



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re AMS (Miscellaneous Civil Application E110 of 2025)
[2025] KEHC 10967 (KLR) (Family) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10967 (KLR)

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

MISCELLANEOUS CIVIL APPLICATION E110 OF 2025

CJ KENDAGOR, J

JULY 10, 2025

**IN THE MATTER OF SECTIONS 26(1), 28(1) AND 29 OF THE MENTAL
HEALTH ACT (CAP 248) OF THE LAWS OF KENYA PETITION FOR
APPOINTMENT OF MANAGER AND GUARDIAN UNDER SECTION
26 OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

IN THE MATTER OF AMS

JUDGMENT

1. By a Petition dated 28th April 2025, the petitioner herein, who is the biological sister of AMS, seeks to be appointed as the guardian of her brother and manager of his estate.
2. In verbatim, the petitioner prays for the following orders;
 - a. That the petitioner, as the sister of the patient, be appointed as the Guardian of the patient AMS alias A.
 - b. That the petitioner be appointed manager of the estate of the patient to manage all the affairs and any property/assets/testamentary entitlement of the patient as long as the patient is unwell.
 - c. That the manager so appointed be granted full authority to execute any document or consents necessary for the management of all the affairs and property/assets/testamentary entitlement of the patient as well as to have access to any bank accounts or funds of the patient and to deposit or to withdraw therefrom any sums of money for the upkeep and maintenance of the patient.
 - d. That the manager so appointed be granted full authority to deal in whatever manner as she deems fit with the affairs and property/assets/testamentary entitlement of the patient including any sales or conversion of any assets into money, collecting any monies payable to the patient, execution of deeds, documents and consents for the wellbeing of the patient and for the preservation of such property/assets/testamentary entitlement of the patient.
3. The application is supported by the affidavit dated 28th April, 2025 sworn by the Petitioner.



4. The matter was canvassed through viva voce evidence. During the hearing, the petitioner, nurse assistant, and another family member testified as PW1, PW2, and PW3, respectively.
5. The petitioner informed the court that she is the sister of the ward and one MMFS, who is a ward in the and that the two depend on her for support. She stated Miscellaneous application E111/25, that she understood her obligations and duties and would at all material times act in their best interest.
6. In her evidence, the petitioner stated that the subject has no other family other than her and that she has been taking care of him. She averred that the intended proceeds from the patient's father's estate are not accessible to the patient. She stated that the proceeds are integral for the upkeep, well-being, maintenance and daily needs of the patient. She adduced evidence of the death certificates of the trustees under the Will of the Ward's father.
7. The referenced Will indicated the ward's 25% entitlement over the Estate of his late father.
8. The subject, AMS, was also present on the call. His voice was faint; he stated that he understood he was in Court and that he had consented to the petitioner's application to be his guardian.
9. The nurse assistant who has been working with the family for two months informed the court that the patients could not express themselves properly and required support. He further told the Court that they were well cared for.
10. The psychiatric assessment report dated 5th March 2025 by Dr. Linet Kendi, a Consultant Psychiatrist at Kiambu County Referral Level 5 Hospital, was filed in court. In the said report, the Doctor stated that on assessment, the subject is unable to make sound judgments and decisions and would therefore benefit from the appointment of a guardian to assist with decision-making.
11. The Petitioner has sought to be appointed as the legal guardian of the ward and manager of the ward's estate under Section 28 of the *Mental Health Act*, to manage his estate, all his affairs and any property/assets/testamentary entitlement of the patient as long as the patient is unwell. She is also seeking to be appointed as manager and be granted authority to access any bank accounts or funds of the patient and to deposit or withdraw therefrom any sums of money for the upkeep and maintenance of the patient.
12. In her evidence, the petitioner stated that the subject has no other family apart from herself, M, and two nieces, and that the subject is her brother, with whom they live in their father's house. Their father is deceased.
13. She told the court there was a probate in their father's estate, but all the appointed administrators have since passed away, and that the subject was a beneficiary of the estate. She presented evidence of the death certificates of the trustees under the Will and the Will of the Ward's father.
14. The *Mental Health Act* provides for the care of persons who are suffering from a mental disorder, custody of their persons and the management of the estate of such persons. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
15. Under Section 26 (3) of the Act it provides,

“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 persons, including proper provision for his maintenance...”

16. Section 28 of the same Act provides for management of the subject’s estate.
17. I have carefully considered the Petition, the Affidavit filed in Court, the medical report, as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya empowers the court to 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 any other suitable person.”
18. From the Medical report by Kiambu County Referral Level 5 Hospital, it is essential that the subject gets a guardian to help him manage his affairs as well as take care of him.
19. From the evidence presented and the medical report by the hospital, I am satisfied with the merits of this petition, and I hereby grant prayers a, b, c, and d of the petition dated 28th April, 2025.
20. Disposition;
 - a. The petitioner is hereby appointed as the Guardian of the Patient, AMS.
 - b. The petitioner is appointed manager of the estate of the ward, AMS, to manage all the affairs and any property/assets/ testamentary entitlement of the patient as long as the patient is unwell
 - c. The Manager so appointed is granted full authority to execute any document or consents necessary for the management of all the affairs and property/assets/testamentary entitlement of the patient as well as to have access to any Bank accounts or funds of the patients and to deposit or to withdraw therefrom any sums of money for the upkeep and maintenance of the patient.
 - d. The Manager so appointed is granted full authority to deal in whatever manner as she deems fit with affairs and property/ assets/testamentary entitlement of the patient including any sales or conversion of any assets into money, collecting any monies payable to the patient, execution of deeds, documents and consents for the wellbeing of the patient and for the preservation of such property/ assets testamentary entitlement of the patient.
21. It is so ordered

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 10TH DAY OF JULY, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

