



REPUBLIC OF KENYA



In re JNN (Petition E023 of 2025) [2025] KEHC 9603 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEHC 9603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E023 OF 2025
DO CHEPKWONY, J
MAY 5, 2025**

IN THE MATTER OF

**KNN 1ST PETITIONER
MWG 2ND PETITIONER
HNN 3RD PETITIONER**

RULING

1. Before the court is the Petition dated 3rd March, 2025 which seeks the following orders:
 - a. That JNN be adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
 - b. That this Court be pleased to appoint KNN (1st Petitioner), MWG (2nd Petitioner) and HNN (3rd Petitioner) as managers of the estate of the subject JNN with special permission pursuant to Section 27(1) of the *Mental Health Act* to charge, sell, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the Subject's estate.
 - c. That this court be pleased to appoint KNN (1st Petitioner), MWG (2nd Petitioner) and HNN (3rd Petitioner) as guardians of the affairs of JNN in accordance with the *Mental Health Act* with powers to sign, access, withdraw, execute, and or carry out any act incidental to the affairs of the subject.
 - d. That KNN (1st Petitioner), MWG (2nd Petitioner) and HNN (3rd Petitioner) hereby granted leave to institute a suit on behalf of JNN as guardians and to execute all court papers necessary for the filing of any litigation on behalf of and geared towards protection, protection and realization of the estate of any of its assets.
 - e. Costs of this petition be provided for.
 - f. Such other and further relief as the court may deem fit and equitable to grant.



2. This Petition has been brought by the Subject's wife and two of his children with the express consent of the other children/siblings. According to the Petitioners in their explanation in affidavits, the subject is a 73 year old man whose health has continued to deteriorate both physically and mentally. That he has been examined and found to be suffering from poor memory, forgetfulness, agitation, disturbed behaviour and negative thoughts/ hallucinations as indicated in the medical report. That the doctor's opinion was that the subject suffers from dementia and thus unable and or incapable of discharging his own affairs, sign documents, operate bank accounts and or look after his financial or business affairs or manage and project his interests and rights. It is the Petitioners' prayer that they be appointed as his guardian and be granted access to his bank account for funds to facilitate and ensure provisions of medical care, nutrition, hygiene and upkeep. They also seek to protect his estate from exploration and safeguard it from waste if appointed as his guardians. They urge the court to grant the orders sought.

Analysis and Determination

3. To determine the Petition herein, I have read through the grounds in the Petition, the Supporting Affidavits and all the Supporting Affidavits and consents filed by the children and siblings of the Petitioners respectively. The issue for determination is whether the Petitioners have satisfied the threshold set out under Section 26 of the *Mental Health Act*, Cap 28 of the Laws of Kenya.
4. The law on an applications such as the present one is made under Section 26 of *Mental Health Act*, Cap 248 of 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 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"
5. This Court is guided by the case of *Re NMK [2017]eKLR* which considered what should guide courts when applying Section 26 and 27 of Cap 248. It was thus held:-

“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.”
6. In the instant case, the court has considered the Petition and the Supporting Affidavit together with the annexures therein. The court notes that the Medical Report from County Government of Kiambu dated 18th February, 2025 shows that the subject had a diagnosis of dementia with probable mood disturbance which was chronic and irreversible. From this Medical Report, the court finds the same is sufficient to demonstrate that the subject suffers from mental disability, hence requires assistance.
7. The court has also noted the Consents filed by the Subject’s children being Hannah Nyangugi Njuguna, Marion Wanjiku Njuguna, Judy Wangari Njuguna and Jennifer Mumbi Njuguna in respect to the Petition. The court further notes the contents in the letter from the Chief of Githunguri location confirming the beneficiaries of the subject including his wife and all his children.
8. Pursuant to court’s directions on 14th May, 2025, all the Petitioners and Beneficiaries together with the Subject appeared before it on 28th May, 2025. The Petitioners and beneficiaries confirmed that they had agreed and consented to the orders sought. The court also had an opportunity to examine the subject and established that they knew his name but could not remember where his national identity card was and did not seem to know where he was.



8. For those reasons, the court is satisfied that the orders sought are merited and proceeds to allow the application in the following terms:-
- a. The subject herein JNN (JNN) be and is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#) Cap 248 of the Laws of Kenya.
 - b. The court hereby appoints KNN (1st Petitioner), MWG (2nd Petitioner) and HNN (3rd Petitioner) as managers of the estate of the subject JNN with special permission pursuant to Section 27(1) of the [Mental Health Act](#) to charge, sell, gift, surrender, transfer, exchange or otherwise deal with any movable or immovable property comprised in the subject's estate.
 - c. The court hereby appoints KNN (1st Petitioner), MWG (2nd Petitioner) and HNN (3rd Petitioner) as guardians of the affairs of JNN in accordance with the [Mental Health Act](#) with powers to sign, access, withdraw, execute, and or carry out any act incidental to the affairs of the subject.
 - d. That KNN (1st Petitioner),MWG (2nd Petitioner) and HNN (3rd Petitioner) are hereby granted leave to institute a suit on behalf of JNN as guardians and to execute all court papers necessary for the filing of any litigation on behalf of and geared towards protection, protection and realization of the estate of any of its assets.
 - e. That the costs of this application be borne by the Estate of the said JNN.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF MAY, 2025.

D. O. CHEPKWONY.

JUDGE

