



**In re JRK (Subject) (Miscellaneous Petition E029 of 2025)
[2025] KEHC 12607 (KLR) (16 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS PETITION E029 OF 2025**

RN NYAKUNDI, J

SEPTEMBER 16, 2025

**IN THE MATTER OF SECTION 26, 27, 28 AND 29 OF THE
MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA**

AND

IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE RULES 2010

AND

**IN THE MATTER OF JRK (SUBJECT, A PERSON
SUFFERING FROM MENTAL HEALTH DISORDER**

AND

**IN THE MATTER OF AN APPLICATION BY CC FOR APPOINTMENT
AS GUARDIAN AND MANAGER OVER THE AFFAIRS OF THE ESTATE
OF JRK (A PERSON SUFFERING FROM A MENTAL DISORDER)**

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP AND
MANAGEMENT OVER THE AFFAIRS OF THE ESTATE OF JRK**

IN THE MATTER OF

CC PETITIONER

RULING

1. The Applicant approached this Court by way of Chamber Summons dated 2nd of July 2025 for the following orders:
 1. That this matter be certified as urgent and be heard on priority basis.
 2. That the Subject JRK be adjudged to be a person suffering from a mental disorder.



3. That the Petitioner be appointed as the legal guardian and manager of the Subject and the Subject's Estate.
4. That Petitioner be granted management orders and authorized to undertake all legal functions with regards to financial affairs, interests and welfare of the Subject.
5. That the Petitioner to access the Subject's funds from the subject's bank account No. 0300XXXX022 at Equity Bank and o continue to receive any pension due to the Subject, and to utilize the same for the subject's upkeep.
6. That such order and further orders as this Honorable Corut may deem just to grant.
7. Costs of and/or incident to this Petition be provided for.

Which application is based on the following grounds:

- a. That the subject has been diagnosed with post traumatic dementia.
- b. That the subject is unable take care of himself, discharge his own affairs, make rational decisions and/or understand formal documents.
- c. That a Petitioner is unable to cater for the Subject and needs to access the subject's funds in order to take care of him, his upkeep and drugs.
- d. That the Petitioner is unable to take care of the Subject, run, manage the Subject's Estate, and/or access the Subject's bank Account 0300XXXX022 at Equity Bank unless she is made the guardian and manager of the affairs and Estate of the Subject.
- e. That the instant application is made timeously to utmost good faith in pursuit of the best interest of justice.

Which application is further supported by the annexed affidavit of CC and any other further reasons to be adduced at the hearing hereof as follows:

1. That I am a female adult of sound mind therefore competent to swear this affidavit.
2. That I got married to one Joel Ruto Kiptoo on 1st December 2002 under the African Christian Marriage and Divorce Act, (Annexed and marked 'CC 1(a) and (b) are the identity cards and marriage certificate).
3. That our marriage was blessed with issues who are now adults (annexed and marked 'CC2(a) and (b) are the Area Chief's letter and the issues' identify cards).
4. Sometime in the year 2022, my husband was involved in a road traffic accident in which he suffered bodily injuries and subsequently, he never healed from his injuries.
5. That on 23rd September, 2024 my husband was examined by a specialist physician and was medically diagnosed with post traumatic dementia (annexed and marked 'CC 3' is the medical report prepared by Dr. Naftali Busakhala).
6. That due to my husband's poor health condition, he is incapable of making decisions or handling himself hence he needs close attention and care on a permanent basis.



7. That I am unable to purchase his drugs or meet his daily upkeep as he was the bread winner of our family.
8. That my husband is the holder of account number 0300XXXX022 at Equity Bank which has funds that I am unable to access (Annexed and marked ‘CC 4’ is the ATM Card).
9. That I pray that I be allowed to access his funds in order to help with his medication and daily upkeep.
10. That I pray that I be authorized to undertake all legal functions with regards to financial affairs, interests and welfare of my husband and his Estate
11. That the family has consented to me being appointed as the legal guardian of Joel Ruto Kiptoo (Annexed and marked ‘CC 5’ is the consent.)
12. That I swear this affidavit in support of the application now before court and pray that the same be allowed as prayed.
13. That I make this oath conscientiously believing the afore-deponed particulars to be true to the best of my knowledge and belief.

Decision

2. There are two cardinal questions which must be answered by this court namely: First and foremost, whether the applicant has met the threshold under Section 26 of the *Mental Health Act* for a declaration to be made that J.R. is incapable of conducting his affairs without the assistance of a legal guardian or manager. Second, whether the applicant has made the suitability test of being appointed legal guardian and/or manager.

The applicable law

3. The surrounding circumstances are well documented in the affidavit of the applicant as supported by the medical report which gives a diagnostic evaluation of JR’s health status. In so far as Section 2 of the *Mental Health Act* is concerned the objects and purpose of the Act is to provide for the prevention of mental illness, to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness; and for connected purposes. In addition, Section 26 of *Mental Health Act* empowers the court to exercise discretion in favour of the applicant for the sole purposes of custody, management and guardianship in the interim period as the court may direct. 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
 - c. 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.
 - d. Where upon inquiries it is found that the person to whom the inquiry relates is suffering whom 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 just for the management of the estate of such person, including proper provision for his and for



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.” (See also Sections 27 & 28).

4. It is trite that when a person, or a spouse or another adult member of a family becomes incapable of managing his or her own affairs under the ambit of the corpus of rights under Article 26 of *the Constitution* especially the administration and management of his personal affairs, his or her own estate the law sets in motion for a legally appointed guardian or manager to step in and manage all those issues of significance which have been impaired for reason of incapacity, serious illness or disability.
5. This is what the international law namely the United Nations’ Convention on the Rights of Persons with Disabilities (CRPD) may have had in mind when it made the following observations:

“The purpose of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disability, and to promote respect for their inherent dignity. It seeks to redress the physical and social barriers, discrimination and disadvantage confronting people with disability throughout the world and to promote their full participation and recognition in civil, political, economic, social and cultural life.”

6. The convention itself goes further to give guidelines on the fundamental principles of autonomy, personal decision making and self-determination that include: Non-discrimination (Art 4) Equal protection before the law (Art 5) The right to equal recognition before the law (Art 12) Access to justice on an equal basis with others (Art 13) Freedom from exploitation, violence and abuse (Art 16) Protecting the integrity of the person (Art 17) Freedom of expression and opinion, and access to information (Art 21)
7. This petition by the applicant is embodied in us and in us alone as human beings. In our amazing race of life we may go through various spheres of growth, aging and countdown to the years which have been gifted to us individually. It is wonderfully original work of creation. However, in the way it takes up these critical conceptions of aging with grace and dignity through the integration of mind and body. *The Constitution* in Article 28 articulates the right to human dignity which in dimensional definition though not defined in the text is an aesthetic quality and also is tranquility in suffering. As it is in this application the sense of urgency is to uplift, protect and guarantee the right to life under Article 26 and right to human dignity under Article 28 of *the Constitution* that such a fulfilment may be experienced by JR during his lifetime.
8. I see the core of this application within the scope of the eloquent account by Kant of the centrality of rights to his conception of morality. The Spouse to JR and his children have moved this court to exercise discretion in their favor to appoint the applicant as a guardian and manager to oversee all that which appertains to the wellness and health rights of their father and companion. This is in line what Kant conceptualized on this aspect in the scheme on the prime feature of morality. Thus;

“Duties towards others of indebtedness and justice rest upon the universal rule of right, and the supreme duty of them all is respect for the rights of others. They are impregnable and inviolable. Woe unto him who infringes those rights, and tramples them underfoot! The right of the other should keep him secure in everything; it is stronger than any bulwark or wall. We have divine ruler, and his sacred gift to us is the rights of man. (Ak. 27:415).



9. The motivation behind this application by the applicant within the rubric of consanguinity and affinity is in its purposive approach towards the case in Francis Coralie Mullin v Union Territory of Delhi (1981) in which it was held:

“That the right to life includes the right to live with human dignity and that it encompasses all those aspects of life which makes a person’s life meaningful, worth living and which can be said to come within the broader expression of “life”.

10. The affidavit by the applicant provides information and evidence to help this court assess the suitability of her being appointed as the proposed guardian or manager. For all intents and purposes the applicant is a spouse, legally married to JR as supported by the marriage certificate No. 95XXXX18 dated 15th December 2002. In addition the children of JR have also consented to the suitability of their mother being appointed as the guardian and/or manager to their father until such a time the court does make an order to dispense with her role under the framework of the law.

11. Having considered the evidence and the legal principles I hold the view that this application has merit for the following orders to abound;

- a. That the applicant be and is hereby appointed legal guardian and manager to oversee the affairs of JR as they relate to his right to life and human dignity.
- b. That this appointment is renewable in the first instance within one calendar year subject to periodic reports submitted to the Deputy Registrar of the High Court at Eldoret.
- c. That for the sake of monitoring compliance any withdrawals made during the interim period shall be sanctioned by this Court in any event.
- d. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 16TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

