



**In re MMFS (Miscellaneous Civil Application E111 of 2025)
[2025] KEHC 10849 (KLR) (Family) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10849 (KLR)

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

MISCELLANEOUS CIVIL APPLICATION E111 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 MMFS

IN THE MATTER OF

AAC PETITIONER

JUDGMENT

1. By a Petition dated 28th April, 2025, the Petitioner herein, who is the biological sister of MMFS, 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 MMFS alias M.
 - 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. At the hearing, the petitioner, along with the 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 AMS, who is a ward in the Miscellaneous Application E110/25, and that the two depend on her for support. She stated 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 estate of the patient's father are not accessible to the patient. She stated that the proceeds are integral for the upkeep, wellbeing, 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. She informed the Court that she had consulted her nieces, who reside in Australia, before commencing the proceedings. The nieces were named as the only other surviving close family relatives.
9. The subject, MMFS, was also present at the hearing. He appeared disoriented but was able to give his name, and his voice was audible. 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 taken care of.
10. One of nieces to the petitioner, KJ, informed the Court that they were aware of the proceedings and that they had consented to the same.
11. 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 report mentioned above, the Doctor stated that the subject is unable to make sound judgments and decisions and would therefore benefit from the appointment of a guardian to assist in decision-making.
12. 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 a manager and granted authority to access any bank accounts or funds for the patient, and to deposit or withdraw sums of money for the patient's upkeep and maintenance.
13. 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.
14. 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...”

15. Section 28 of the same Act provides for management of the subject's estate.
16. 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.”
17. 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.
18. From evidence adduced by the petitioner and the witnesses, the medical report by the hospital, I am satisfied of the merit of this petition and I hereby allow prayers a, b, c and d of the petition dated 28th April, 2025.
19. Disposition;
 - a. The petitioner is hereby appointed as the Guardian of the Patient, MMFS.
 - b. The petitioner is appointed manager of the estate of the ward, MMFS, 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.
20. It is so ordered.

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

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

