



**In re FMK (Subject) (Miscellaneous Application E006 of 2025)  
[2025] KEHC 6306 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6306 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
MISCELLANEOUS APPLICATION E006 OF 2025**

**RC RUTTO, J**

**MAY 19, 2025**

**IN THE MATTER OF FMK (PERSON SUFFERING FROM MENTAL DISORDER)**

**AND**

**IN THE MATTER OF A PETITION BY JKM TO BE APPOINTED  
GUARDIAN OVER THE AFFAIRS OF THE ESTATE OF THE FMK**

**IN THE MATTER OF**

**JKM ..... PETITIONER**

**JUDGMENT**

1. The Petition presented before this Court was filed JKM, who is the father to the Subject, FKM. The Petition is premised upon sections 25,26, 27 and 28 of the *Mental Health Act*. It is supported by an Affidavit sworn by the Petitioner, along with the attached annexures. The Petition seeks the following orders:
  - i. That the petitioner being JKM be appointed the manager and guardian in respect of the Ward being FMK
  - ii. That the Petitioner shall testify on behalf of the Ward in Mavoko MCC E953 of 2022, the civil claim filed seeking compensation for the said accident.
  - iii. That the costs and legal fees of this application be provided for from the Ward's estate.
2. The Petitioner also filed a Notice of Motion dated 4 February 2025 seeking the following orders:
  - a. Spent
  - b. That Pending the hearing and determination of the application, an order does issue appointing the Petitioner as the guardian and manager of the Estate and all the affairs of the said FMK.



- c. That Pending the hearing and determination of the Petition, an order does issue appointing the Petitioner as the guardian and manager of the Estate and all the affairs of the said FMK
  - d. That Pending the hearing and determination of the Petition, an order does issue granting the Petitioner the capacity to testify on behalf of the Ward in Mavoko Civil Case E953 of 2022
  - e. The cost of this application be borne by the estate of the said FMK.
  - f. Any other relief and order that the court may deem fit to give in the circumstances.
3. The Notice of Motion is supported by an Affidavit sworn by the Petitioner/Applicant and premised on the grounds that: The subject was involved in an accident and sustained traumatic brain injury; blunt injury to the abdomen, fracture right distal tibia bone and soft tissue injuries. As a consequence of the injuries, he has been incapable of managing and attending to his personal affairs as set out in the *Mental Health Act*. The subject is married to HWG and are blessed with three children.
  4. Further, that on 17<sup>th</sup> November 2022 the subject commenced civil proceedings seeking compensation for the said accident. That it became apparent that the subject could not remember the events of the said date and was unable to give a testimony to support its case. He was examined and as per the medical report the subject depicted failure to comprehend anything. The petitioner now seeks to undertake to testify on behalf of the Ward and give an accurate account of the events leading to the accident. The surviving family members, his wife has consented to the petitioner's appointment as the manager and guardian of the subject and no prejudice will be suffered by any party if the orders sought herein are granted.
  5. I will determine both the Petition and the Application concurrently.
  6. In the Affidavit in support of the Petition, the Petitioner depones that the subject was involved in an accident and has not regained his memory and is incapable of managing and attending to his personal affairs as set out in the *Mental Health Act*. That even though the subject's health condition has been stable over the years due to proper oversight and care, the said subject is still incapable of giving a testimony in court regarding the events prior to the accident.
  7. According to the record, the Subject was examined by Dr. Titus Ndeti, who presented a report dated 4<sup>th</sup> November 2022 confirming that the subject is unable to comprehend information or walk independently and suffers from memory loss. In addition, a report from Mathari National Teaching & Referral Hospital dated 23rd October 2024 and signed by Dr. Rajab Saddam was also submitted. The report indicated that due to brain injury, the subject exhibit poor working memory, lacks orientation in time and has suffered significant impairment in long term memory. The report also states that it is not possible to predict the duration required to attain full recovery.
  8. In further support of the petition and the application, a copy of the police abstract, confirming occurrence of the accident was provided, copies of pleadings filed at the Chief Magistrates Court Civil Case No E953 of 2022 confirming the existence of a suit seeking general damages for pain suffering and loss of amenities arising from accident were filed.
  9. The Petitioner also submitted a copy of the Certificate of Marriage between the subject and HWG, along with a consent authorising the petitioner to act as the subject's guardian and manager. During the hearing, the court also had an opportunity to speak with the Subject's wife who confirmed that she had granted consent to the petitioner to be appointed guardian for the purpose of testifying and pursuing the suit filed at the Chief Magistrates court at Mavoko.



10. In view of the evidence presented and observations made, I am persuaded that this Petition is properly before the Court.
11. Section 26 of the said Act states that:
  - 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 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
12. The definition in Section 2 of the Act 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.”
13. Having reviewed all the material placed before me. It is evident that the subject’s health condition has remained stable over the years due to proper oversight and care. However, he continues to experience poor working memory, a lack of temporal orientation, and significant impairment in long-term memory. As a result, he is unable to provide testimony in court regarding the accident.
14. In the circumstances, the Court makes a finding that the Subject is a person suffering from a mental disorder within the definition of the *Mental Health Act* and hereby appoints the Petitioner as the Subject’s guardian limited to testifying and pursuing on behalf of the subject in Mavoko CMCC E953 of 2022.
15. In view of the foregoing and pursuant to the Petition and Notice of Motion filed herein, I make the following orders:
  - i. That FMK is hereby declared as a person suffering from and living with a mental disorder within the meaning of section 26 of the *Mental Health Act*;
  - ii. That JKM is hereby appointed as the legal guardian and manager of FMK, with the appointment strictly limited to testifying and pursuing the suit Mavoko Chief Magistrate Court Civil Case No E953 of 2022 Francis Mwangi Kimari v Kenyatta Somoni Kelvin on behalf of the subject/Ward in
16. In view of the nature of the case, I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19<sup>TH</sup> DAY OF MAY, 2025**



**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Petitioner

Sam, Court Assistant

