



**In re GCKM (Subject) (Family Miscellaneous Civil Case E016 of 2025)
[2025] KEHC 12676 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E016 OF 2025
FN MUCHEMI, J
SEPTEMBER 10, 2025
IN THE MATTER OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIAN AD LITEM OF GCKM
IN THE MATTER OF
BNK APPLICANT**

RULING

1. The application for determination dated 24th July 2025 seeks for orders of adjudging GCKM (the subject) to be suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act* and to appoint the applicant as the subject's legal guardian and manager of his estate particularly to defend the subject in Kamwangi ELC 005 of 2025 where he is a defendant.
2. The applicant is the wife of the subject who was diagnosed with mental instability and has been attending mental health clinics at Mathari National Teaching & Referral Hospital since the year 2020. The subject underwent a medical examination pursuant to directions from the court in Kamwangi Law Courts MCELC E005 of 2025 and a report was issued on 14th July 2025 indicating that he did not possess the mental capacity to understand, retain or weigh relevant information necessary for decision making. Thus he does not possess the capacity to argue or defend himself in court nor does he have the capacity to manage his estate.
3. The petitioner who testified as PW1 stated that they have six children with the subject. She further stated that the subject has been sick since 2018 suffering from dementia. The witness testified that the subject's condition has deteriorated and he is forgetful and unable to converse properly.
4. PW2, Magdalene Nyokabi Kioni testified that she is the fifth child of the subject and the petitioner. She further testified that the subject has suffered from dementia since 2018 and he goes for clinic and treatment at Mathari Mental Hospital. The witness stated that the subject is on medication and that



he is unable to take care of himself. PW2 testified that as a family they agreed that the petitioner be appointed guardian of the subject.

Issues for determination

5. The main issues for determination are as follows:-
 - a. Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 - b. Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject.

The Law

Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248

6. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.
7. Section 2 of the Act defines “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 psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”
8. Section 26 provides for custody, management and guardianship
 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 of the guardian of any such person.
 3. Where upon 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. According to the medical report by Dr. H. Fardosa, a consultant psychiatrist, dated 14th July 2025, the patient is suffering from dementia. The doctor further indicated that the subject does not possess mental capacity to understand, retain or weigh relevant information necessary for decision making.



10. The court had the opportunity to observe the subject and noted that the subject was not able to give rational answers to questions put to him by the court. The subject was unable to give the name of his daughter. The subject was not aware why he was in court.
11. It is apparent from the medical report that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing his own affairs.

Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject

12. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
13. The petitioner has stated that she is the wife of the subject. PW2, the fifth child of the subject and petitioner testified that she supports
the petitioner being appointed the legal guardian and manager of the subject and his estate.
14. Thus, there being no objection and the course of the application being well supported as required under the law, it is my considered view that same is successful and it is hereby allowed in the following terms: -
 - a. That the applicant Bibiana Njeri Kamau is hereby appointed guardian as litem of the subject to defend the subject's case at Kamwangi Law Courts No. E005 of 2025.
 - b. That the applicant is appointed to manage the affairs of the subject including the management of his estate.
15. This being an exparte application, there shall be no order as to costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025

F. MUCHEMI

JUDGE

