



REPUBLIC OF KENYA



In re PMG (A Person Suffering from Mental Disorder) (Family Miscellaneous Application E020 of 2025) [2025] KEHC 9001 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEHC 9001 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
FAMILY MISCELLANEOUS APPLICATION E020 OF 2025
DO CHEPKWONY, J
MAY 21, 2025
IN THE MATTER OF PMG
AND
IN THE MATTER OF: APPLICATION BY MWM AND
JMM
IN THE MATTER OF: MWM AND JMM TO BE APPOINTED AS GUARDIANS
OVER THE AFFAIRS AND MANAGER OF THE
ESTATE OF PMG**

RULING

1. What is before the court for determination is the Notice of Motion application dated 7th April, 2025 in which the Applicants seeks the following orders:-
 - a. A Declaration that the subject, PMG is suffering from mental disorder resulting from a stroke pursuant to the *Mental Health Act*, Cap 248 Laws of Kenya.
 - b. That the Applicants be appointed as the managers of the estate of and all affairs of PMG.
 - c. That the Applicant be appointed as guardians of PMG, the subject herein.
 - d. That this Honourable Court do grant the Applicants access to Subject Bank Accounts held with ABSA Bank PLC Ltd Being Account Number 4899421 and Account Number 434839 for the purpose of meeting the subject's medical needs.
2. It is The Applicant's case that in the year 2002, the subject herein suffered cerebrovascular accident (CVA) commonly known as a stroke which has significantly impaired his mental and physical abilities for which he was treated and seemed to be recovering in 2023, he suffered a second attack which resulted into paralysis on his right side and memory lapses with difficulty in word finding. As a result of this, the subject has been undergoing continuous treatment at Karen Hospital although his condition has deteriorated that he is now incapable of handling financial matters, represent himself in



legal proceedings, manage his properties since he can neither speak, write or manage his personal and financial affairs without assistance and thus there is need for the Applicants to be appointed to manage his estate in his best interest.

3. According to the Applicants, the subject requires daily care and medication, whose cost has been borne by his immediate family but they are now constrained and hence there is need for them to access his bank accounts to obtain funds for his medical bills, ongoing treatment and essential medication. That the subject has several properties as listed at Paragraph 6 of the application and 8 of the Supporting Affidavit sworn by Mary Munga, and annexures 'MWN3', which if left unattended, that he has several properties as listed which if left unattended, there is a risk of deterioration and financial loss. It has also been deponed by his wife, MWM, that the subject is a protestor in Succession Cause No 96 of 2018 currently pending before the High Court in Kiambu regarding the Estate of Githunguri. That, given his mental state, the Applicant together with her Co-applicant seek to substitute him in the said proceedings and represent his interest in the case. They hold that it will be in the interest of justice that the application be allowed.
4. The 1st Applicant, MWM confirms that she and subject have five(5) children who include her Co-Applicant, and they have all consented to the grant of the prayers sought in the application. The court also went on to confirm this by interviewing all the other children on oath and they confirmed their copies of consents marked 'MWM5'. Further, the subject was presented before the court on a wheel chair and this Court observed a man who was evidently unaware of his surroundings and was drooling from the mouth.

Analysis and Determination

5. To determine this application, the first port of call is the law as provided for under Section 26 of *Mental Health Act*, Cap 248 Laws of Kenya which gives the court judicial power over persons and estates of persons who are shown to be suffering from mental disorder and/or any incapacity. Section 26 of the said Act provides as follows:-

“ [26]. Application for administration

1. An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—
 - a. a supporter of the person with mental illness; or
 - b. the representative of the person where the person with mental illness has not appointed a supporter.
2. An application under Subsection (1) shall be submitted together with an affidavit setting out—
 - a. the grounds upon which the application is made;
 - b. the full particulars as to the property and relatives of the person to whom it relates; and
 - c. a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
3. A Notice of the application under Subsection (1) shall, in such manner as the court may direct, be served upon the—



- a. person in respect of whom the application is made; or,
 - b. where an application is made by a supporter to the representative of the person with mental illness.
4. Despite the provisions of Subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.
5. The court may waive the requirement for service under Subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.
6. The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—
 - a. court to examine the person; or
 - b. person to be examined by a qualified registered mental health practitioner
6. The court is also guided by the case of *Re N. M. K.* [2017] eKLR which considered what factors should guide the court when applying Section 26 and 27 of Cap 248. They 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.”
7. In this case, the court has considered the Notice of Motion application, the grounds which it is premised on its face and reiterated in the Supporting Affidavit together with the annexures attached thereto. The court notes that the Applicants MWM and James Mwaura Munga are wife and son to the subject respectively as evidenced by Marriage Certificate No 22XXXXXX, Birth Certificate No 20XXXXXX and respective copies of National ID Cards. The subject’s mental status is confirmed by a medical report from Karen Hospital dated 4th March, 2025, which shows that the subject suffers from neurological motor aphasia and right apastic hemiparals which findings are as a result of the recurrent strokes suffered in the past that he has memory lapses with difficulty in word finding that he is unable to talk or make independent decisions. The court finds the attached medical evidence by Dr. Musila B. N. a Physician and the physical observation of the subject is sufficient to confirm that the subject indeed suffers from mental disability and requires assistance to manage his personal, financial affairs alongside management of this Estate.
8. The Applicants have attached copies of documents marked as annexures ‘MWM3’ to confirm the properties listed at Paragraph 8 of the Supporting Affidavit sworn by the 1st Applicant belong to the subject and require to be properly managed to avoid tier deterioration and or loss. Also attached are the pleadings in respect of the Succession Cause No 86 of 2018 where the subject is a Protestor and



in his current physical and mental status, he requires to be substituted by persons close to him so that his legal right and interest are taken care of.

9. Further support of the application has been provided by the children of the subject and 1st Applicants, MWM as demonstrated by their respect copies of consents, National Identity Cards and by their physical and virtual attendance before this court to verbally confirm their support on oath.
10. For the reasons stated above, the court hereby allows the application and proceeds to order that:-
 - i. A Declaration be and is hereby made that the Subject, PMG is suffering from mental disorder resulting from a stroke pursuant to the *Mental Health Act*, Cap 248 Laws of Kenya.
 - ii. That the Applicants MWM AND JMM are hereby appointed as the Managers of the Estate of and all affairs of PMG.
 - iii. That the Applicants are hereby granted access to the Subject's Bank Accounts held with ABSA Bank PLC Ltd being Account Number 48XXXXXX and Account Number 43XXXXXX for the purpose of meeting the Subject's medical needs.
11. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 21ST DAY OF MAY 2025.

D. O. CHEPKWONY

JUDGE

