



In re JK (A Person Suffering from Mental Incapacity) (Miscellaneous Civil Application E028 of 2024) [2025] KEHC 7149 (KLR) (14 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CIVIL APPLICATION E028 OF 2024**

REA OUGO, J

MAY 14, 2025

IN THE MATTER OF

ANA APPLICANT

JUDGMENT

1. ANA is the biological mother of J K, the subject, who suffers from schizophrenia, a mental illness. He is 28 years old. The petitioner avers that the subject cannot manage his personal and financial affairs. The petitioner avers that being the biological mother, she has been taking care of the subject, and she is best suited to act as his guardian and manager.
2. The petitioner has a letter from Karen Kachibo, a clinical officer in the Mental and Psychiatric, which states that the subject is a patient and is on follow-up in our facility for a mental illness (schizophrenia) and that he is currently on antipsychotics but not stable. The petitioner has also attached a letter from the area Chief Muchi location dated 2.4.2025, which states that J K L hails from Muchi location of Ndivisi division in Webuye and that he confirms that he has had a mental illness since 2017 and that he is being taken care of by the mother 24/7, he is unable to do anything constructive without the assistance of the mother.
3. The petitioner seeks to be appointed a guardian and manager of the affairs of the subject J K.
4. Section 2 of the *Mental Health Act* defines a person suffering from mental disorder as: “A 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.”



5. The said *Mental Health Act* provides for the care of persons who are suffering from mental disorders, custody of their persons and for the management of the estates of such persons under section 26 of the *Mental Health Act*, the court is empowered to make orders for:“

- “ 1. The management of the estate of any person suffering from mental disorder;
(i) and
ii. The guardianship of any person suffering from a 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 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 the 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 cases, make any order as to the custody of the person suffering from mental disorder.”

6. The petitioner has a medical report on the subject, and from its contents, the subject is unable to manage his affairs and is solely dependent on her; I am satisfied that the subject is not capable of managing his affairs.

7. Accordingly, I make the following orders;

- i. That the Subject JK is hereby declared and adjudged to be a person suffering from mental disorder under Section 26 of the *Mental Health Act* and is incapable of managing his own personal affairs .
- ii. That the Petitioner herein ANA shall henceforth act as manager and guardian of the subject JK in accordance with the directions of this court and in particular, shall do the following:
 - (a) Manage the subject’s mental health care.
 - (b) Execute all documents and claim for any benefits from the subject as long as he lives whilst under her care.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON 14TH DAY OF MAY 2025.

R.E.OUGO

JUDGE

In the presence of:

ANA / Petitioner

Wilkister - C/A

