



**In re AAO (Miscellaneous Cause 137 of 2021)  
[2025] KEHC 7443 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7443 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
MISCELLANEOUS CAUSE 137 OF 2021**

**SN RIECHI, J**

**MAY 22, 2025**

**IN THE MATTER OF AAO SUFFERING FROM MENTAL DISORDER**

**BETWEEN**

**RDA ..... PETITIONER**

**AND**

**JO ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner, RDA is a paternal cousin of the subject AAO. The petitioner in her petition dated 13<sup>th</sup> July 2021 seeks orders that this honourable court to appoint the Petitioner RDA as the Guardian of the subject AAO.
2. The Petition is premised on the grounds that AAO (hereinafter referred to as "the Subject") is incapable of protecting her interests and/or managing her affairs due to severe depression, anxiety and bipolar disorder. The Subject has been on treatment and monitoring for various mental disorders ranging from acute bipolar to severe depression from 2006 to date.
3. The Petitioner stated that the circumstance relating to the Subject's immediate family members is that the Subject's father is deceased and the Subject's mother is alive. The Subject has five siblings . The Subject has five children, four of whom all reside abroad.
4. The petitioner stated that she has been taking care of the Subject as her condition dictates. The Petitioner is the only family member within the jurisdiction who is able to take care of the Subject.
5. The Petitioner stated the Subject and the Respondent Joff Otieno were husband and wife until 2009 when their marriage was dissolved. During the course of their marriage, the parties acquired several properties, including the property known as LR No. 1870/IV/248, No. 10 Elite Regency situated along East Church Road, Westlands, Nairobi (hereinafter referred to as "the suit property") which



was hitherto their matrimonial home. The Subject continued to live in the suit property even after dissolution of the marriage.

6. The Petitioner stated on the 4<sup>th</sup> of February, 2021 the Respondent, through his advocates, issued the Subject with a letter notifying her of the impending eviction from the suit property. The Respondent has also intimated his intention to start charging the Subject rent for use and occupation of the suit property on terms that are untenable.
7. The petitioner deponed that the Respondent's threats and intended eviction are hinged on a Deed of Settlement that parties allegedly executed in 2009 in settlement of HCC No. 21 of 2009 (O.S) Agnes Achieng v Joff Otieno.
8. The Petitioner stated the Respondent's intention to evict and/or hold the Subject at his mercy over the suit property is not only illegal, unlawful, unreasonable and untenable, but also life-threatening as the tenor and corollary of the intended eviction is to render the Subject homeless. Her life is also in imminent danger of being put at risk since she is mentally unstable and in need to constant care which she will be unable to access should the Respondent's threats mature.
9. The Petitioner deponed further the Subject did invest her savings with Cytonn Investments High Yields Solutions in different portfolios meant to mature at different times so as to enable her sustain and maintain her medication and lifestyle. The Petitioner stated one of the portfolios matured but Cytonn Investments High Yields Solutions unilaterally rolled it over, while withholding the interests thereto, thereby exposing the Subject to financial hardship.
10. The Petitioner averred that it is necessary that guardian ad litem be appointed to institute legal proceedings to compel Cytonn Investments High Yields Solutions to release the funds which are due to the Subject, failing which the Subject will be unable to access medical care and treatment and purchase medication which she is mandated to take on a constant basis. The Petitioner stated it is imperative that the Petitioner be appointed as legal guardian in respect of the subject.
11. The petition is further supported by the affidavit of the Petitioner sworn on even date in which she reiterated grounds in the Petitioner.
12. The respondent Joff Otieno opposed the petition and filed a replying affidavit sworn on 5<sup>th</sup> August 2021. The respondent briefly deponed that the applicant herein is guilty of non-disclosure of material facts. The respondent stated the issues raised herein were the subject of proceedings in High Court Miscellaneous Application No. E629 of 2020 (OS), which were considered on merit and dismissed by court in a judgment dated 23<sup>rd</sup> March 2021. The respondent in supported annexed copies of Originating summons dated 28th February 2020 and supporting affidavit of Charles Thakanio Kaharuka Supplementary affidavit of Charles Thakanio Kaharuka sworn on ,Supporting affidavit of Charles Thakanio Kaharuka , Replying affidavit of Joff Otieno sworn on 23rd November 2020, Submissions by the applicant dated 16th February 2021, Submissions by the respondent dated 16<sup>th</sup> February 2021 and Respondent's submissions dated 22nd February 2021 in response to submissions by the applicant. The respondent also annexed Judgment dated 23<sup>rd</sup> March 2021.
13. The respondent deponed that all orders issued in the previous suits are clear on their terms and Agnes Achieng has a legal obligation to comply with all of them.
14. By consent this petition was heard virtually by viva voce evidence. The Petitioner, RDA testified that the subject is her cousin and their fathers are brothers. She testified that the subject is 56 years old and she was married Joff Otieno. She testified that they divorced in 2010. She testified further that they had 5 children namely;



- i. Tracy-Adult
  - ii. Amanda-Adult
  - iii. Dorine-Adult
  - iv. Claire-Adult
  - v. Loraine-Adult
15. The Petitioner informed the court that she would like to granted guardianship of the subject who has mental problem and she losses concentration.
16. The Subject AAO testified virtually in court and testified as follows;
- “I am going to be 56 years old. I stay in Westlands in Nairobi.
- I have 5 children.
1. Tracy
  2. Dorine
  3. Loraine
  4. Clair
  5. Amanda
- I don't know where they are. I am not allowed to see them everybody abandoned me. I have not seen them for 3 years. It has been a very long time. I was married to the General Otieno. I was married to him when I was 18 years old. I have a headache. I don't sleep. I get nightmares. People are knocking on my door. My ears are bad because I got cold. Redempta said she will take me to Lions. I stay alone and sometimes Tracy my daughter comes and and Redempta visits me.”
17. This court observed that the subject looked anxious and sleeps on the table.
18. MAO testified that the subject is her mother. She lives in Germany. She was last in Kenya in 2020. She met the subject and she was fine. That is the last time she had conversation with her mother. She testified further that she has not spoken to her because they do not have much to talk about.
19. Lorine Pauline Atieno testified that she knows the subject and she is her mother . She lives in London. She testified that she was last in Kenya in June 2023. She did not meet her mother the subject herein.
- The subject was in Nairobi and she stayed in Kenya for 6 months in Oasis. She testified that she did not meet her mother because she was seeking treatment and she can't remember when she last communicated to her.
17. CLAO testified that she stays in Loresho with her Dad Joff Otieno. She testified that she knows the subject and she is her mother. She stated She knows A stays in Westland. She testified that she last saw her mother on 14.6.2014 at her house in Westlands. She was alone. She testified she was with her for two hours. She is not mentally stable because they were talking issues. The subject appeared mentally stressed and unstable but she does not know to what degree. She accused her for hacking her phone. She testified that her mental health is deteriorating at a faster rate. She testified that they accused them working for their Dad by getting intelligence for their Dad. She testified that they can't stay with the



- subject for long because she thinks they are spying on her. She testified that the subject appeared to be stressed and could not sleep. She testified that she does not think subject can harm anybody but she is not sound. She testified that she did not find out if she was taking any medicine.
18. She testified further that she knows the subject has been taken for treatment. She was once admitted. She was treated by passing electricity through her brain. She testified that she thinks it was shock therapy. She testified the subject can take care of herself, she can cook, well groomed. She testified that the only issue is her emotional wellness. She testified that she needs someone to take care of her because she needs therapy. She testified that she does not mind been appointed as guardian as long as she is not the only one. She testified that she would want to do it with Dorine who stays in Germany. She is financially stable. Tracy is admitted at Oasis Hospital. She has been there for three weeks. Amanda stays in Canada but she does not know where she is. She does not respond to her texts.
  19. Dr. Violet Caroline Akoth Okech testified that she is consultant Psychiatrist working at Kenyatta National Hospital. She testified that she knows the subject and came to know her as a patient. She testified that she prepared a medical report dated 18.5.2021 and wish to produce it as evidence.
  20. During cross examination by Mungai, Dr. Violet testified that the patient went to her hospital at Kenyatta National Hospital Doctors Plaza. The history was given by Agnes Achieng. She was in fair physical condition and vitals were normal. She testified that she saw previous reports by other doctors who she had seen previously. She did not have them.
  21. By court directions Dr. Violet Oketch Caoline was ordered to further examine the subject and prepare and file a report. On 10.2.2025 Doctor. Violet testified on the report that she saw the subject on 27.1.2025 and she has filed a report. She testified that she found the subject to be still unwell with severe bipolar, disorder depression with psychotic features. She is not in touch with reality. She testified that she also found that the subject has poor psycho-social support. She is under the care of her cousin Redempta Awour. She is having severe mental illness. She is able to work and clean.
  17. The court has exhaustively considered all the material placed before it, the main issue for determination is whether the court should declare the subject as a person suffering from mental disorder so as to grant the guardianship and management orders as sought in the application herein.
  18. Section 2 of the *Mental Health Act* Cap 248 provides that: “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.”
  19. 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:

    - i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
    - ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
    - iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”



17. Before this court there is a medical report dated 21.05.2010 prepared by Dr.Margaret Mak'Anyengo a Consultant Psychiatrist in which she stated that;

“Conclusion

.... In my opinion Agnes is suffering from a severe form of mental illness with mood changes and paranoid delusions which may lead her to harm herself or someone close to her. What makes her condition mor complicated is her 'lack of insight' to her illness.She does not agree that she is sick and therefore she refused to take medications and subsequently the illness persists.

The illness affects her state of mind to a point that she makes wrong decisions. I strongly recommend that she be admitted for treatment in a psychiatry hospital”

29. There are other medical reports dated 25.5.2010,27.5.2010 and 28.05.2010 prepared by Dr.Makanyengo,Dr.M.M.O Okonji and Dr.Fredick Owiti and Dr.S.G.Gatere respectively. They all opined that and confirmed that the subject has a mental sickness.

30. There is also a recent medical report dated 27.01.2025 prepared recently by Dr. Violet C.A.Okech, Consultant Psychiatrist. This was follow up report and She opined as follows;

“...Ms.AAO is unwell with a life-long chronic, moderately severe mental illness and needs regular support and care from a family member or caregiver in order to support her wellbeing.”

31. This court during hearing I was able to interrogate the subject and this court observed the subject virtually and the subject looks anxious and sleeps on the table.

32. Relying on the above observations and evidence adduced in court , I am satisfied that the subject suffers from mental disorder. I am satisfied that the Subject suffers from a mental illness under Section 26 of the *Mental Health Act*. I find merit in the Petition dated 13<sup>th</sup> July 2021 and make orders as follows;

1. AAO is hereby declared as a person suffering from a mental disorder as defined in the *Mental Health Act* CAP 248 Laws of Kenya.
2. The court hereby appoint jointly RDA, LPO and MAO as the Guardians and Managers of affairs of the subject's estate.
3. In accordance with the provisions of Section 33 of the Mental Act, the petitioners will furnish an inventory and annual statement to this court and the Public Trustee as required by the law.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF MAY 2025**

.....

**S.N.RIECHI**

**JUDGE**

