



**In re CDS (Miscellaneous Application E007 of 2025)
[2025] KEHC 5363 (KLR) (Family) (2 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5363 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E007 OF 2025

H NAMISI, J

MAY 2, 2025

**IN THE MATTER OF THE MENTAL HEALTH ACT,
CAP 248 OF THE LAWS OF KENYA**

AND

IN THE MATTER OF CDS (PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY ALS AND AWS TO BE APPOINTED
GUARDIANS OVER THE AFFAIRS AND MANAGERS OF THE ESTATE OF CDS**

IN THE MATTER OF

ALS 1ST PETITIONER

AWS 2ND PETITIONER

JUDGMENT

1. The Petition before the Court was brought by A.L.S and A.W.S, being the children of the Subject, C.D.S. The Subject is a 79-year-old female, a retired civil servant, residing in Nairobi. She spends time tending to her vegetable garden. Her husband is deceased.
2. The Petition which is brought under sections 26, 27 and 28 of the *Mental Health Act*, is supported by an Affidavit sworn by the 2nd Petitioner, as well as annexures thereto. The Petition seeks the following orders:
 - i. That C.D.S be adjudged as a person suffering from a mental disorder under Section 26 of the *Mental Health Act*;



- ii. This Honourable Court be pleased to appoint the Petitioners, namely A.L.S and A.W.S as the legal Guardians over the affairs of C.D.S in accordance with the *Mental Health Act* with the powers to manage the Subject's health care, have access and operate the Subject's bank accounts, estate, execute documents on behalf of the Subject and carry out any act incidental to the affairs of the Subject;
 - iii. This Honourable Court be pleased to appoint the Petitioners, namely A.L.S and A.W.S as Managers of the estate of C.D.S in accordance with the *Mental Health Act* with special permissions pursuant to section 27 (1)(a) of the *Mental Health Act* to mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise deal with any moveable or immoveable property of which the estate may consist; and
 - iv. The costs of this Petition be borne by the estate of C.D.S
3. In the Affidavit in support of the Petition, the 2nd Petitioner depones that sometime in 2019, the Subject was diagnosed with Alzheimer's, which has progressed over the years. With time, the Subject has developed complete memory loss and is disoriented in three aspects of time, person and place, despite being on medication. Her situation is deteriorating by the day and it is now improbable that she can recover sufficiently to shoulder any of her previous responsibilities.
 4. The 2nd Petitioner further depones that due to the progressive nature of her condition, the Subject is experiencing a decline in cognitive function, impairing her ability to make informed decisions concerning medical treatment, financial transactions and other important decisions. Over time, the Subject has increasingly relied on the Petitioners for effective management of her well being, her affairs and her estate. The Subject's estate remains unattended, consequently subjecting it to potential loss and wastage.
 5. The Petitioners have presented 2 Medical Reports. The first report, dated 19 September 2022, was prepared by Katharine O'Brien, confirms the diagnosis. The second report, undated, was prepared by Dr. Cynthia M. Wendo at the Aga Khan University Hospital following a visit by the Subject on 10 July 2024. The PET Scan done revealed pattern of cortical hypometabolism pattern, which is suggestive of Alzheimer's dementia.
 6. The Petitioners also produced copies of their Certificates of Birth, confirming their relationship to the Subject.
 7. The Court had a chance to interact and engage with the Subject. She appeared healthy, well groomed and happy. She had good recollection of her immediate family members, including her late husband, but had trouble recalling significant events in her life. She also had a poor sense of time and could not recall many things, including what day it was.
 8. In view of the evidence presented and observations made, I am persuaded that this Petition is properly before the Court.
 9. 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
10. I have also considered all the material placed before me. It is apparent that the subject suffers from a mental disorder and that she is incapable of managing her own affairs, although she is not a danger to herself.
 11. 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.”
 12. 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 Petitioners as the Subject’s guardians. Additionally, the Court appoints the said Petitioners as general managers of the estate of the Subject.
 13. In view of the foregoing, I make the following orders:
 - i. That C.D.S. 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 A.L.S and A.W.S are hereby appointed as the legal guardians and managers of C.D.S;
 14. For the avoidance of doubt, such managers’ general powers will not include the power of alienation, sale or transfer of any other assets held by the Subject, but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the Subject in respect of any of the assets forming part of her estate.
 15. In view of the nature of the case, I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 2 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

.Mr. Ngatiafor the Petitioners

Libertine Achieng..... Court Assistant

