



**In re YSKD (A Person Suffering from a Mental Disorder) (Family Miscellaneous Application E010 of 2025) [2025] KEHC 10114 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10114 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY MISCELLANEOUS APPLICATION E010 OF 2025**

**G MUTAI, J**

**JULY 7, 2025**

**RULING**

**IN THE MATTER OF AN APPLICATION BY MOHAMED SHAFI SULEIMAN KASSAM TO BE APPOINTED AS THE GUARDIAN AD LITEM OF YASMIN SULEIMAN KASSAM DADA**

**BETWEEN**

**MSSK ..... APPLICANT**

**AND**

**LSKD ..... 1<sup>ST</sup> OBJECTOR**

**ZSKD ..... 2<sup>ND</sup> OBJECTOR**

**KS ..... 3<sup>RD</sup> OBJECTOR**

**KD ..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. Through a Notice of Motion dated 14<sup>th</sup> May 2024, the applicant/respondent, MSSK, applied to be the guardian ad litem of YSKD and the manager of her affairs. The grounds for the said application, as disclosed in the grounds in the body of the motion, were that YSKD, who is the sister of the applicant/respondent, has a mental illness which made her unable to make rational decisions and or lead an independent life. I shall hereafter refer to “YSKD” as “YSKD” or “the patient.”
2. The applicant/respondent deposed that he lived with YSKD and that he was the best person to be her guardian and the manager of her estate which he stated was 25.64% of Title No Mombasa/Block xx/1X1, while he held 61.60%, with their aunt KA owning the remaining 13.35%.
3. This Court heard the matter on 16<sup>th</sup> October and 6<sup>th</sup> November 2024. On the former date, the applicant/respondent testified, as did their sister, SSK. The evidence indicated that MSSK lived with YSKD. The doctor, Dr. Charles Mwangome, testified on 6<sup>th</sup> November 2024. It was his professional



- opinion that YSKD had a mental illness and that she needed a guardian ad litem and a manager for her estate.
4. Being satisfied with the evidence adduced, I, on 22<sup>nd</sup> November 2024, appointed the applicant/respondent as the guardian ad litem and manager of the estate of the patient YSKD. I authorized him to manage her estate, but not to sell, charge, or otherwise alienate any immovable asset without leave of the Court.
  5. The applicants, who are the sisters of the applicant/respondent and YSKD, were aggrieved by the said decision and filed the Notice of Motion dated on 6<sup>th</sup> February 2025, through which they sought to have the Court vacate the earlier orders and to issue orders appointing LSKD, ZSKD and KSK as the joint managers and guardians ad litem of YSKD.
  6. The basis of the application was that in a will dated 27<sup>th</sup> August 1998, their father appointed them as the trustees over the affairs of YSKD. They averred that the contents of the said will were intentionally withheld by the applicant/respondent. They averred that there was a pending succession cause, to wit P&A No 255 of 2001, where the parties were litigating over the same subject matter. The pendency of this matter was not disclosed by the applicant/respondent. It was alleged that the failure to do so amounted to material non-disclosure on the part of the applicant/respondent.
  7. The applicants stated that the proceedings conducted by the applicant/respondent were an abuse of the Court process, scandalous and embarrassing to the just administration of law and integrity of the Court system.
  8. In the affidavit, LSKD deposed that there were siblings. Their father, in his will, appointed the applicants/respondents, L, S, and Z, as the trustees and managers of YSKD's estate.
  9. In his response vide a replying affidavit sworn on 14<sup>th</sup> February 2025, the applicant/respondent averred that the applicants weren't presently living with the patient as L was married, while Z too had got married and moved to the United Kingdom. While conceding that there was a will, he stated that L and Z were not involved in the patient's life to a significant degree. On the other hand, S fully supported his application and testified in Court to that effect. He denied that Khatoonisa was appointed as the guardian or trustee of the patient in their father's will. Mr MSSK, therefore, prayed that the application be denied.
  10. Vide a supplementary affidavit sworn on 17<sup>th</sup> March 2025, LSKD stated that the applicant/respondent moved YSKD and the mother from the matrimonial home in 2016 and prevented them, except for SSKD, from visiting YSKD. She accused the applicant/respondent of fraudulently altering ownership details of Title No Mombasa/Block xx/1X1 and giving himself a 61.60% share and of failing to disclose the existence of the will to the Court. She deposed that, given the existence of the will, there was no need to appoint a guardian ad litem and manager of the patient's estate, as that had already been done.
  11. The Court had an open session with the parties on 18<sup>th</sup> February 2025. It was apparent to the Court that the real issue in dispute is, in effect, the fate of the property bequeathed to their mother and the patient, rather than the best interest of YSKD.
  12. The application was canvassed by way of written submissions, which were briefly highlighted on 6<sup>th</sup> May 2025. The applicant's submissions are dated 24<sup>th</sup> April 2025.
  13. In their submissions in support of the application dated 6<sup>th</sup> February 2025, Messrs. Asige Keverenge & Anyanzwa Advocates, identified the issue coming up for determination as being whether the Court ought to quash its previous orders. Mr Asige, learned counsel for the applicant, submitted that



- the appointment of MSSK ought to be quashed and L, Z and Khatoonisa appointed as guardians/managers of YSKD, in his place.
14. Mr Asige submitted that the welfare of YSKD was, under the will, the responsibility of Mohamed, L, Z and Saadia and that Mohamed did not disclose this fact nor did he mention that there were proceedings in High Court Succession Cause No 255 of 2021 where orders had been given for the distribution of the estate of the deceased, which also coveted YSKD's needs, welfare and guardianship. Counsel urged that had full disclosure been made, the Court would not have issued the impugned orders. It was averred that these proceedings were designed so that the applicant/respondent could fraudulently and unlawfully acquire Title No Mombasa/Block xx/1X1 exclusively for himself, and that he had succeeded in procuring a 61.60% share thereof. He urged that the application dated 14<sup>th</sup> May 2024 was not made in the best interest of the subject, YSKD, but merely so that the Applicant/Respondent could gain possession of Title No Mombasa/Block xx/1X1.
  15. Mr. Asige submitted that under section 31 of the *Mental Health Act*, the Court could, for sufficient reason, remove any manager and appoint another.
  16. The application was opposed by the applicant/respondent. Through his counsel, Khalid Salim & Co. Advocates, he urged that the application be denied.
  17. The firm of Khalid Salim & Co. Advocates identified the issue for determination as being whether the applicant/respondent should be retained as the legal guardian of YSKD or if the objectors should be appointed instead. Counsel urged that the applicant/respondent was YSKD's biological brother and had been taking care of her, including shouldering responsibilities for her medicine and finances, since their father died. Ms Amal Said, learned counsel for the applicant/respondent, submitted that L and Z got married and moved out, and thus, they had not been taking care of YSKD. Ms Said urged that the 3<sup>rd</sup> objector had no standing as she wasn't appointed in the will as the trustee of the patient.
  18. Ms Said urged that since the demise of their father in 2001, he had been living together with the mother (now deceased) and the patient.
  19. Counsel submitted that the applicants could not be the guardians of YSKD as they are married and have husbands who aren't YSKD's mahram, under Islamic law, and their children too weren't her mahram. She urged that it would not be lawful in Islam for the applicants to be granted custody.
  20. Counsel urged that the reason why the application was filed was to secure Title No Mombasa/Block xx/1X1 and not the guardianship of YSKD. It was denied that MSSK's wife mistreats YSKD.
  21. It was submitted that the applicant/respondent was the most appropriate person to be appointed as the guardian ad litem and manager, as he lived with her and was in the country.
  22. I have considered the application before the Court and the responses thereto. I have taken note of the submissions of the parties and the deliberations in open Court. I must now decide whether the orders sought ought to be granted.
  23. From the application filed in this matter, whose decision gave rise to the instant application, the applicant/respondent did not provide a family background. He made no mention of the fact that there is a pending succession matter in which YSKD's interest was under discussion. He also did not procure the presence of his siblings, save for S, who attended Court and testified in support of his case, and gave the impression that other siblings were unavailable.



24. In my view, and as rightly submitted by Mr. Asige, the applicant/respondent, as an *ex parte* applicant, had the duty of laying all the facts on the table so that the Court could decide justly and fairly, based on the facts and the law, and not conjecture.
25. The duty to make full disclosure is sacrosanct. Our legal system operates on the principle that parties approaching the Court make full and frank disclosure of all material information.
26. In *Kenya Electricity Transmission Company Limited v Kibotu Limited* [2019] KEELC 113 (KLR) M Odeny, J stated as follows:-
- “It should be noted that the issue of non-disclosure of material facts to the court is indeed a serious issue which may warrant a court to set aside or vary interlocutory injunctive orders.”
27. In *The King v The General Commissioners for the Purposes of Income Tax Acts for the District of Kensington: Ex parte Princess Edmond De Pligac* [1917] 1 KB 486, Warrington LJ stated at page 509 that:-
- “It is perfectly well settled that a person who makes an *ex parte* application to the Court that is to say, in the absence of the person who will be affected by that which the court is asked to do – is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by him. That is perfectly plain and requires no authority to justify it.”
28. The effect of non-disclosure of material information is, as stated in *Gabriel Kariuki Gitonga & 2 others v Redken Wells Ltd & 11 others* [2021] KEHC 12892 (KLR), that:-
- “12. Material non-disclosure is a serious issue which, once the court is made aware of it, would lead to the setting aside and discharge of an *ex parte* order forthwith. Good faith is so central in an *ex parte* circumstances that a party who approaches the court in such circumstances must be absolutely truthful.”
29. Given the contested nature of the parties' relationship and their interests in Title No Mombasa/Block xx/1X1, it was necessary that this be disclosed. The failure to do so on the part of the applicant/respondent was a serious omission.
30. What then should happen? I note that the 1<sup>st</sup> and 2<sup>nd</sup> applicants do not live with YSKD, nor does the 3<sup>rd</sup> applicant. The patient's condition requires constant supervision. Whereas the applicant/respondent has misconducted himself, the Court must take into account the need to protect YSKD and ensure that she has a manager who is constantly with her for the purpose of providing medication and other caregiving tasks. Those tasks cannot be done remotely. In these circumstances, the presence of MSSKD remains necessary.
31. In the circumstances, I review my previous order and appoint MSSK, together with his sisters L, Z, and S, as the joint guardians *ad litem* and managers of the patient. I have done so as their deceased father appointed the four in his will as the guardians of YSKD. I have omitted Khatoonisa as she wasn't appointed as such in the will.
32. I direct that the patient will remain with MSSK and be in his custody, with unlimited access to L, Z, and S.



33. In the interest of justice, I order that MSSK provide a statement of account of his dealings with the property of YSKD and also account for how he obtained the 61.60% interest in Title No Mombasa/Block xx/1X1. This must be completed within 30 days of the date of this ruling.
34. As this is a family matter, each party shall bear his or her own costs.
35. It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 7<sup>TH</sup> DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Asige, for the Objectors/Applicants;

Ms Amal Said, for the Applicant/Respondent; and

Arthur – Court Assistant.

