



**In re JMS (Family Miscellaneous Application E003 of 2022)
[2024] KEHC 6926 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
FAMILY MISCELLANEOUS APPLICATION E003 OF 2022**

GMA DULU, J

JUNE 5, 2024

**IN THE MATTER OF: SECTION 26(1)(A) AND (B), 28(1) AND (2) OF
THE MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA**

=AND=

**IN THE MATTER OF: J.M.S (SUBJECT) A PERSON
SUFFERING FROM MENTAL HEALTH DISORDER**

=AND=

IN THE MATTER OF: AN APPLICATION FOR LEGAL GUARDIANSHIP

=AND=

RCR.....PETITIONER/APPLICANT

RULING

1. This is a petition dated 12th October 2022 initially filed by FM, who was later substituted with RCR.
2. It is an application filed under Section 26 of the [Mental Health Act](#) (Cap.248) and relates to a person called JMS described in the proceedings as J.M.S, (subject) and seeks the following orders:-
 1. A declaration that the subject herein is a patient and a person suffering from a mental disorder within the meaning of Section 2 of the [Mental Health Act](#) Cap.248 Laws of Kenya.
 2. An order that the petitioner be appointed as legal guardian to the subject.
 3. That the petitioner be granted management orders and be authorized to undertake all legal functions with regard to the financial affairs, interests and welfare of the subject.
 4. Costs of this application be in the cause.
3. The main grounds upon which the petition was brought are that the subject has been diagnosed with a mental illness and is not capable of managing his affairs, or participating in legal proceedings, as he is a person with permanent disability.



4. The application was canvassed through written submissions filed by Mtalaki Law Advocates LLP for the petitioner RCR.
5. It was emphasized in the said submissions that under Order 51 Rule 1 of the *Civil Procedure Rules*, and Section 2 and Section 26 of the *Mental Health Act*, this court has jurisdiction to issue the orders sought.
6. Having perused and considered the petition and documents filed herein, such as a medical report signed by Dr. Felix Kimotho Medical Superintendent Moi County Referral Hospital Voi dated 27th August 2021, as well as a letter dated 6th September 2023 signed by Crispus Mushangi the Chief of Ngolia Location Voi, and I am persuaded that the prayers sought herein have merits. I will thus allow the petition and grant the prayers sought.
7. Consequently, I allow the petition and order as follows:-
 - i. This court issues a declaration that the subject herein JMS (J.M.S) is a patient and a person suffering from a mental disorder within the meaning of Section 2 of the *Mental Health Act*, Cap.248 Laws of Kenya.
 - ii. This court orders that the petitioner RCR be and is hereby appointed the legal guardian to the subject.
 - iii. The petitioner is hereby granted management orders and is authorized to undertake all legal functions with regard to the financial affairs, interests and welfare of the subject.
 - iv. The costs of the petition are in the cause.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF JUNE 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Onyango holding brief for Mr. Mtalaki for petitioner

