



**In re Estate of EKK (Miscellaneous Civil Application E016 of 2023)
[2025] KEHC 8245 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CIVIL APPLICATION E016 OF 2023**

CW MEOLI, J

JUNE 12, 2025

**IN THE MATTER OF SECTION 25,26,28(1) AND 28(2) OF
THE MENTAL HEALTH ACT, CAP 248, LAWS OF KENYA**

AND

IN THE MATTER OF E.K.K (A PERSON INCAPACITATED)

AND

**IN THE MATTER OF AN APPLICATION BY S.S.K, R.N.S AND L.K.T TO BE
APPOINTED GUARDIANS OVER THE AFFAIRS OF THE ESTATE OF E.K.K**

JUDGMENT

1. The subject of the Petition filed on 31.01.2023 is EKK, a female said to have been diagnosed with stroke and incapacitated in terms of movement and speech. She is therefore unable to carry out her daily business and cannot transact from her bank account at Co-operative Bank Account No 011xxxxxxxxx and National Bank account 012 xxxxxxxxxxx. The three petitioners are the children of EKK and have been catering for her medical expenses. By their Petition, they seek to be appointed as guardians of EKK and as managers of the estate of EKK with access to her bank account at Co-operative bank for purposes financing her medical bills.
2. The Petition was supported by an affidavit sworn on the same date by the petitioners. They reiterated that EKK suffered a stroke that left her unable to speak and carry out her normal duties. That she was being treated at Kenyatta National Hospital and her medical bills continue to accumulate. They deposed that she requires expensive medication, hence the need to access her bank account at Co-operative bank Account No 011xxxxxxxxx. They sought to be appointed as guardians with authority to and access her said bank account and to transact therein while undertaking to manage her estate faithfully and with accountability.
3. The matter came up for *viva voce* hearing on 30.09.2024 when the petitioners adduced evidence. The first witness was Dr. Wilcox Ochieng Odhiambo who testified that the report dated 24.11.2022 was prepared by his colleague Dr. Stanley Ngare who is a consultant. He said that the two of them had



treated EKK who was diagnosed with stroke which had affected her daily duties as she is bedridden and ambulates by use of a wheelchair and requires a care giver to feed her and take care of her personal needs. Further, that EKK was on medication and two weekly sessions of physiotherapy, and was under the care of Dr. Stanley Ngare, a consultant, and himself.

4. SSK testified that he is a son to EKK and a businessman residing in Rongai. He stated the petition was prompted by the fact that his mother, the subject, was diagnosed with stroke for which she was undergoing treatment, primarily at home with monthly visits to Dr. Stanley Ngare. For the former purpose, a clinical officer, physiotherapist and caregiver have been engaged and that the Petitioners desire to have access to the subject's account in order to fund her medical bills. And that the subject had two accounts at Co-operative bank and at National Bank being account numbers 011xxxxxxxxx and 012xxxxxxxxx, respectively both at Ongata Rongai.
5. RNS testified and stated that he is one of the petitioners and a son to EKK, and a farmer at Rongai. He said the subject suffered a stroke in 2021 and was admitted in hospital for a year, but was following outpatient treatment with Dr. Stanley Ngare, in addition to the clinical officer and the physiotherapist who attended to her attend twice a week. That a caregiver daily attends to the subject. That they seek to access her bank accounts at Co-operative and National bank mentioned herein.
6. LKT in her testimony confirmed the evidence by RNS.
7. Following directions given by the court (Mutuku J). the petitioners filed their submissions on 4.10.2024. Stating that under section 26 of the [Mental Health Act](#), the court is duty bound to ascertain from the entire evidence tendered whether the patient is suffering from a mental illness that impairs her capacity to perform her normal duties, and whether the orders for guardianship and management of the subject's estate should be granted. Asserting that they required the sum of Kshs. 92,000/- per month to take care of the needs of EKK, the petitioners urged the court to find that they had demonstrated justification of the orders sought, and to grant the same.
8. The court has considered the petition, the supporting affidavits, and medical report by Dr. Stanley Ngare and evidence before the court. The medical report confirms that the subject suffered a stroke, which has rendered her unable to care of herself and/or her estate, and in need of constant treatment and therapy and personal care. Hence the petition brought by her children.
9. The petition herein is brought under the [Mental Health Act](#). Section 26 of thereof provides for the custody of persons suffering from mental disorder, appointment of guardians and management of their estate as follows: -

- “(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) 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”.

9. Additionally, section 27(1) provides that:

“(1) Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist: Provided that

- (i) a manager so appointed shall not, without the special permission of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist of;
 - (b) lease any such property for a term exceeding five years; or
 - (c) invest in any securities other than those authorized by section 4 of the [Trustee Act](#) (Cap. 167);
- (ii) no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the [Trustee Act](#) without the prior consent of the court”.

10. The Petitioners seek to be appointed as guardians and managers of the subject. To justify the grant of the orders, the Petitioners are obligated to adduce evidence demonstrating, firstly, that EKK is a person suffering from a mental disorder under the [Mental Health Act](#) and secondly, that she is incapable of managing her own affairs.

11. The Petitioners’ evidence shows that the subject suffered a stroke which affected her mental function and left her unable to walk, talk or comprehend her surroundings. The court has reviewed the medical report by Dr. Stanley Ngare dated 24.11.2022 which confirms the testimony of the petitioners. The subject was admitted to Kenyatta University Hospital for treatment after the stroke and discharged after a year. She continues to receive treatment through monthly consultation with Dr. Stanley Ngare, homebased medical care including two sessions of weekly physiotherapy and is assisted by a caregiver for her daily personal needs, all which cost money.

12. Based on the above material the court is satisfied that EKK suffers from a mental disorder under Section 26 of the [Mental Health Act](#) and secondly, that due to her impaired capacity, she is unable to manage her own affairs, and more particularly her estate. The petitioners as her children, who hitherto have been shouldering the cost of her treatment, are best suited for appointment as her guardians and managers of EKK’s estate, including monies held in her bank accounts, which are needed for EKK’s treatment and related expenses.

13. In the circumstances, the court will grant the petition as prayed.

DELIVERED AND SIGNED AT KAJIADO ON THIS 12TH DAY OF JUNE 2025.



C.MEOLI

JUDGE

In the presence of:

For the Petitioners: Ms. Muriungi h/b for Mr. Mugambi

C/A: Lepatei

