



REPUBLIC OF KENYA



**In re CAO (Miscellaneous Application E130 of 2025)
[2025] KEHC 11077 (KLR) (Family) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E130 OF 2025
PM NYAUNDI, J
JULY 25, 2025
IN THE MATTER OF THE MENTAL HEALTH ACT
AND
IN THE MATTER OF SECTION 26 OF THE MENTAL
HEALTH ACT
AND
IN THE MATTER OF CAO
AND
IN THE MATTER AN APPLICATION BY ASO
TO BE APPOINTED AS GUARDIAN OVER THE
AFFAIRS AND MANAGER OF THE ESTATE OF CAO**

JUDGMENT

1. Vide application filed under certificate of urgency dated 5th May 2025, the Applicants herein ASO seeks the following orders-
 1. That to appoint ASO as Guardian of CAO.
 2. That to appoint ASO as Manager over the Estate of CAO.
 3. That costs of this Application be in the cause.
2. Subsequently, the Application proceeded by way of viva voce evidence. The Petitioner is son of the subject herein. The subject is 82 years old suffering from Senile Dementia, which has rendered her incapable of running his own affairs due to loss of memory associated with the said condition. The subject is blessed with 3 children who are all adults namely;



- a. ASO (the petitioner herein)
 - b. RBO
 - c. GDWO
3. The subject's husband died on 18th January, 2017 as per the annexed copy of death Certificate Serial Number xxx. The subject is unable to properly well manage her affairs. The other family members have nominated the Petitioner to be the Guardian of the subject.
 4. According to subject's daughter RBO and son DGO testified in Court that they confirmed the subject suffers from Senile dementia and that they support the Application by the Petitioner.
 5. It's Applicant's averment that the subject needs a representative to be appointed to enable the Applicant manage the affairs of the subject which has direct impact on his daily and medical needs as he deserves.
 6. Report dated 24th April, 2025 by Dr. Gideon Munaru from County Government of Kisii Teaching and Referral Hospital stated that-

The above named person has been on medical follow-up at our facility he was diagnosed with signs of Senile Dementia which affects her social and occupational functioning.
 7. Another report from Chief's letter dated 25th April, 2025 acknowledging that the subject herein hails from his area of jurisdiction and the subject cannot run her affairs effectively since she is suffering from dementia.
 8. The Court interviewed the subject and observed that she was disoriented. The subject unable to state where she lives.

Determination

9. The provisions of the [Mental Health Act](#) ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The [Mental Health Act](#), at Section 26 provides 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 considered the evidence adduced in Court as well as signed consent and I am persuaded that the Petitioner is best placed to provide adequate care to the subject and ensure is wellbeing.



11. It is in the subject's best interest that the Petitioner is appointed as her personal representative to ensure that funds are available for her upkeep and further medical attention in the future.
12. In the circumstances the Application dated 5th May, 2025 is allowed and with the following orders:
 - a. CAO is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
 - b. ASO is hereby appointed under section 27 of the *Mental Health Act* as the Guardian of CAO
 - c. ASO is hereby appointed manager of the estate of CAO under Section 28 of *Mental Health Act* to manage his estate including any such description of moveable or immoveable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
 - d. Pursuant to this appointment ASO shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging CAO.
 - e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Applicants shall cause within 30 days the publication of notice in the Gazette, informing the public of his appointment as the managers of the estate of CAO.
 - f. As Managers of the Estate of CAO the Applicant may dispose of the property only with the sanction of the Court.
 - g. The matter will be mentioned before court on 21st January 2026 to confirm compliance.
 - h. Costs to be met out of the Estate of the Subject.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JULY, 2025.

P. M. NYAUNDI

JUDGE

In the presence of:

Ms. Kirui holding brief for Laichena Mugambi for Applicant

Fardosa Court Assistant

