



**In re the Matter of CK (Miscellaneous Case E046 of 2025)
[2025] KEHC 5738 (KLR) (Family) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS CASE E046 OF 2025

CJ KENDAGOR, J

MAY 5, 2025

**IN THE MATTER OF SECTION 26 (1)(B) AND 28 OF
THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

AND

IN THE MATTER OF CK

IN THE MATTER OF

JNG 1ST PETITIONER

JNK 2ND PETITIONER

JUDGMENT

1. Before this Court is a Petition dated 20th February, 2025, which seeks the following orders: -
 - a. That the subject namely CK 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 the Petitioners namely JNG and JNK be appointed as guardians of the subject namely CK;
 - c. That the Petitioners shall jointly act as guardians in accordance with the directions and orders of the court and in particular do the following;
 - i. Manage the subject's health care and welfare;
 - ii. Execute documents on behalf of the subject;



2. The application is supported by an Affidavit dated 20th February, 2025 sworn by the Petitioners. The matter was canvassed via viva voce evidence on the online platform in the presence of the subject CK, who was presented to the court via an online platform.
3. The Petitioners, who testified as PW1 and PW2, told the Court that their sister, CK, is currently facing significant health challenges. The 1st Petitioner stated that the subject stays with him and has a caregiver.
4. Present in the courtroom alongside them were their other siblings, as well as the caregiver responsible for CK's daily needs, who testified as PW3, PW4, and PW5, respectively. PW5, the caregiver, stated that CK is unable to communicate effectively due to her condition.
5. PW3 and PW4 both expressed their full endorsement of the Petitioners' requests, consenting to the joint appointment of PW1 and PW2 as managers and guardians for CK.
6. The siblings all stated that the arrangement is aimed at ensuring that CK receives the necessary care and support she requires.
7. A medical report dated 21st August, 2024 by Dr. Margaret Makanyengo, a Consultant Psychiatrist was filed in Court. In the said report the Doctor confirmed that the subject has a severe form of autistic disorder with mental retardation and requires a round clock full time nursing care, occupational therapy and social engagement.
8. The Subject presented to the Court via the online platform appeared to be mentally incapacitated. She was unable to comprehend the proceedings and could not communicate.
9. The file is related to Misc E045 of 2025. The Petitioners confirmed that they had made an application to secure funds for CK's medical and welfare needs from their father's estate, PKK.
10. The [Mental Health Act](#) provides for the care of persons who are suffering from a mental disorder, custody of their persons and the management of the estate of such persons.
11. Section 26 (3) of the Act provides as follows;

“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 persons, including proper provision for his maintenance...”
12. Section 28 of the same Act provides for management of the subject's estate.
13. I have carefully considered the Petition, the Affidavit filed in Court, the medical report, as well as the evidence adduced in the matter. Section 26 of the [Mental Health Act](#), Cap 248, Laws of Kenya empowers the Court to 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 any other suitable person.”
14. The medical report reveals that the Subject needs support and guardianship to effectively manage her welfare matters. Furthermore, the court has documented notable observations regarding her



presentation during the hearing, highlighting concerns about her capacity to make independent decisions.

15. From the evidence produced by the Petitioners and the Medical Report on record, and confirmed by the subject's other siblings, I am satisfied of the merit of this Petition.
16. The Court issues the following orders concerning the subject and her estate;
 - a. That the Subject namely; CK is 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 the Petitioners namely; JNG and JNK are hereby appointed Guardians of the Subject namely; CK.
 - c. That the Petitioners shall jointly act as Guardians in accordance with the directions and orders of the court and in particular do the following;
 - i. Manage the Subject's health care and social welfare;
 - ii. Execute documents on behalf of the Subject.
 - d. That the costs and legal fees of this application be provided for from the Subject's estate.
17. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 05TH DAY OF MAY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Lynn Ng'ang'a, Advocate for the Petitioners

