



In re SPM (Petition E139 of 2025) [2025] KEHC 12978 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12978 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E139 OF 2025
M THANDE, J
SEPTEMBER 19, 2025
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF SPM
IN THE MATTER OF
SKM PETITIONER

JUDGMENT

1. By a Petition dated 30.7.25 the Petitioner, SKM seeks to be appointed manager and guardian of SPM (the subject) to take over the entire management of his estate so as to claim the subject's award in WIBA/KLF/055/2023. The Petitioner is a wife of the subject.
2. In her supporting affidavit, the Petitioner deponed that the subject, sued China Communications Constructions in WIBA/KLF/055/2023 and judgment was entered in his favour. However, the subject the subject is unable to conduct his own affairs as he is a psychiatric patient with attention and concentration challenges. She urged that she be appointed as the subject's guardian to enable her step in and enforce the decision for his benefit.
3. In a medical report dated 25.8.25, Dr. Darius Wambua Kiema indicated that following the accident on 12.11.18 where he fell from a truck at his work place, the subject has right sided hemiparesis. He also suffers memory and cognitive impairment, loss of independence to undertake both physical and legal mandate, as well as diminished capacity to work and undertake activities of daily living. The medical report further indicated that the subject requires physiotherapy and occupational therapy as well as brain care medication. The subject's total permanent disability was assessed at 85%.
4. The Petitioner thus seeks to be appointed legal guardian to the subject and undertakes to faithfully administer all the estate of the subject and abide by any condition as may be imposed by the Court.



5. The Court has considered the Petition, the supporting affidavit, the exhibited medical report, as well as counsel's submissions. At the hearing, the Court heard the account of the Petitioner and their 2 daughters JK and RN on the subject's condition. They all confirmed that he has been ailing since the accident in 2018 and is unable to take care of himself and that the Petitioner has been taking care of him. The Court was also able to observe the subject and noted that he appeared not to know the location of his home nor remember the names of his children.
6. From the material before the Court and the Court's own observation, it is evident that the subject's condition has rendered him incapable of managing his own affairs.
7. The *Mental Health Act* empowers the Court to make orders relating to a person suffering from mental disorder. Section 2 of the *Mental Health Act* defines a person suffering from mental disorder as follows:

person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;
8. Section 26 of the Act requires the Court to make inquiry prior to making orders relating to a person suffering from mental disorder as follows:
 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.
9. The Court has made inquiry and makes a finding that subject is a person suffering from mental disorder and incapable of managing his own affairs. It is therefore necessary to make orders for the guardianship of the subject and for the management of his estate.
10. Under the Act, the Court may also direct that the property of a person suffering from mental disorder be applied for such person's maintenance or his family. The Petitioner stated that there is a judgment in favour of the subject in WIBA/KLF/055/2023 which he is unable to claim and intends to do so on his behalf and for his benefit.
11. Section 29(1) of the Act provides:

Where it appears to the court that, having regard to the circumstances of a person who is suffering from mental disorder and of his family and any other relative circumstance, it is expedient that his property should be made available for his or their maintenance it may,



instead of appointing a manager or, notwithstanding such appointment, order that the property or the proceeds thereof when realized be paid to such person as the court may think fit, to be applied for such maintenance.

12. Having considered the foregoing, my finding is that it is expedient that the award in WIBA/KLF/055/2023 be made available to the Petitioner for the subject's medical care and maintenance.
13. In light of the foregoing, I am satisfied that the Petitioner as wife of the subject, is a fit and proper person to be appointed guardian over the subject and manager of his estate.
14. In view of the Court's finding that the subject is a person suffering from mental disorder, it is necessary to make orders for his guardianship and for the management of his estate. Accordingly, it is hereby ordered as follows:
 - i. SKM is hereby appointed as guardian of SPM and manager of his estate for the purpose of claiming the subject's award in WIBA/KLF/055/2023.
 - ii. There shall be no order as to costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 19TH DAY OF SEPTEMBER 2025

M. THANDE

JUDGE

