



**In re Estate of NAM (Family Miscellaneous Application E010 of 2025) [2025] KEHC 10089 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10089 (KLR)

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

**G MUTAI, J**

**JULY 3, 2025**

**IN THE MATTER OF SECTIONS 26 AND 28 OF THE MENTAL HEALTH ACT. (CAP 248 OF THE LAWS OF KENYA)**

**AND**

**IN THE MATTER OF AN APPLICATION BY ZNA AND AAA TO BE APPOINTED AS GUARDIANS AD LITEMS OVER THE AFFAIRS, AND MANAGERS, OF THE ESTATE OF NAM**

**AND**

**IN THE MATTER OF GUARDIANSHIP OF NAM**

**IN THE MATTER OF**

**ZNA ..... 1<sup>ST</sup> PETITIONER  
AAA ..... 2<sup>ND</sup> PETITIONER**

**JUDGMENT**

1. The petitioners are the daughter and granddaughter of NAM, respectively. I shall hereafter refer to Mr NAM, also known as NA, also known as NA, as “the patient”. According to his national identity card, the patient was born in Mombasa on 1<sup>st</sup> January 1947. The patient has suffered from schizophrenia since 2022 and experiences functional and cognitive impairment, which significantly impacts his ability to manage his personal finances and affairs and to live independently.
2. To help him, the petitioners, ZNA and AAA, filed the instant petition. They seek the following orders:-
  1. For the patient to be declared to be suffering from a mental disorder pursuant to section 26 of the *Mental Health Act*;
  2. For the petitioners to be appointed as his legal guardians and managers of his estate, and for them to represent him in Court proceedings; and



3. For any other relevant orders to issue.
3. The petition is supported by the affidavit of the petitioners sworn on 5<sup>th</sup> March 2025. In their affidavits, the petitioners state that the patient's illness was established by Dr Ilham Mohamed, as per her medical report dated 16<sup>th</sup> November 2024. They averred that due to his condition, the patient could not issue a power of attorney, and yet he requires care. The applicants averred that they were currently taking care of the patient as his nearest relatives. They stated that they had lived with him for a long time. The patient is a widower, while the 1st applicant is the only child, and the 2nd petitioner is the eldest grandchild.
4. The petitioner averred that the patient had cash in the following bank accounts, which they required to access for his upkeep: -
  1. Bank account number 0250199xxxxxx with Equity Bank in the name of NAM; and
  2. Bank account number 95820100xxxxxx with the Bank of Baroda in the name of NAM.In support of the said contention, they attached a bank statement and a copy of the deposit slip.
5. When the matter first came before me, I ordered that the patient be examined at Port Reitz Hospital, Mombasa, and that the chief of the area where the patient resides prepare and file a requisite report confirming that the petitioners were related to the patient. I slated the matter for hearing on 29<sup>th</sup> May 2025.
6. On 29<sup>th</sup> May 2025, three witnesses testified. I shall give a summary of their evidence below.
7. The first witness was ZNA. Ms. A is a housewife residing at Kizingo. The patient is her father. She prayed that she be allowed to manage her father's affairs as he is not able to do so himself due to ill health. In particular, she stated that the patient was unable to dress himself or take his own medicine. She testified that her mother was deceased and that she was the only child of the patient.
8. The 2<sup>nd</sup> petitioner, AAA, was the second witness. She is unemployed and resides with the 1<sup>st</sup> petitioner and the patient at Kizingo. She stated that her grandfather had schizophrenia. She prayed that they be appointed as co-managers/legal guardians of the patient so that they could take care of him.
9. The last witness was Dr Janbibi Yusuf Mohamed. Dr Mohamed is a psychiatrist working at Port Reitz Sub-County Hospital. The hospital in question is the leading psychiatric health institution in the coastal region. She testified that she has a master's in Psychiatry from Moi University. Dr Yusuf testified that upon examining the patient, she diagnosed the ailment afflicting him as being chronic Schizophrenic dementia. According to her, the patient cannot take care of himself.
10. In her professional opinion, Schizophrenia is untreatable but can be managed with medication. She stated that his condition would progressively worsen with time. She urged that a guardian be appointed for him for his benefit.
11. The Assistant Chief of the Makadara Sub-location Old Town, Mr Ali Abubakar, wrote a letter dated 21<sup>st</sup> May 2025 in which he confirmed that the petitioners are the next of kin of the patient.
12. I have considered the pleadings, documentary evidence, and oral testimony of the witnesses. In my view, the issues I need to determine are:-
  1. Does the patient suffer from mental illness? and
  2. If so, what order(s) should be issued?



13. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the *Mental Health Act*, as amended in 2022. A manager's duty is to safeguard the property of the patient. The appointment of a Manager must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said Act provides that:-

“A manager shall perform the manager's duty under this Act responsibly, taking into account the best interests of the estate of the person suffering from mental illness.”
14. Under the *Mental Health Act*, the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Although ZNA and AAA are not “supporters” of the patient, as they weren't appointed in writing, it is my finding that being the patient's daughter and granddaughter, respectively, they are his “representatives” within the meaning of the Act and, therefore, have the locus standi to file the instant petition.
15. *In re CWN (a person suffering from mental disorders)* [2022]eKLR the Court stated that:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders, the petitioners must adduce evidence sufficient to satisfy the Court, firstly that the patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the patient is incapable of managing her own affairs.”
16. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished capacities to manage their affairs, analogous to those of children. Therefore, the court must ensure the application was filed in the patient's interest. Additionally, the court's orders must be designed to achieve this goal.
17. Evidence adduced shows that NAM suffers from chronic schizophrenic dementia and is experiencing functional and cognitive impairment that significantly impacts his ability to manage his finances and maintain his bank accounts. Dr Ilham Mohamed and Dr Janbibi Yusuf Mohamed both diagnosed her condition as a mental illness. Given the findings of the said doctors and her present situation, it is my view that the patient suffers from a mental illness.
18. The petitioners averred that the patient had a bank account with Equity Bank, account number 0250199xxxxxx, and a bank account with the Bank of Baroda, account number 95820100xxxxxx, both in the patient's name. In support of this contention, they attached a bank statement and a copy of the deposit slip. Treatment of mental illnesses is expensive. Being ill, the patient may not appreciate the need for treatment, nor be able to manage the treatment regimen. The appointment of the petitioners as the patient's guardians ad litem and managers will enable them to access his funds, allowing them to pay for nursing care and medication.
19. The petitioners' and the medical professionals' testimonies all indicate that the patient is unable to manage his affairs. Therefore, it will be in his best interest to appoint managers to run his estate. The managers/guardians ad litem will ensure that he receives the most appropriate care possible, that his estate is not wasted or lost, and that his interests are protected.
20. I am satisfied, based on the evidence adduced, that the patient has a mental illness. There is, therefore, a case for the appointment of the petitioners as the guardian ad litem of NAM and the managers of his estate. In the circumstances, I order as follows:-



1. The petitioners, ZNA and AAA, are hereby appointed as the guardians ad litem of the patient, NAM, and also the managers of his estate;
2. ZNA and AAA shall manage the patient's estate but will not have the power to sell, charge or otherwise alienate his immovable property without the leave of the Court;
3. Pursuant to section 27(4) of the *Mental Health Act*, the appointment of the managers/guardians ad litem shall be published in the Kenya Gazette;
4. The managers/guardians ad litem shall file the inventory and statement of account of the estate of the patient within six months from the date of their appointment; and
5. I make no orders as to costs.

21. It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 3<sup>RD</sup> DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Mbarak, holding brief for Mr Salim, for the Petitioners; and

Arthur – Court Assistant.

