



**In re JWK (A Person With Mental Illness) (Miscellaneous Application E294 of 2024) [2025] KEHC 8150 (KLR) (Family) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8150 (KLR)

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

**MISCELLANEOUS APPLICATION E294 OF 2024**

**H NAMISI, J**

**JUNE 12, 2025**

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

**IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR THE MANAGEMENT  
AND ADMINISTRATION OF THE ESTATE OF JWK (A PERSON WITH MENTAL ILLNESS)**

**IN THE MATTER OF**

**KK ..... 1<sup>ST</sup> APPLICANT**

**CKK ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. Before the Court is a Notice of Motion dated 26 November 2024 filed by the Applicants, sons to the Ward, J.W.K. According to the documentation provided, the Ward is 71 years old. The Application is filed under provisions of section 26 of the *Mental Health Act*, and is supported by the Affidavit sworn by the Applicants.
2. The Application seeks the following orders:
  - i. (spent)
  - ii. An order do issue finding that JWK is mentally unfit to defend her interests in Machakos ELC No. E014 of 2021 – Abdilahhi Farah Elmi -vs- JWK & Others;
  - iii. An order do issue appointing KK and CKK as the representatives of JWK in respect of Machakos ELC No. E014 of 2021 – Abdilahhi Farah Elmi -vs- JWK & Others on account of her mental illness;



- iv. An order do issue finding that JWK is mentally unfit to manage her funds in various bank accounts;
  - v. An order to issue appointing KK and CKK as the representatives of JWK in respect of money in the following bank accounts in the name of JWK and the said KK and CKK shall have mandate to transact with the said bank accounts jointly:
    - a. Barclays Bank of Kenya Limited, Moi Avenue Branch, Account Number 620xxxx29 and 203xxxxxxxx816;
    - b. Guaranty Trust Bank (Kenya Limited) Ngong Road Branch, Account Numbers 222xxxxxxxx802 and 222xxxxx327;
    - c. Equity Bank Ltd, Karen Branch, Account Number 125xxxxxxxx425
3. The Applicants avers that the Ward has been diagnosed with dementia by a registered mental health practitioner and her mental abilities have progressively declined to the extent that she cannot manage her affairs and will rely on others. The Applicants are the only children, close relatives and primary caregivers of the Ward, who is a widow.
  4. Attached to the Supporting Affidavit were copies of pleadings in Machakos ELC NO. E014 of 2021, in which the Ward is the 1<sup>st</sup> Defendant. There is a copy of a Medical Report from Upperhill Specialist Clinics dated 16 October 2024 prepared by Dr. K. Ndege, Consultant Neurologist.
  5. The Court had a chance to hear from the Ward herself, who appeared to have very good memory despite a few lapses. She recognised her children and their families and gave a very good account of her daily activities. She was articulate and responded well to the questions posed by the Court. From my examination of the Ward, I am convinced that at that moment in time, she was very capable of managing her own affairs.
  6. With this in mind, it was, therefore, necessary to hear from Dr. Ndege, who had made the diagnosis of dementia. According to the Doctor, dementia is a global deterioration of cognitive functions. Initially, it starts with disorder of short-term memory. It is not only a memory disorder. There will be personality changes. There will be changes in intelligence, and in mood. It implies that one has loss of brain cells.
  7. The Doctor explained that dementia begins in a very subtle way and gradually progresses and worsens. When he first began seeing the Ward, she did not have it. On the last visit, 15 January 2025, he observed that she needed help. The Ward was able to perform daily functions of daily living, but was unable to manage complex issues such as coming to the office and remembering her appointments. By this time, the Ward had deteriorated to a point where she had to be accompanied by her next of kin. The Doctor confirmed that it would be very difficult for the Ward to give credible testimony in court proceedings.
  8. Section 26 of the *Mental Health 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
9. I have also considered all the material placed before me. It is apparent that the Ward suffers from a mental disorder and that she is incapable of managing complex affairs, although she is not a danger to herself.
10. 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.”
11. In the circumstances, the Application is allowed as prayed. The Court hereby appoints the Applicants as the Ward’s Guardians ad litem. For the avoidance of doubt, Guardians ad litem powers will not include the power of alienation, sale or transfer of the Ward’s immovable assets 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 Ward in respect of any of the assets forming part of her estate.

**DATED AND DELIVERED AT NAIROBI THIS 12 DAY OF JUNE 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Ms. Abobo .....for the Applicants

Libertine Achieng.....Court Assistant

