



**In re LNK (Family Miscellaneous Civil Case E003 of 2025)
[2025] KEHC 4554 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E003 OF 2025
FN MUCHEMI, J
APRIL 3, 2025
IN THE MATTER OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF
MMK APPLICANT**

RULING

Brief Facts

1. The application for determination dated 13th February 2025 seeks for orders of adjudging LNK (the subject) to be suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act* and to appoint the applicant as the subject's legal guardian. The applicant further seeks access of the subject's bank accounts held at Equity Bank Account No. 0090100XXXXXX and Standard Chartered Bank Account No. 015014XXXXXX and to obtain statements to enable her file a comprehensive defence on behalf of the subject in Kenol ELC No. 26 of 2023. The application furthers seeks for the court to appoint the applicant as the manager of the estate of the subject under Section 28 of the *Mental Health Act* to manage her estate and to dispose of the subject's property land parcel number Tezo/Kibarani/Tezo/Konjora Block X/XXX in order to meet the subject's medical expenses.
2. The applicant is the daughter of the subject who was diagnosed with multifocal ischemic stroke affecting her right fronto-temporal region and right cerebellar hemisphere wit(stroke) which resulted in total dependence on home care nursing in the year 2022.
3. The applicant avers that she has been taking care of the subject and has been responsible for her since May 2022 but her condition has deteriorated over the years with the subject losing her executive function.
4. The applicant states that the subject has been sued in Kenol ELC Case No. 26 of 2023 in regard to L.R. No. Mitumbiri Wempa Block X/XXXX and LOC XX/Iganjo/XXXX and there is a risk of her



losing her properties if her interest is not presented before the court by an appointed legal guardian. As such, the applicant states that she needs to access the subject's accounts to prepare a defence on behalf of the subject.

5. The applicant states that the medical needs for the subject are increasingly becoming expensive for the family to handle hence the sought authority to dispose the subject's land parcel number Tezo/Kibarani/Tezo/Konjora Block X/XXX.
6. The applicant avers that the subject is unable to manage her estate, administer her properties, conduct any legal transactions therefore incapable of dealing with her estate as she is under continuous medical treatment, attention and medical supervision.
7. The applicant states that the subject is also the registered owner of land parcels Makuyu/Makuyu Block X/XXXX, Makuyu/Makuyu Block X/XXXX, LOC XX/Iganjo/XXX, Murang'a LOC XX/Igikiro/T.2, Ngobit/Suppuko/Block X/XXXX, Kakuzi/Kirimiri/Block VI/XX and Mitumbiri/Wempa/Block X/XXXX which need to be managed.
8. The application is supported by an affidavit by Joyce Njeri Kung'u and George Gicharu Kariuki, the children of the subject and the applicant's siblings and they state that their mother is ailing, currently bedridden and largely depends on the applicant for her day to day care. It is further deposed that on 17/1/2025, after assessing the subject's condition which is deteriorating, the family held a meeting whereupon they agreed that the applicant should file an application for his appointment as a legal guardianship and a consent was signed to that effect by those present.

Issues for determination

9. The main issues for determination are as follows:-
 - a. Whether the subject should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248.
 - b. Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject.

The Law

Whether the subject should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), Cap 248.

10. 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.
11. Section 2 of the Act defines "person suffering from mental disorder" as follows:-

"person suffering from mental disorder" means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse."
12. Section 26 provides for custody, management and guardianship
 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.
2. Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate of the guardian of any such person.
3. Where upon 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 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.
13. It is noted that the medical report by Dr. G. B. Mahapatra, a consultant physician, dated 10th February 2025 shows that the subject is suffering from multifocal ischaemic stroke affecting right fronto-temporal region and right cerebral hemisphere with left sided hemiplegia. The medical report further indicated that the subject is no longer able to manage herself in her day to day living.
14. It is apparent from the medical report that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing her own affairs.

Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject

15. As noted above, 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.
16. The applicant has stated that she is the daughter of the subject. The applicant's brother and sister swore an affidavit and filed a consent stating that they support to the applicant being appointed the legal guardian and manager of the subject and her estate. Furthermore, the court had the opportunity to examine the subject in court and noted that the subject could not answer any questions put to her and that she was in a poor state of health.
17. Thus, there being no objection from any family members of the subject and the course of the application being well supported as required under the law, it is my considered view that the prayer for appointment of guardian ad litem and manager of the subject's estate is merited.
18. The court notes that the petitioners seek for orders to access the bank account of the subject in order to withdraw funds for her medical care as well as for her maintenance. The petitioners state that funds will be required to meet expenses for the court case at Kenol. It is noted that care of a sick and elderly person requires funds. Expenses for court fees and disbursements will be needed. The whole family seems to have given their consent in this issue of finances. There being no objection this court allows the application in the following terms: -
 - a) That the subject is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#).



- b) That the petitioner Lucy Njeri Kariuki is hereby appointed guardian ad litem of the subject in respect of the court case ELC No. 116 of 2003.
- c) That the petitioner shall have access to the bank accounts of the subject at Equity Bank No.0090100XXXXXX and Standard Bank No.015014XXXXXX to cater for the subject's personal and medical needs as well as to meet expenses for the said court case.
- d) Being a family matter, there shall be no order as to costs.

20. It is hereby so ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF APRIL 2025.

F. MUCHEMI

JUDGE

