



In re CNG (A Person Suffering from Mental Disorder) (Miscellaneous Case E013 of 2025) [2025] KEHC 4550 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E013 OF 2025**

CJ KENDAGOR, J

APRIL 3, 2025

**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF C.N.G (A PERSON SUFFERING FROM MENTAL DISORDER)
AND
IN THE MATTER OF AN APPLICATION BY DKG AND AGM TO BE APPOINTED
GUARDIANS OVER THE AFFAIRS AND MANAGERS OF THE ESTATE OF CNG**

IN THE MATTER OF

DKG 1ST PETITIONER

AGM 2ND PETITIONER

JUDGMENT

1. Before this Court is a Petition dated 16th January, 2024, which seeks the following orders: -
 - a. That CNG be adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act*.
 - b. That DKG and AGM be appointed as the guardians of the affairs of CNG in accordance with the *Mental Health Act* with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs of the subject;
 - c. That DKG and AGM be appointed as managers of the estate of the subject, CNG, with special permission pursuant to Section 27 (1) of the *Mental Health Act* to charge, sell, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the subject’s estate;



2. The application is supported by an Affidavit dated 16th January, 2025 sworn by the 1st Petitioner on his own behalf and on behalf of the 2nd Petitioner. The matter was canvassed by way of viva voce evidence on the online platform in the presence of the subject CNG who was also present. The Petitioners, who testified as PW5 and PW6, respectively, told the Court that they are brother and sister of the subject CNG and understand their role and will act in the subject's best interest.
3. EWG (mother to the subject), AWG (brother), JWG (sister), and the subject, CNG, who were also present on the call, stated that they understood the proceedings and consented to them.
4. A medical report dated 6th November, 2024 by Alfred Weku, a Psychologist (Counselling) & Certified Professional Mediator-CPM was filed in Court. In the said report, the Psychologist stated that on psychological assessment and toxicology studies, the subject tested positive for marijuana{THC} and cotinine {COT} and recommended that the subject be assisted to receive mental health intervention and treatment as per the *Mental Health Act*, Cap 248. The Psychologist further stated that the patient needs a legal guardian to be appointed by the Court to manage his affairs.
5. The Petitioners have sought to be appointed guardians of the affairs of the subject CNG in accordance with the *Mental Health Act* with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs and as managers of the estate of the subject CNG with special permission pursuant to Section 27 (1) of the *Mental Health Act* to charge, sell, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the subject's estate.
6. The 1st Petitioner elaborated that the subject resides in the same household with him, their mother, and sister, emphasizing the close family ties and support system in their living arrangement. He clarified that the subject is not married and does not own any property in his name, emphasizing that his financial responsibilities and assets are connected to the family rather than being individually owned.
7. The subject, who was present in the online Court platform, confirmed that he understands the proceedings and consents to his two siblings being his guardians. He acknowledged that he was experiencing mental health challenges and expressed his desire to have his two siblings appointed as guardians.
8. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
9. Under Section 26(3) of the Act it provides,

“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 persons, including proper provision for his maintenance...”
10. Section 28 of the same Act provides for management of the subject's estate.
11. I have carefully considered the Petition, the Affidavit filed in Court, the medical report, as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya empowers the Court to 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 any other suitable person.”
12. The medical report prepared by Dr. Alfred Weku details that the subject requires significant assistance in various aspects of life due to his condition. It further emphasizes the necessity of appointing a legal guardian to oversee his health care decisions, and overall well-being to ensure his safety and proper management of affairs.
13. Based on the evidence provided by the Petitioners, the Medical Report on file, and the confirmation from the subject, his mother, and siblings, this Court is convinced of the merits of this Petition. The subject needs support and care for his well-being and stability.
14. In conclusion, the Court makes the following orders:-
- a. CNG is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act*.
 - b. DKG and AGM are hereby appointed as the guardians of the affairs of CNG in accordance with the *Mental Health Act* with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs of the subject;
 - c. DKG and AGM are hereby appointed as managers of the estate of the subject, CNG under Section 27 of the *Mental Health Act*.
 - d. The appointed Guardians/Managers may only sell any property belonging to the Subject with the court’s sanction.
 - e. The appointed Guardians/Managers are required to promptly notify the Court of any developments related to the subject’s stable mental health.
15. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 3RD DAY OF APRIL, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant; Beryl

Advocate Nadio for Applicants

