ESTATE AND GUARDIANSHIP OF DWM**

AND

IN THE MATTER OF:

BETWEEN

GWM APPLICANT

AND

DWM RESPONDENT

RULING

1. The Applicant, GWM, is the daughter of DWM. On 3rd July, 2025, the Applicant filed an Originating Summons under the [Mental Health Act](#), in which she seeks the following orders that concern DWM;
 - a. That this Honourable Court do issue a Declaration that DWM is a person suffering from mental disorder, within the meaning of Section 2 and Section 26 of the [Mental Health Act](#), Cap.248 of the Laws of Kenya;



- b. That pending the hearing and determination of this application, this Honourable Court does order that Dr. Juzar Hooker, of Aga Khan University Hospital conduct and file a medical report before this court in respect to DWM on her mental state, to enable the making of orders/ direction for her treatment, care and administration of her estate if necessary;
 - c. That this Honourable Court be pleased to appoint GWM as the guardian of DWM for the purposes of collecting and processing the benefits of her late father EMM, who died on 5th May, 1984;
 - d. That the Honourable Court be pleased to appoint GWM as the general manager of the estate of DWM; and
 - e. That the costs of the Application be provided for.
2. The Court directed that the Application be served upon the other siblings, particularly those who live with DWM. The Court also ordered that DWM attend the Court session before it can consider the O.S. Application.
 3. Before the matter could be heard, a notice of preliminary objection was filed by counsel representing DWM, asserting that no evidence has been submitted to prove that she is a person suffering from a mental disorder.
 4. The Preliminary objection dated 25th September, 2024 is the subject of the present Ruling. It is premised on the following grounds;
 - i. No evidence filed to prove that the Respondent is a person suffering from a mental disorder under the [Mental Health Act](#);
 - ii. No evidence filed to prove that the Patient is incapable of managing her own affairs;
 - iii. The Applicant's application is therefore an abuse of the Court process.
 5. I have considered the submissions and the assertions made by each party.
 6. The O.S. Application is seeking orders that have the extent of depriving DWM's liberty. I have perused the pleadings, and indeed, no medical evidence has been tabled that she is a person suffering from a mental disorder.
 7. The Court has not had the opportunity to interview or hear directly from DWM in person, which is a significant consideration in these proceedings. The primary objective of the proceedings conducted under the [Mental Health Act](#) is to safeguard the rights and well-being of individuals with mental illness.
 8. The preliminary objection raises several legitimate concerns regarding the ongoing proceedings. However, I will not grant the motion to strike out the Originating Summons at this time. It is crucial for the Court to first ensure, through a formal hearing process, that the welfare of DWM is not at risk as alleged.
 9. This matter will be examined in an upcoming hearing, to which all parties will be duly invited to present their arguments and evidence.
 10. The matter is to be set down for hearing on a priority basis.
 11. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 7TH DAY OF APRIL, 2025.



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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

No attendance by parties

