



REPUBLIC OF KENYA



**WMM & another v JMC & 3 others (Miscellaneous Application
E206 of 2023) [2025] KEHC 6304 (KLR) (Family) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6304 (KLR)

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

MISCELLANEOUS APPLICATION E206 OF 2023

PM NYAUNDI, J

MAY 15, 2025

BETWEEN

WMM 1ST DECREE HOLDER

EWM 2ND DECREE HOLDER

AND

JMC 1ST RESPONDENT

RMC 2ND RESPONDENT

HNC 3RD RESPONDENT

PMC 4TH RESPONDENT

RULING

1. By Notice of Motion dated 25th September 2024 presented under Order 51 rule 1 of the *Civil procedure Rules*, Section 3A of the *Civil procedure Act*, Sections 26 and 27 of the *Mental Health Act*, the Applicant seeks that the Subject FNC be adjudged to be a person suffering from mental illness and that the respondents be appointed as representatives of her estate with power to settle out of her estate, the sums outstanding on the decree issued on 23rd September 2021 in ELC No 291 of 2011. The Application is supported by the affidavit of the 2nd Applicant sworn on even date. He has annexed to his application, a report dated 30th June 2023 by Courtstar Auctioneers that states that their investigations reveal that the subject suffers from dementia. The information was divulged to them by the ‘area authority’
2. The application is opposed. The 2nd respondent has sworn an affidavit on 26th October and avers that if there is a debt the same is owing against the Estate of the late Chuch Wataku who is the deceased husband of the Subject. It is averred that on this account the application is incurably defective.



3. The respondents have also filed grounds of opposition dated 31st October 2024, stating the application has met not met the threshold set out in Section 26 so as to adjudge the subject as a person suffering mental illness.
4. The Application was canvassed via written submissions and parties also highlighted their submissions on 13th February 2025. The Applicants submissions are dated 24th July 2025. The Applicants restate that the application is competent and that the orders should be granted.
5. The respondent submissions are dated 3rd October 2024. It is submitted that the applicants lack locus and secondly on the basis of the decision in *GMG & another v IMN; Nganga (Interested Party)* (Petition 27 of 2019)[2023] KEHC 667 (KLR) (9th February 2023) (Judgment) the applicants have not discharged the evidentiary burden that rests on them.
6. The prerequisites to the court making the orders as sought by the applicant are set out in Section 26(2); it is necessary that there be (c) ‘ a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.’
7. Section 2 of the *Mental Health Act*, in turn defines a “person with mental illness” as ‘a person diagnosed by a qualified mental health practitioner to be suffering from mental illness.’ (Emphasis mine)
8. It is evident therefore that for this application to be considered there has to be a report by a qualified mental health practitioner. The finding as to the mental health status of a subject cannot be on the basis of anecdotal surmisings as is proposed. A private investigator or an ‘area authority’ is not a mental health practioner as envisaged under the *Mental Health Act*. I find therefore that the application must fail on this ground and it is accordingly dismissed.
9. Each party to bear their own costs.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF MAY 2025

P M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Manyara for Applicants

