



**In re GW (Subject) (Miscellaneous Application E054 of 2024)  
[2025] KEHC 6289 (KLR) (20 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6289 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS APPLICATION E054 OF 2024**

**DKN MAGARE, J**

**MAY 20, 2025**

**IN THE MATTER OF GUARDIANSHIP OF SUBJECT – GW**

**BETWEEN**

**NWW ..... APPLICANT**

**AND**

**AWW ..... RESPONDENT**

**JUDGMENT**

1. The Applicant seeks that the Applicant and Respondent be appointed as guardians of the subject. The subject is said to be suffering from mental disorders. The subject is said to be the registered owner of land parcel number Mahiga/Kamoko/1XX2. The applicant stated that the subject’s parcel is in danger of disposal. They annexed medical reports from Othaya Sub County Hospital and Kamoko Health Centre. The land was transferred to the deceased. However, a restriction was registered three months later, on 29.11.2023
2. The Applicant is the brother of the deceased, while the Respondent is the subject’s daughter. The parties are willing to take care of the subject. The Respondent, however, wants to take care of the subject alone. However, I have an uncanny feeling that the parties thought that guardianship affected the fate and ownership of the land.
3. The applicant filed submissions stating that his application was not defective. they relied on the case of *Coast Development Authority v Adam Kazungu Mzamba & 49 others* [2016] eKLR, where the court of Appeal [Makhandia, Ouko & M’Inoti, JJ.A] posited as follows:

Article 159 (2) (d) demands that justice shall be administered without undue regard to technicalities. In *Salat v IEBC & 7 others*, Petition No 23 of 2014, the Supreme Court reiterated that the above constitutional provision accords precedence to substance, over form and in *Lamanken Aramat v. Harun Maitamei Lempaka*, Petition No 5 of 2014 the



same Court observed that a court dealing with a question of procedure, where jurisdiction is not expressly limited in scope, may exercise discretion to ensure that any procedural failing that lends itself to cure under Article 159, is indeed cured. The Court concluded thus:

The Court’s authority under Article 159 of the Constitution remains unfettered, especially where procedural technicalities pose an impediment to the administration of justice.”

4. They stated that the subject suffers from mental health pursuant to section 2 of the Mental Health Act. The Applicant stated that there should be a joint management of her estate. The respondent submitted that the application ought to be made by petition. they relied on in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
5. In state that the subject suffers mental disorder, among other ailments, noted in the application. The facts are largely undisputed; the respondent has not applied for guardianship of the subject. She nevertheless thinks that her uncle should not be a manager; there is a tussle on how best to handle the subject.
6. While the applicant is concerned for the welfare of the sister, the Respondent appears interested in releasing the subject’s land. The applicant had taken care of the subject until 2021, when, admittedly, she took the mother from the applicant’s custody. The applicant was willing to take care of her sister. The respondent, on the other hand, predicates help on ‘leasing the land.’ I find the Applicant is a proper person to be a guardian. However, he had requested the daughter also to be a manager.
7. Further, I have perused the medical evidence and concluded that the subject cannot manage his affairs. Section 26 of the Mental Health Act provides for an order for custody, management, and guardianship of subjects of mental health as follows:
  1. The court may make orders:
    - (a) for the management of the estate of any person suffering from a 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 and guardian of any such person.
  3. 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 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.
8. On the other hand section 27 of the Act provides for the power of the manager in respect of the estate as follows:
  1. Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist: Provided that-



- i. a manager so appointed shall not, without the special permission of the court:
    - a. mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
    - b. lease any such property for a term exceeding five years; or
    - c. invest in any securities other than those authorized by section 4 of the Trustee Act (Cap. 167);
  - ii. no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.
2. Where the person appointed to be manager of an estate or guardian of a person under this Part is unwilling to act gratuitously, the court may fix such allowance to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the court may think fit.
  3. Any manager appointed under any other law in force before the commencement of this Act shall be deemed to have been appointed under this Act as from such commencement, but shall not be required to file any inventory or statement under subsection (1) of section 33 if he has already done so before such commencement.
  4. For the purposes of this Act and the *Penal Code* (Cap. 63), a manager shall be deemed to be a trustee under any other law for the time being in force.
9. Having seen the state of affairs, it is the duty of this court to make necessary orders as may be necessary to protect the estate of the subject and properties. In respect of properties, section 28 of the *Mental Health Act* provides as follows;
- (1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from a mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.
  - (2) The Minister, the Public Trustee or a manager may take out, as a matter of course, an application in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part.
10. However, there are limitations as to the extent to which properties can be applied. A court order must be obtained in respect of immovable properties. None has been requested. Therefore, the parties must hold their horses up until the court makes such an order. Having seen the subject and confirmed the state of affairs, I find merit in the application and allow it. I do not find it necessary to delve into the issue of procedure for now, when the subject needs to get the best care possible.

### **Determination**

11. I therefore allow the application as follows:
  - a. A declaration is hereby made that is a patient and a person suffering from a mental disorder within the meaning of Section 2 of the *Mental Health Act*, Cap 248, Laws of Kenya.



- b. An order is hereby issued that the Applicant, NWW and AWW, have full custody and management over WMB and his estate as provided under Sections 26, 27, and 28 of the *Mental Health Act* Cap. 248 Laws of Kenya.
- c. An order is hereby issued that NWW and AWW while acting as Guardians and Managers over the subject herein and his estate shall exercise and are granted special powers as may become necessary to sue and/or defend a suit for and against the estate of the Subject herein.
- d. Nevertheless, whereas NWW and AWW, the Guardians and Managers, have a right to deal with Land Parcel Number Mahiga/Kamoko/1XX2, they shall not sell or alienate the parcel without a Court order before any transaction is carried out. Any disposal shall be null and void.
- e. No order as to costs.
- f. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 20TH DAY OF MAY, 2025.  
JUDGMENT IS DELIVERED THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

No appearance for the applicant

Ms Muganda for Mr. Kioko for the Respondent

Court Assistant – Michael

**M. D. KIZITO, J.**

