



In re LOS (Civil Miscellaneous E051 of 2025) [2025] KEHC 5622 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL MISCELLANEOUS E051 OF 2025**

RN NYAKUNDI, J

MAY 5, 2025

IN THE MATTER OF MENATL HEALTH ACT CAP 248 OF THE LAWS OF KENYA

AND

IN THE MATTER OF L. O. S

BETWEEN

LRO APPLICANT

AND

LSO RESPONDENT

RULING

1. Before this court is a Chamber Summons dated 16th April 2025 seeking the following orders:
 - a. The Chamber Summons filed herein and dated the 16th April 2025 be and heard at the earliest possible moment during the Vacation of this Honourable Court.
 - b. Costs of this Application be provided for.
which application is supported by the annexed affidavit of Tarigo Kiptoo and other grounds as shall be urged at the hearing hereof
 - a. The Application raises serious legal issues in regard to the Applicant’s legal Guardian Ad Litem and/or Next Friend to LOS who is suffering head injury, memory loss and head trauma, cannot make decisions on his own and/or run day to day activities due to mental state
 - b. Unless the said Application is admitted for hearing during the vacation, the same will be rendered nugatory and the Applicant shall suffer irreparable harm



- c. This is principally due to the commencement of the High Court Vacation on 9th April, 2025-22nd April, 2025.
- d. Unless this Honourable court admits the Application to hearing during the vacation, the Applicant shall suffer irredeemable harm and grave injustice without a chance to be heard concerning their legitimate concerns.
- e. It is only fair and just that the application be heard during the vacation of the High Court
- f. No party will suffer prejudice should this application be allowed
- g. Its only fair and just for this application to be allowed as prayed.

2. In support is the annexed affidavit sworn by the LRO stating as follows:

- a. I am the above named female adult of sound mind and disposition and the Applicant herein hence competent enough to swear this affidavit.
- b. I am the legal wife to LOS having being married to him on 14.4.2019
- c. That our union was blessed with on issue in our marriage namely AO aged 5years
- d. The minor is currently schooling at XXX Academy and the father LOS has been paying school fees an other school related expenses.
- e. That LOS has been ailing since 20th December, 2024 to date and I have been taking care of him at xxx Hospital Eldoret where he has been undergoing treatment
- f. That he has been unable to make decisions due to ill health, memory loss and head trauma, which has rendered him dependent on other people for everything.
- g. That L. O. S fell down from a high height while he was at work and he suffered head injury which resulted him suffering memory loss and head trauma
- h. That there is need for my husband to have legal Guardian Ad litem and /or Next Friend whom can make decision on his behalf
- i. That there is need for me to allowed to access, manage, withdraw and/or operate my husband's stanbic Bank Account number XXXXXXXXXXXXXXXX in the meantime as he is undergoing treatment for purposes of meeting our child's school fees and other school related expenses and other family related bills, which he was doing before he become ill.
- j. That I undertake to assist my sick husband to make decision for him/or anything in his bet interest

3. I have read and considered the application together with the affidavit in support as averred by the Applicant on oath. The primary question is what is the applicable law. “ The [Mental Health Act](#) provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.

- 8. Section 2 of the Act defines “person suffering from mental disorder” as follows:-“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.”



9. Section 26 provides for custody, management and guardianship
 1. The Court may make order for the management of the estate of any person suffering from mental disorder; and 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 of the guardian of any such person.
 3. Where upon 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.
4. The Applicant in this matter annexed a medical report by Dr. Mwadime a medical officer Brain and Sine Centre xxxx Hospital , Eldoret dated 14.4.2025. Medical report indicated that the subject was referred to our facility on 20th December, 2024 following a traumatic fall from height, which resulted in a decreased level of consciousness. A CT Brain scan revealed a massive apidural hematoma, and his Glasgow Coma Scale (GCS) on admission was 6/15. As a consequence, the subject remains under neuro-rehabilitation care with a GCS of 9/15 owing to his neurological condition, the patient cannot properly communicate and his memory affected, therefore he is unable to manages his legal and financial obligations independently at this time.
5. There is also the import of the convention on the right of persons with disabilities. It addresses recognition before the law, legal capacity and decision making. Legal capacity is important because it goes beyond decision making to the core to what it means to be human. Without legal capacity our freedom to make choices is greatly diminished yet life choices are part of who we are. Without legal capacity many if not all rights become meaningless for instance the right to life under Article 26 , the Right to Human dignity in Article 28, the Right to Private life, the Right to Access to Information under Article 35, the Right to property under Article 40 and the Right to work under Article 41. Practically, legal capacity is the law’s recognition of the validity of a persons choices. Legal capacity is something people take for granted until they lose it due to one reason or another or through serious injuries and trauma like the subject in this application
6. Having reviewed the evidence, and the applicable law there is merit to the question of appointing guardian ad litem and next friend who happens to be his spouse. By dint of this appointment LRO guardian ad litem will in the interim exercise all those choices that could have been made by the subject save for his incapacity at the moment. This includes access to the subject’s bank account No: XXXXXXXXXXXXXXX at Stanbic Bank. This court therefore exercise discretion to grant the application to meet the ends of justice implicit on the survival rights of the subject.

GIVEN UNDER THE HAND AND THE SEAL OF THIS COURT ON THIS 5TH DAY OF MAY 2025.

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R. NYAKUNDI

JUDGE



In the Presence of
Mr. Tarigo Advocate
Applicant

