



**In re BOO (A Person Suffering from a Mental Disorder) (Petition E020 of 2024) [2024] KEHC 3749 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3749 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
PETITION E020 OF 2024**

**RE ABURILI, J**

**APRIL 18, 2024**

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

**AND**

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

**AND**

**IN THE MATTER OF BENJAMIN OMADEDE IKIDE (SUBJECT, A  
PERSON SUFFERING FROM MENTAL HEALTH DISORDER**

**AND**

**IN THE MATTER OF AN APPLICATION BY DORINE OLING'A OKUTE  
FOR ORDERS OF CUSTODY MANAGEMENT AND LEGAL  
GUARDIANSHIP OF BENJAMIN OMADEDE OKIDE (A PERSON  
SUFFERING FROM A MENTAL DISORDER)**

**IN THE MATTER OF**

**DOO ..... PETITIONER**

**RULING**

1. The Petitioners in the amended Petition dated 27<sup>th</sup> March 2024 are D O I O and C O M. They are spouse and brother respectively to the subject herein Benjamin Omadede Okide who is described as mentally ill having been diagnosed with schizophrenia since 2019.



2. The 1<sup>st</sup> Petitioner has sworn an affidavit in support, to the effect that she is aged 37 years, and has been married to the subject under customary law since 2009.
3. That she lives in Mamboleo, Kisumu, in the house and on land belonging to the subject who, since his illness, has been unable to work and settle hence he was relieved of his duties as an National Intelligence Service (NIS) Officer, on medical grounds.
4. That they have 5 biological children and one dependant who is the child of the 1<sup>st</sup> Petitioner's sister living with them.
5. The court did call for the appearance of and it did see and interview all the children of the subject with the 1<sup>st</sup> Applicant, which children are all under the age of 16 years and are in school except the last born who is a baby, aged 3 years.
6. The 1<sup>st</sup> Petitioner filed birth certificates for all the children. She also filed medical documents showing the diagnosis of the Schizophrenia illness of the subject, by Dr. Syengo of Chiromo Lane Medical Centre dated 1<sup>st</sup> November 2019. The subject is aged 42 years old. He could not be traced to be availed to court whether physically or virtually, for observation.
7. Noting that all the children are minors and that the 1<sup>st</sup> Petitioner is a sole applicant, I ordered for amendment to the Petition and the application to enjoin a second Petitioner and close blood relative of the subject.
8. The amended Petition and application enjoin Charles Oike Mubweka. His National identify card is annexed. It is No. 3355238. He was born in Busia County, Teso South, Chakol Division, Ochude Location, Otimong Sub-location.
9. According to the 1<sup>st</sup> Petitioner in her further affidavit sworn on 20<sup>th</sup> March 2024, the 2<sup>nd</sup> Petitioner/ Applicant is an elder brother to the subject and has been instrumental in the life of the subject and is the closest blood brother to the subject hence he is capable of providing homecare to the subject as he has been prompt in addressing the urgent issue or emergencies that occur concerning the subject.
10. The Petitioners/Applicants jointly pray for the orders That the subject Benjamin Omadede Okide, a person suffering from a mental disorder be adjudged to be such a person as defined under section 2 of the [Mental Health Act](#) Cap 248 of the Laws of Kenya.
11. The Applicants further pray for orders to be appointed as legal guardians of BOO (A person of unsound mind) the subject herein and that the Applicants be granted management orders and be authorized to undertake all legal functions concerning the financial affairs, interests and welfare of the subject BOO.
12. Section 2 of the [Mental Health Act](#) defines a person suffering from mental disorder as:

“A person suffering from mental disorder means; “a person who has been found to be so suffering under this Act and includes a person diagonized as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”
13. The said [Mental Health Act](#) provides for the care of persons who are suffering from mental disorders, custody of their persons and for the management of the estates of such persons under section 26 of the [Mental Health Act](#), the court is empowered to make orders for:

“ 1.



- (i) The management of the estate of any person suffering from mental disorder; and
  - ii. The guardianship of any person suffering from a 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 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 the 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 cases, make any order as to the custody of the person suffering from mental disorder.”
14. The documents annexed to the Petition include a letter from the subject’s employer National Intelligence Service, dated 18<sup>th</sup> February 2022 signed by its Director of Administration, Mrs. A. N. Shikuku referring to the absence of the subject from duty due to prolonged ill health and placing him on sick leave for 3 months with full pay and the next three months sick leave with half pay and thereafter, subject to the findings and recommendations of the Director of Medical Services, no pay, as per the NIS terms and conditions of service as well as the existing Regulations.
  15. The letter dated January 2024 signed on behalf of the Director, NIS, shows that the subject was retired on medical grounds from 1<sup>st</sup> October 2023 but that he could not even sign the requisite discharge documents due to his mental condition and that therefore only an order of the court under section 26 of the [Mental Health Act](#) can aid in processing any dues to him from the Service.
  16. The Medical Discharge advise dated 1<sup>st</sup> November 2019 from Chiromo Lane Medical Centre confirms the mental illness that the subject is suffering from.
  17. The 1<sup>st</sup> Applicant annexed an affidavit of her marriage to the subject though the date of deposition is not clear, where the subject wanted the 1<sup>st</sup> Applicant to be included in his NHIF benefits.
  18. From the affidavit of Dorine Oling’a Okute sworn on 18<sup>th</sup> March 2024, she had been allowed by the subject to withdraw money from his account via ATM card which card had now expired.
  19. The subject and the 1<sup>st</sup> Petitioner/Applicant have 5 children and a dependant child who depend wholly on the subject for their livelihood and no doubt, where they are unable to access any support, their basic needs will not only be compromised, but that the dependants will be left in dire want and need
  20. In addition, the subject BOO needs support and care to manage himself and his needs can only be met if people close to him are permitted to access and manage his estate so that they can take good care of him.
  21. For the above reasons, I am satisfied that the subject BOO is incapable of managing his own affairs and the affairs of his family comprising the 1<sup>st</sup> Petitioner, her 5 biological children and a dependant child.
  22. Accordingly, I make the following orders which are, however, not permanent in nature:



1. That the Subject BOO is hereby declared and adjudged to be a person suffering from mental disorder under Section 26 of the Mental Health Act and is incapable of managing his own personal affairs and the affairs of his dependants comprising the 1<sup>st</sup> Petitioner Dorine Oling'a Okute and their five (5) biological children and one other dependant child.
2. That Dorine Oling'a Okute and Charles Oike Mubweka, adults of sound mind, being spouse and brother to the subject BOO respectively, are hereby appointed as guardians al litem and managers of the subject BOO.
3. That the two Petitioners herein Dorine Oling'a Okute and Charles Oike Mubweka shall henceforth act as managers and guardians of the subject BOO in accordance with the directions of this court and in particular, shall do the following:
  - a. Manage the subject's mental health care
  - b. Have access and jointly operate the subject's Bank Account(s) limited to accessing funds that will meet the basic needs of the subject, the 1<sup>st</sup> Petitioner Dorine Oling'a Okute and the 5 biological children of the subject and the 1<sup>st</sup> Petitioner herein and the dependant child who resides with the 1<sup>st</sup> Petitioner
  - c. Execute all documents and claim for any benefits from the subject's employer, National Intelligence Service on behalf of the subject
  - d. Claim and receive any debts owed to the subject by third parties
  - e. Collect and preserve any property or assets owned by the subject for the benefit of his estate
  - f. Make decisions and handle the subject's statutory or other lawful obligations to the Government with regard to his National Health Insurance Fund (now the Social Health Insurance Fund) to enable the subject and his dependants named herein access Government and other medical services
  - g. In the discharge of their duties as appointed managers and guardians ad litem of the subject BOO, the Petitioners shall be governed by the provisions of section 27 of the *Mental Health Act* Cap 48 Laws of Kenya
  - h. This appointment shall be for a period of only one (1) year of today and shall lapse upon the end of one calendar year or upon the death of the subject, whichever is the earlier
  - i. The Petitioners and guardians as appointed herein shall at all times manage and preserve the estate of the subject in a transparent, and prudent manner as not to waste the said estate and shall file into this court at the end of the one-year period herein granted, true and accurate accounts of the estate of the subject for the Court to determine whether to extend the appointment or not.
23. I so order.
24. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**R. E. ABURILI**



**JUDGE**

