



**In re DWK (A Person Suffering from Mental Disorder) (Miscellaneous Application E241 of 2024) [2025] KEHC 10069 (KLR) (Family) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10069 (KLR)

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

**MISCELLANEOUS APPLICATION E241 OF 2024**

**H NAMISI, J**

**JULY 11, 2025**

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

**AND**

**IN THE MATTER OF DAMARIS WANGARI KIRURI (A PERSON SUFFERING  
FROM MENTAL DISORDER)**

**AND**

**IN THE MATTER OF A PETITION BY MICHAEL NG'ANG'A KIRURI TO BE  
APPOINTED GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE  
ESTATE OF THE SAID DWK**

**IN THE MATTER OF**

**MNK ..... PETITIONER**

**JUDGMENT**

1. The Petition herein dated 8 October 2024 seeks:
  - i. That the Subject, DMK, be declared to be suffering from mental disorder as defined in the *Mental Health Act*;
  - ii. That this Honourable Court be pleased to appoint the Petitioner as Guardian of the affairs of DMK in accordance with the *Mental Health Act* with power to sign and file documents, enter into a deed for family settlement and release on behalf of DMK and to carry out other incidental and general functions of DMK subject to leave by this Honourable Court;



- iii. That this Honourable Court be pleased to appoint the Petitioner as manager of the estate of DMK in accordance with the *Mental Health Act* with special permission pursuant to section 27(1)(a) of the *Mental Health Act* to mortgage, charge, or transfer by sale, gift, surrender, exchange or otherwise deal with any movable or immovable property which the estate may consist subject to leave of this Honourable Court; and
  - iv. That this Honourable Court be pleased to make such other orders as it may deem fit under the circumstances of this case.
2. The Petitioner is a son to the Ward, as evidenced by the Certificate of Birth attached to the Petition. The Petitioner avers that the Ward has 2 other children, MNK and DMK, both of whom have consented to the Petition and appeared before the Court to confirm the same.
  3. The Petitioner wishes to be appointed as Guardian to his mother because the Ward suffers from severe memory loss. She does not speak and is completely mute. According to the Petitioner, the Ward does not comprehend anything and cannot manage her affairs. He informed the Court that he and his siblings agreed to that it is important that they take care of her affairs. Being the eldest child, he has been tasked with the responsibility.
  4. Currently, the Ward resides with the Petitioner and his family in Ruai. The Petitioner caters for the Ward's upkeep and treatment.
  5. Also attached to the Further Affidavit is a copy of a Medical Report dated 20 March 2025 prepared by Dr. Nganga G, from the County Government of Kiambu. The Doctor observed that the Ward presented with symptoms of chronic psychosis and bizarre behaviour. The conclusion is that the Ward is likely suffering from senile dementia secondary to her advanced age and compounded by the comorbid hypertension. The mental examination conducted confirmed severe cognitive impairment.
  6. The Court had a chance to speak to the Ward who was completely unresponsive. From my observation of the Ward, I am convinced that the Ward may not be capable of managing her own affairs.
  7. 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

8. 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.
9. 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.”
10. In the circumstances, the Petition is merited. The Court hereby appoints the Petitioner as the Ward’s Guardian ad litem. For the avoidance of doubt, Guardian ad litem powers will not include the power of alienation, sale or transfer of the Ward’s immovable assets without leave of Court 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 11 DAY OF JULY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Petitioner: Mayodi

Court Assistant: Libertine Achieng

