



In re Application for Custody, Management, and Appointment as Guardians and Estate Managers of the Estate of LWK, alias LK, W alias LK (Family Miscellaneous Civil Case E004 of 2025) [2025] KEHC 11233 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
FAMILY MISCELLANEOUS CIVIL CASE E004 OF 2025**

AK NDUNG’U, J

JULY 28, 2025

**IN THE MATTER OF LWK ALIAS LK, W ALIAS LWK (SUBJECT),
AN ELDERLY PERSON SUFFERING FROM A MENTAL DISORDER
AND IN THE MATTER OF AN APPLICATION FOR CUSTODY,
MANAGEMENT, AND APPOINTMENT AS GUARDIANS AND ESTATE
MANAGERS OF THE ESTATE OF LWK, ALIAS LK, W ALIAS LK**

IN THE MATTER OF

SMN 1ST APPLICANT
WWN 2ND APPLICANT
GMN 3RD APPLICANT
RNN 4TH APPLICANT
PNN 5TH APPLICANT

RULING

1. The applicants moved this court by way of originating summons dated 2nd July 2025 brought under Section 26(1) and Section 29 of the *Mental Health Act*, Cap 248 of the Laws of Kenya, Section 4 (1) of the *Trustee Act* Cap. 167, and Order 37 Rule 1 of the Civil Procedure Rules 2010) seeking the following orders:-
 1. Spent
 2. That in view of the urgency, the prayers in the summons be granted in the interest of justice to wit;
 - a. That the subject be and is hereby adjudged to be suffering from a Mental Disorder as defined in the *Mental Health Act*, Cap 248 of the Laws of Kenya.



- b. That RNN and SMN be and are hereby appointed as legal guardians of the subject and by extension the managers of her estate.
- c. That RNN and SMN be granted management orders and authorized to undertake all legal functions with regards to the financial affairs including access to bank account, Sacco accounts, shares, immovable properties relating to interest and welfare of the subject.
- d. That RNN and SMN be hereby granted management orders and authorized to undertake all legal functions with regards to the financial affairs particularly Standard Chartered Bank, Nanyuki Branch A/C No. xxx owned by the subject.
- e. That this Honourable court grants leave to the Applicants to jointly open a bank account for purposes of rent collection and any other monies and benefits payable to the estate.
- f. That this Honourable court be pleased to make any further orders as it may deem just and fit to grant.

2. The application was based on grounds that;

1. That the subject is the mother of the applicants, who have nominated two (2) of their siblings RNN and SMN be, appointed as legal guardians of the subject.
 2. That the subject, is unwell and unable to manage her estate and her affairs generally and is currently taken care of by her children, the Applicants herein.
 3. That the Subject was examined by Dr. Linda A. Barasa, who prepared a medical report dated 19.2.2025 wherein she was diagnosed with amnesic syndrome and Alzheimer's disease which has affected her mental performance and overall decision making.
 4. The subject doesn't have the capacity to make her own decisions and with her memory given it is incurable progressive neurodegenerative condition.
 5. The subject is well advanced in age and because of her condition she has always required support in daily activities of daily living since February, 2023, totally dependent on caregivers and cannot managed her affairs.
 6. That the subject owns a number assets as laid out in paragraph 6 of the supporting affidavit.
 7. The Applicants are apprehensive that because of the subject's condition, she is not able to manage, or take part actively on the day to day management of her estate.
 8. That the subject can neither manage, give direction or administer her own property hence this application seeking orders for management so as to preserve the property of the subject.
 9. That unless the orders sought are granted, the Applicants and the estate of the Subject will be exposed to the risk of interference or adverse actions by third parties with no lawful claim or authority over the estate to be detriment of the Subject's rights and interests.
3. It is further supported by the annexed affidavit of GMN.
4. It is deponed that the Subject is Applicants' mother and a widow, currently under the care of deponent's siblings RNN and SMN due to her deteriorating mental condition.



5. That the Subject had been diagnosed with amnesic disorder and Alzheimer's disease as per the Medical Report by Dr. Linda A. Barasa dated 19th February, 2025, which indicates that due to the Subject's condition, she suffers from:
 - a. Severe memory impairment,
 - b. Inability to make rational decisions,
 - c. Difficulty in speech and mobility,
 - d. Total dependence on caregivers for daily activities since February 2023.

6. Further, that the subject was an administrator of their late father's estate pursuant to a rectified certificate of confirmation of grant (CMCC Nanyuki Succession Cause No. 22 of 2020 in the matter of the Estate of MNK alias MK alias KM(Deceased) dated 6th April 2023 and owns the following assets;
 - a. Immovable Property
 - i. Title No. LR No. 2787/xxx or Plot No. SSS/111/xxx, Nanyuki Municipality – From MNK succession.
 - b. Title No. Nanyuki/Marura Block 8/xxx(Nturukuma) in the name of MNK & LWK.
 - c. Title No. Nanyuki/Marura Block 8/xxx (Nturukuma) in the name of MNK & LWK.
 - d. Title No. Laikipia/Nanyuki Municipality Block 3/xxx in the name of LWK.
 - e. Island Fars Plot xxx – Ancestral land.
 - f. Sacco Memberships & Shares
 - g. Unison Sacco A/C No. xxx owned by LWK.
 - h. NECCO Society Limited A/C No. xxx owned by MNK.
 - i. Taifa Sacco Society Limited being A/c No. 703 -01 -xxx owned by LWK.

Shareholdings

 - j. Kenya Commercial Bank MXOxxx from MNK succession
 - k. Safaricom PLC EQBC/C – xxx/LI-0 from MNK Succession.
Safaricom PLC A/c No. xxxx LWK
 - l. Kenya Commercial Bank A/c No. xxx owned by LWK
 - m. Kenya Commercial Bank A/c No.Mxxx2 owned by LWK
 - n. Kenya Commercial Bank A/c No. xxx owned by LWK
 - o. Kenya Commercial Bank & Nation Media Group A/C No. xxx owned by LWK
 - p. Sanlam Money Market Fund A/c No. 00001-001-30xxx-xxx-x owned by LWK
 - q. Britam Unit Trust A/C No. BA0xxx-BAMM owned by LWK

Bank Accounts

 - r. Co-operative Bank, Nanyuki Branch A/C No. xxx from MNK succession.



- s. Equity Bank, Nanyuki Branch A/C No. xxx from MNK succession.
 - t. Post Bank, Nanyuki Branch A/c No. xxx from MNK succession.
 - u. Kenya Commercial Bank Nanyuki Branch A/C No.xxx from MNK succession.
 - v. Kenya Commercial Bank Nanyuki Branch A/C No.xxx from MNK succession.
 - w. Standard Bank, Nanyuki Branch A/C No. xxx owned by LWK.
 - x. Kenya Commercial Bank Nanyuki Branch A/C No.xxx owned by LWK.
7. G adds that due to her illness and mental incapacity, the Subject was unable to manage her financial affairs, give instructions on property administration and protect her estate from potential exploitation.
- a. Further that the Applicants seek to be appointed as joint guardians of their mother and managers of her estate to:
 - b. Safeguard her welfare,
Collect rental income,
 - c. Pay for her medical and living expenses,
Prevent third-party interference.
8. That the Applicants are the proper and suitable persons to manage her affairs and the appointed as her legal guardians as her children, and no conflict of interest exists among them.

Analysis and Determination

9. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of patient (subject) as follows:-
- Order for custody, management and guardianship.
- 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 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 considered the Summons before the court, the grounds in support and the affidavit evidence on record and documents annexed thereto. In order to warrant the appointment of legal guardian it



must be shown that the subject suffers from a mental disorder rendering her incapable of managing her own affairs.

11. I have specifically perused and considered the Medical report by Dr. Linda A. Barasa dated 19/2/25. The report confirms that the Subject was diagnosed with amnesic syndrome and Alzheimer's disease which has affected her mental performance and overall decision making. The subject thus lacks capacity to make her own decisions using her mental capacity given that it is in an incurable progressive neurodegenerative condition.
12. I take note that all the children of the Subject have signed a consent dated 14/7/25 to the appointment of RNN and SMN as the legal guardians of the Subject. The children are all aware of the condition of the Subject and they raise no objection to the application herein.
13. In the case of RE NMK (2017) eKLR, the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

“In considering an application brought under section 26 and 27 of the *Mental Health Act* the court is guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle.

14. The Applicants are children of the Subject and are fit to be appointed legal guardians of the Subject. Further, am satisfied that the conditions precedent for such appointment are met and I have no doubt that the undertaking herein is in the best interests of the subject and her estate.
15. With the result that the Originating Summons is allowed and I make the following orders;
 - a. That the subject, LWK, alias LK, W alias LK be and is hereby adjudged to be suffering from a Mental Disorder as defined in the *Mental Health Act*, Cap 248 of the Laws of Kenya.
 - b. That RNN and SMN be and are hereby appointed as legal guardians of the subject and by extension the managers of her estate.
 - c. That RNN and SMN be and are hereby granted management orders and authorized to undertake all legal functions with regards to the financial affairs including access to bank account, Sacco accounts, shares and immovable properties relating to interest and welfare of the subject.
 - d. That RNN and SMN be and are hereby granted management orders and authorized to undertake all legal functions with regards to the financial affairs particularly Standard Chartered Bank, Nanyuki Branch A/C No. xxx owned by the subject.
 - e. That RNN and SMN be and are hereby granted leave to jointly open a bank account for purposes of rent collection and of any other monies and benefits payable to the estate of the Subject.



f. There be no orders as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY, 2025.

A.K. NDUNG’U

JUDGE

