



In re WSG (A Person with Disability and hereinafter referred to as (the Subject") (Miscellaneous Application E002 of 2024) [2025] KEHC 4763 (KLR) (Civ) (11 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
MISCELLANEOUS APPLICATION E002 OF 2024**

SC CHIRCHIR, J

APRIL 11, 2025

**IN THE MATTER OF WSG (A PERSON WITH DISABILITY
AND HEREINAFTER REFERRED TO AS "THE SUBJECT")**

IN THE MATTER OF

FW APPLICANT

RULING

1. What is coming up for determination is the Notice of Motion dated 13/5/2024. It has been brought by FW (The Applicant) and is premised on Order 32 Rules 1 – 15 of the Civil Procedural Rules and Section 26 of the *Mental Health Act*. It seeks orders as follows;
 1. Spent
 2. That FW be and is hereby appointed as a guardian and next friend of WSG a person with Mental illness.
 3. That FW be and is hereby appointed as Manager of the affairs of WSG including managing his funds in KCB ACCOUNT NO. 121XXXX320 Isiolo Branch.
 4. That KCB Bank do comply with the orders.
 5. That the costs of the Application be in the cause.
2. The application is supported by the Affidavit of the Applicant. It is the applicant's case that she is married to WSG (The subject). She has attached a marriage certificate showing that the marriage was registered on 27/4/2001; that the subject suffered a stroke and has been paralyzed for the last 7 years. A medical report and a chief's letter has been attached.
3. It is further stated that the subject is a retired civil servant and has been receiving his pension through his Kenya Commercial Bank Account No. 121XXXX320 at Isiolo Branch; that due to his incapacitation



he is no longer in a position to operate his count. The Applicant further states that the subject is constantly in need of medication and she needs to access the money in his Account to meet the cost of his treatment and pay college fees for their son.

4. The Applicant swore a further Affidavit on which she has stated that, she has four children with the subject and the children's identity cards have been attached to the affidavit. It is further stated one of the children has dropped out of university due to lack of fees. A fees structure from Kenya Methodist university is attached.
5. Attached to the Affidavits is a lengthy medical report for the subject from Nairobi Heart clinic , and two medical reports from Isiolo County Referral Hospital.

Determination

6. I have considered the Applicant's prayers herein scrutinized the various medical and other reports filed. The Application is premised on section 26 of the [mental health Act](#) and order 32 of the civil procedure rules as aforesaid.
7. The preamble to the [mental Health Act](#) (cap 248, Laws of Kenya) states: "An Act of parliament to provide for the prevention of mental illness, to provide for the care treatment and rehabilitation of persons with mental illness, to provide for procedures of admission, treatment and general management of persons with mental illness"
8. Section 2 of the same Act states "a person with mental illness "means "a person diagnosed by a qualified mental health practitioner to be suffering from mental illness and includes (a) a person diagnosed with alcohol or substance abuse disorder; and (b) A person with suicidal ideation or behavior"
9. A scrutiny of the documents availed show that none of the medical reports have been done by a mental Health professional certifying that the subject as mentally ill. In the light of the preamble to the [mental Health Act](#) and section 2 (supra), there is no evidence that have been submitted to court to prove that the subject is suffering from mental illness. . Consequently I decline to make a declaration to that effect.
10. In this regard I find support on the decision of Justice Mativo in the case of MMM Vs AMK (2016) KEHC 4741 KLR where the subject was suffering from dementia. The Judge found that dementia does not fall under mental illness as defined in the [mental Health Act](#).
11. However the Applicant has also relied on order 32 rule 15 of the Civil procedure Rules. Rules 1 to 14 of order 32 prescribes the procedure of dealing with the affairs of a minor, while rule 15 provides for application of rules 1 to 14 to a person of unsound mind or a person with mental infirmity. Rule 15 provides as follows: "The provisions contained in Rules 1 to 14, so far as they are applicable, shall extend to persons adjudge to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry by reason of unsoundness of the mind or mental infirmity to be incapable of protecting their interest when suing or when being sued."
12. In the case of Purvuri Rami Reddi Vs Duvvudu Papi Reddi & Others (Air, 1963 AP 160 as cited by Justice Mativo in MMK Vs AMK (supra) sets out the guiding principles whenever an Application such as the present one is being determined. The court stated:
 - a. Order 32, rule 15 places persons of unsound mind or persons so adjudged in the same position as minors for purposes of Rules 1 to 14.
 - b. Order 32 rule 15 applies not only to a person adjudged to be of unsound mind, but also to a person of weak mind.



- c. Where it is alleged that a party to a suit is of unsound mind, and the other party denies it, the court must hold a Judicial inquiry, and come to a definite conclusion, as to whether by reason of the unsoundness of mind or mental infirmity, he is incapable of protecting his interests in the suit.
- d. Mental infirmity may even be due to physical defects, if it renders him incapable of receiving any communication, or of communicating his wishes or thoughts to others.
- e. Whether a person is of unsound mind or mentally infirm for the purpose of the rule and the extent of the infirmity has to be found by the court on inquiry.
- f. Where the question of unsoundness of mind arises not only under order XXXII, rule 15 of the Civil Procedure Code but is also one of the issues in the suit, the court has ample jurisdiction to enquire into that question, and for that purpose seek medical opinion.
- g. The enquiry should consist not only of the examination of the witnesses produced by either party, but also of the examination of the alleged lunatic by the judge, either in open court or chambers, and as courts are generally presided over by lay-men, as a matter of precaution, the evidence of medical expert should be taken.
- h. Of course, the opinion, of a doctor, as is the opinion of any other expert, under the *Evidence Act*, is only a relevant piece of evidence.
- i. The court may also compel the attendance of the alleged person before it, and to submit himself for medical examination. If the alleged person is in custody, the court may direct the next friend or any other person having custody to produce him before the medical expert for examination.
- j.
- k.” (Emphasis added)

13. Am duly guided as above and turning to the present Application, I have seen a Medical report from Nairobi Heart Clinic dated 30/01/2023 . The report is quite comprehensive on what ails the subject. It indicates the various investigations that have since been carried out. In conclusion, the doctor indicates that the subject suffers from, among other ailments, Ischaemic Heart Disease (post coronary artery bypass graft), Lumber Spondylosis, pontine mass lesion and Benign prostatic hypertrophy . He is to be on some prescribed medication for an indefinite period of time.
14. A medical report from Isiolo County Referral Hospital dated 12/2/2024 states that the subject has been bed-ridden for the last 7 years, suffers from cardiovascular disease and his vision is impaired. The report further states that he was unable to talk or sign any documents. At the time, he was described as unconscious and was on house – based care.
15. Another report dated 4/3/2025, also for Isiolo County Referral Hospital, states that he is known patient with Ischaemic Heart Disease, BPH, Pre-Pontine mass lesion and lumbar Spondylosis
16. The World Health Organization defines Ischaemic Heart Disease as follows; “A type of heart disease where the heart Muscle does not get enough oxygen and nutrient due to reduced blood flow due to



narrowed or blocked coronary arteries” while Lumber spondylosis is described as the Osteoarthritis of the spine.

17. The court directed the Applicant to take the stand and under oath, She told the court that the subject is unable to maintain balance, he cannot write, has difficulty in communication, he has to be put down to sleep and held to wake up. He also has to be helped in his ablutions . She further stated that he can no longer attend hospital due to lack of funds.
18. This court further conducted its own inquiry on the subject. The inquiry was conducted while the subject was inside a car, parked outside the front door entrance to the Law Courts. These were the observations I made:
 - a). He was being held by the Applicant sitting in a slanted position.
 - b). He responded to greetings by making by a grunt . He never responded to the further questions put to him.
 - c). Has difficulty in speaking
 - d). The eyes were partially closed .
19. At the end of the exercise, it became apparent that the subject is not only incapable of managing his affairs but is incapable of undertaking basic bodily care .
20. Thus based on the medical reports and my own inquiry am satisfied that the subject is incapable of managing his affairs and the Application herein is warranted.
21. Consequently I make orders as follows:
 - a). WSG , ID NO. 00XXX50, is hereby declared as being incapable of taking care of his affairs and property , due to illness.
 - b). FW is hereby appointed as guardian and next friend of WSG
 - c). That FW is hereby appointed as a manager of the affairs of WSG, including his money held in Account Number 121XXXX320 at Kenya commercial Bank, Isiolo Branch.
 - d). FW is hereby authorized to carry out all transactions in respect to Account No. 121XXXX320 held at Kenya Commercial Bank, Isiolo Branch.
 - e). This matter will be mentioned after six months for the Applicant to render Accounts on the use of funds from the aforesaid Bank Account.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI , THIS 11TH DAY OF APRIL, 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

Mr. Abdullahi for the Applicant.

