



**In re SMN (Miscellaneous Civil Application E010 of 2025)  
[2025] KEHC 10578 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10578 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
MISCELLANEOUS CIVIL APPLICATION E010 OF 2025**

**RC RUTTO, J**

**JULY 17, 2025**

**(OS)**

**IN THE MATTER OF SMN (A PERSON SUFFERING FROM MENTAL ILLNESS)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF LEGAL  
GUARDIANS JOINTLY OVER THE AFFAIRS AND ESTATE OF SMN**

**IN THE MATTER OF**

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

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

**RULING**

1. The Originating Summons dated 4<sup>th</sup> April 2025 has invoked sections 2, 26, 27 and 28 of the *Mental Health Act*, sections 1A, 1B and 3A of the *Civil Procedure Act* and order 32 rule 14 of the Civil Procedure Rules. It seeks the following orders:

1. ... Spent;
2. That this Honourable Court do find and declare that SMN is incapable of protecting his interests and estate with regard to his affairs due to mental illness/senile dementia;
3. That this Honourable Court be pleased to appoint the applicants herein, VNK and RMK, as the guardians ad litem of the affairs and estate of SMN to act jointly and individually;
4. That the applicants herein be authorized to manage all the affairs relating to SMN for the purposes of his medical expenses, personal



needs and care and to carry out other incidental and general functions concerning him and his general welfare;

5. That the Honourable Court do issue further orders and give directions as it may deem fit to meet the ends of justice.
2. The application is supported by the grounds on the face of it and the supporting affidavit of the 2<sup>nd</sup> applicant together with annexures thereto. The facts expounded are that the 1<sup>st</sup> and 2<sup>nd</sup> applicants are the wife and daughter respectively of SMN. They live with him and are his primary caregivers. In 2021, SMN developed high blood pressure. Thereafter, he sustained a cardiovascular accident weakening his right side of his body, loss of voice and memory impairment.
3. On 16<sup>th</sup> October 2021, a computer tomography scan was done revealing that SMN had left front cerebral infarct. On 14<sup>th</sup> December 2021, the subject underwent a second computer tomography scan which led to a diagnosis of moderate generalized brain atrophy. Because of this diagnosis, the applicants contended that he is unable to make rational judgments or decisions due to cognitive unsoundness. They further stated that he could not communicate coherently or perform day-to-day activities without assistance.
4. The applicants asserted that SMN was fully depending on the applicants for care and support and was in constant need of medical attention and other necessities following his vascular dementia diagnosis. For those reasons, the applicants prayed that this court does grant them leave to be appointed as the guardians ad litem with authority over his affairs, including access to his bank accounts and finances to settle outstanding bills and for general day-to-day upkeep.
5. The application was heard by way of viva voce evidence on 4<sup>th</sup> June 2025. The 2<sup>nd</sup> applicant relied on her witness statement which regurgitated the facts set out in the originating summons. She also urged this court to consider the copies of consent of the family members and their national IDs, copy of the medical report by Dr. Joshua Nderitu, radiology report dated 16<sup>th</sup> October 2021, hematology report dated 14<sup>th</sup> December 2021 report from clinical psychologist at Machakos Level Five Hospital dated 13<sup>th</sup> March 2025, bundle of treatment notes, chief's letter confirming the family member and a consent from her co-applicant to swear affidavit.
6. The 1<sup>st</sup> applicant also prayed that the application be allowed as her husband was sickly. Also present in court on that day were JKN, JMK, CMK and RKK who all stated that they were not averse to the application.
7. I have considered the originating summons, the annexure attached thereto and the position of the applicants and other members of the family. The application has favored no objection from other family members of SMN. The application is premised on the fact that the said SMN has been diagnosed with vascular dementia moderate generalized brain atrophy.
8. According to the applicants, the diagnosis has resulted in SMN unable to make rational judgments or decisions due to cognitive unsoundness. They further stated that he could not communicate coherently or perform day-to-day activities without assistance. That he was fully dependent on the applicants for care and support and was in constant need of medical attention and other necessities. For those reasons, the applicants prayed for appointment as the guardian's ad litem with authority over SMN's affairs, including access to his bank accounts and finances to settle outstanding bills and for general day-to-day upkeep.
9. Section 26 (1) of the *Mental Health Act* provides that an application may be made in court for the management and administration of the estate of a person with mental illness. A person with mental



illness has its definition under section 2 of the *Mental Health Act* as a person diagnosed by a qualified mental health practitioner to be suffering from a mental illness.

10. From the evidence of the clinical psychologist, a mental health practitioner within the meaning ascribed to the term under section 2 of the *Mental Health Act*, the subject SMN suffers from vascular dementia. She opined that he is currently helpless and relies on his family members for personal care. Her findings further revealed that his memory, learning, thinking or thoughts and language had deteriorated and was poor at the time he was seen on 13<sup>th</sup> March 2025. She noted that his concentration was poor, gait dropping, recent and remote memory was also found to be poor together with his orientation with time, places and persons. While he could remember his name, he could not recall his wife's name.
11. Taking the uncontroverted evidence into account, and the provisions of the law, I find that the Originating Summons has merit. accordingly, and in line with the provisions of section 27 of the *Mental Health Act*, the following are my orders:
  1. The subject SMN be and is hereby adjudged a person suffering from mental sickness under the *Mental Health Act*;
  2. VNK and RMK are hereby appointed Guardians Ad Litem as guardians of SMN for purposes of settling his debts and bills;
  3. VNK and RMK are appointed managers of the estate of SMN for the purposes of safeguarding his property, administering his estate and managing the subject SMN;
  4. For the avoidance of doubt, such managers general powers will not include the power to alienate, sale or transfer of any other assets held by the subject, 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 subject in respect of any of the assets forming part of his estate.
  5. In view of the nature of the case I shall not make any orders as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17<sup>TH</sup> DAY OF JULY, 2025**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....1<sup>st</sup> Applicant

.....2<sup>nd</sup> Applicant

Selina Court Assistant

