



**In re MCB (Miscellaneous Application E160 of 2025)
[2025] KEHC 11062 (KLR) (Family) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11062 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E160 OF 2025

PM NYAUNDI, J

JULY 25, 2025

IN THE MATTER OF MCB

AND

IN THE MATTER OF MENTAL HEALTH ACT, CHAPTER 248 OF THE LAWS OF KENYA

IN THE MATTER OF

MCB PETITIONER

JUDGMENT

1. Vide application filed under certificate of urgency dated 29th May 2025, the Applicant herein MCB, seeks the following orders-
 1. That she be appointed the Legal Guardian and Manager of the Patient’s affairs and estate.
 2. That the Petitioner be compelled to maintain and render on order books of account and other records of the Petitioner’s welfare and estate for the period he will act as guardian and manager of the Patient.
 3. That Petitioner be allowed to administer the Estate of the Patient’s late mother VB, in his stead in relation to the following properties; -
 - a. Agricultural Land/Plot, a residential premises is build up upon which bearing CTS No. 57, Khasra No. XXX/X, Village Jadri, Tehsil-Bali, District-Pali, Adm. Area (from east to west 50ft. and from north to south-35ft. Total 1750 sq. ft.)
 - b. Agricultural Land/Plot, a residential premises is built up upon which bearing CTS No. 56, Khasra No. XXX/X, Village – Jadri, Tehsli-Bali, District-Pali, Adm. Area (35 x 50 ft. Total 1750 sq. ft.).



- c. Commercial/Industrial premises/factory under name M/s. Gautam Industries, having its registered office at Ashok Marg, Plot No. 20 (K), Falna Udyong Mandal Limited, Falna, Pali.
4. That the Honourable Court make any and such orders as it may deem fit in the interest of justice.
5. That the costs of this Petition be in the cause.
2. The Application proceeded by way of viva voce evidence. The Applicant is a maternal uncle of the subject herein. The subject is 26 years old suffering from mental retardation which has been the case since he was born. Subsequently, he was diagnosed with Intellectual Disability and Autism Spectrum Disorder.
3. The Applicant averred that the patient lost his mother VB on 17th May 2021 in India as per annexed copy of death certificate Serial Number 1958778 dated 20th March, 2025. The subject's mother was the legal guardian and caregiver of the subject leaving him under the care of his grandmother, LM. The patient has since moved from India to permanently reside in Kenya with the Applicant. The patient has another maternal uncle, PBM who was present in Court together with the grandmother and consented to the appointment of the Applicant as well as written consent dated 29th May, 2025.
4. The patient's biological father is not known as his mother raised him as single parent.
5. The Applicant further averred that the patient's mother left the following properties to be inherited by the patient as her only child: -
 - a. Agricultural Land/Plot, a residential premises is build up upon which bearing CTS No. 57, Khasra No. XXX/X, Village Jadri, Tehsil-Bali, District-Pali, Adm. Area (from east to west 50ft. and from north to south-35ft. Total 1750 sq. ft.)
 - b. Agricultural Land/Plot, a residential premises is built up upon which bearing CTS No. 56, Khasra No. XXX/X, Village – Jadri, Tehsil-Bali, District-Pali, Adm. Area (35 x 50 ft. Total 1750 sq. ft.).
 - c. Commercial/Industrial premises/factory under name M/s. Gautam Industries, having its registered office at Ashok Marg, Plot No. 20 (K), Falna Udyong Mandal Limited, Falna, Pali.
6. 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.
7. Consequently, the Applicant will diligently and faithfully manage the estate as well as keeping proper record of accounts that can be presented for inspection on the order by both the Court and his other relatives.
8. Dr. Tahir Kadernani, a Consultant Psychiatrist stated in Court that he works at Mathare Mental Hospital as well as Mp. Shah Hospital. He further reiterated that he interviewed the subject for an hour and concluded that the subject suffer from intellectual disability. Further his Medical Report dated 22nd May, 2025 from Royal London Polyclinic Hospital stated that-

The above named person has been diagnosed with Intellectual Disability and Autism Spectrum Disorder which is not reversible since it has been the case since he was born. The doctor further affirmed that the patient should be seen by a psychiatrist regularly, the patient did not have the cognitive or



mental capacity to make his own decisions thus advised family to apply for Guardianship to legally take over his affairs.

9. Another Medical Report dated 9th February, 2009 prepared from Government of Rajasthan Medical & Health Department in India issued a Medical Board Certificate on Permanent Disability which indicated that the subject suffers from mental retardation which has been the case since he was born.
10. The Court observed the subject is completely oblivious to his surroundings.

Determination

11. 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.
12. I have considered the evidence adduced in Court and I am persuaded that the Petitioner/ Applicant is best placed to provide adequate care to the subject and ensure is wellbeing.
13. It is in the subject's best interest that the Applicant is appointed as his personal representative to ensure that funds are available for his upkeep and further medical attention in the future.
14. In the circumstances the Application dated 29th May, 2025 is allowed and with the following orders:
 - a. BMG is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
 - b. MCB is hereby appointed under section 27 of the *Mental Health Act* as the Guardian of BMG
 - c. MCB is hereby appointed manager of the estate of BMG under Section 28 of *Mental Health Act* to manage his estate including any such description of moveable or immovable 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 MCB shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging BMG.



- e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Applicant shall cause within 30 days the publication of notice in the Gazette, informing the public of his appointment as the manager of the estate of BMG .
- f. As Manager of the Estate of MCB 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. Nzuki holding brief Ms Murimi for Applicant

Fardosa Court Assistant

