



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re JGM (Subject) (Family Miscellaneous Application E006 of 2025)  
[2025] KEHC 4521 (KLR) (Family) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4521 (KLR)

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

**FAMILY MISCELLANEOUS APPLICATION E006 OF 2025**

**HK CHEMITEI, J**

**APRIL 8, 2025**

**IN THE MATTER OF**

**AMM ..... APPLICANT**

**JUDGMENT**

1. This ruling relates to the application dated 14<sup>th</sup> January, 2025 filed by the Applicant, Agnes Muthoni Matu seeking for Orders That:-
  - a. Spent.
  - b. Spent.
  - (c) This honourable court be pleased to issue an ex parte order appointing A. M. as J. G. M's Guardian ad litem limited to giving instructions with regards to ongoing litigation at Milimani Law Courts, namely; (i) Chief Magistrates Court at Milimani Civil Case No. E3XXX of 2023 [JGM v Family Bank Ltd & Others] and (ii) Chief Magistrates Court at Milimani Civil Case No. 6XXX of 2024 [RKD v Duramed healthcare Limited & Others];
  - d. J. G. M be and is hereby adjudged to be a person suffering from mental sickness under the [Mental Health Act](#);
  - e. A. M. M be appointed as J. G. M's Guardian duly authorised to manage his affairs;
  - d. The court be pleased to issue any other orders to meet the ends of justice.
2. The application is supported affidavit sworn by Agnes Muthoni Matu on 14<sup>th</sup> January, 2025.
3. She avers inter alia that she is the former wife of J.G.M., with whom they have four children. Although their marriage was officially dissolved on 4<sup>th</sup> April, 2022, she has remained involved in his care due to his declining health. J.G.M. has a history of serious health issues, including diabetes diagnosed in



- 2010, which progressed to high blood pressure, glaucoma (now at end stage with complete vision loss) and recurrent strokes - four since 2019 with the latest two in 2023 and 2024 classified as severe cerebrovascular accidents.
4. These conditions have significantly impacted his mental capacity, leaving him unable to comprehend basic instructions or perform simple cognitive tasks. Despite efforts to maintain his mental health through treatment at Mathari Teaching and Referral Hospital, his condition continues to decline.
  5. In 2024, based on medical advice, she sought a forensic mental assessment for him, which requires a court order due to hospital privacy standards. J.G.M. also suffers from kidney complications and sees a nephrologist regularly. Since 2023, he has been living with her and their children, during which time she has witnessed firsthand the extent of his mental and physical challenges. He now requires continuous care, including specialized medical and nursing attention.
  6. In addition, he is involved in the following legal proceedings: Milimani CMCC No. E3XXX of 2023 against Family Bank Ltd concerning the attempted sale of his assets and a suit filed against him by a co-director in Duramed Healthcare Ltd - Milimani CMCC No. E6XXX of 2024. Given his incapacity and the legal matters at hand, the applicant seeks to be appointed as guardian ad litem to manage his affairs, provide instructions to his legal counsel and ensure the protection of his interests. She assures the court of her readiness to serve in good faith, emphasizing that his wellbeing directly affects their children's future.
  7. The application is unopposed and there are no written submissions filed.

### **Analysis And Determination**

8. I have carefully considered the application and the annexed medical reports on record.
9. Though the applicant and the ward have had a very interesting history and it appears that she is coming in to aid him at these difficult times.
10. I am satisfied with the medical history provided and in the premises find the application meritorious.
11. In *In re WKM (Subject) (Miscellaneous Application E138 of 2023) [2023] KEHC 22202 (KLR) (7 July 2023) (Ruling)* the court pronounced itself as follows:-
  - “6. Section 2 of the *Mental Health Act* cap 248 provides as follows;  
“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.”
  7. On empowering the court to grant orders as sought by the applicant, section 26 of the *Mental Health Act* cap 248 provides as hereunder:-
    - “(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.”

In making reference to section 26 and 27 of the *Mental Health Act*, Charles Kariuki J in the case of Re SWM (Patient) [2022] eKLR stated as follows:-

“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:

There must be medical evidence warranting the determination by the court that the Subject suffers from mental disorder;

The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;

The court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”

Similarly, in re Estate VFM (Patient) [2020] eKLR, the court held that:

- a) For the court to grant the application for appointment of a manager of the estate and guardian to the patient, the petitioner/applicant is duty bound to prove that:
- b) There exists medical proof by show of evidence confirming that the subject suffers from mental disorder.
- c) The petitioner/applicant seeking to be appointed as manager or guardian must be legally fit to be so appointed.



- d) That due to the subject's mental disorder, he or she is incapable of managing his/her own affairs independently and responsibly.
- e) That the proposed manager/guardian will manage the subject's property effectively and efficiently for the benefit of the estate and welfare of the subject.

The court in in Re N M K [supra] stated that the overall guiding principle in applying all these factors must be the welfare and best interests of the subject.”

12. The application is therefore allowed as prayed and the Applicant directed to comply with all the provisions of the Mental Act.

13. Costs in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 8<sup>TH</sup> DAY OF APRIL 2025.**

**H K CHEMITEI**

**JUDGE**

