



**In re BO (Miscellaneous Civil Application 60 of 2023)
[2024] KEHC 17026 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 17026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CIVIL APPLICATION 60 OF 2023**

TA ODERA, J

JULY 9, 2024

**N THE MATTER OF THE CIVIL PROCEDURE ACT
CAP 21 AND CIVIL PROCEDURE RULES, 2010**

AND

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA

AND

IN THE MATTER OF BO

IN THE MATTER OF

RMM EXPARTE APPLICANT

RULING

1. The Applicant herein namely moved the court vide Notice dated 27th March, 2023 under Section 26 of the *Mental Health Act* CAP 248, section 3, 3a & 63 of the *Civil Procedure Rules* and Order 32 Rule 15 of the *Civil Procedure Rules* for the following orders:
 - i. -----spent
 - ii. That this Honourable court be pleased to find that one BO is incapable of protecting his interests with regard to his affairs due to mental illness.
 - iii. That the ex- parte applicant RMM be appointed guardian ad litem for BK the subject herein.
 - iv. Costs be provided for.
 - v. That such further orders as the court may deem fit and expedient.
 The application is based on the grounds that;
 - a. Applicant is the wife to the subject.



- b. On 20.8.21 the subject was involved in a road traffic accident in which he sustained severe bodily injuries.
- c. He was admitted for 23 days and treated at Kisii Teaching and Referral Hospital.
- d. He instituted legal proceedings i.e Kisii CMCC No. 983 of 2021 (*BO vs Dennis Moguche & Another*) seeking compensation for general damages for pain and suffering, future medical expenses, special damages as well as costs.
- e. The said matter is pending hearing and determination.
- f. That during the pendency of the said suit the condition of the subject deteriorated and he developed bizarre/disorganized behaviour and has been examined and found to be mentally unfit. His memory and understanding have been impaired.
- g. The subject is unable to manage his own affairs.
- h. The ex-parte applicant is now desirous of protecting the interest of the said subject and hence this application.
- i. It is imperative that the applicant be appointed guardian of the subject.
- j. Unless the orders are granted the subject and the applicant will suffer prejudice. It is in the interest of justice that the application be allowed.

The application is supported by the supporting affidavit of RMM dated 27.3.23. She deponed to the issues raised in the grounds on the face of the application and annexed a police abstract "RMM1", discharged Summary "RMM2" medical report "RMM3" copy of plaint "RMM4" Psychiatrist report "RMM5". She also filed a supplementary affidavit dated 1.3.24. in which she annexed introduction letter dated 15.2.24 from the assistant Chief Bokeire sub-location introducing her as a wife to the subject "RMM5"

Analysis And Determination

2. I have carefully considered the petition the supporting affidavit of the petitioner and all the annexures attached to it and the issue for determination is whether this court should allow the application and grant guardianship orders of the subject to the applicant herein.
3. Section 2 of the *Mental Health Act* Cap 248 provides that:

“A person suffering from mental disorder” means a person who is suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
4. Section 26 of the *mental health Act* empowers the court to grant custody, management and guardianship orders. The said section provides;

“(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



- 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 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 just 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. Section 27 provides for powers of a managers of the estate of a patient while Section 28 of the same Act provides for management of the subject's estate.
- 10. I have perused the application, the supporting and supplementary affidavits of the applicant and the medical report by Mr. Rodgers Omuya, a clinical Psychiatrist at Kisii County Referral Hospital (RMM4) and I am satisfied beyond doubt that the patient is Disoriented in time place and has poor calculation skills thus has mental incapacity under section 2 of the [Mental Health Act](#). I find that he is unable to manage his affairs.
- 11. On whether Applicant should be appointed as guardian/ manager to the patient’s estate. She says she is a wife to the subject and has been introduced by the letter from the area Assistant Chief by the area Chief. It is clear that the subject is mentally challenged and is in need of special care and protection.
- 12. I find that the petition is merited. The applicant is appointed guardian ad litem of the subject and his estate. Any proceeds from his estate be held in trust for her and be utilized in his best interest. file is closed.

T.A ODERA

JUDGE

9. 7.24

DELIVERED IN OPEN COURT AT KISII ON THIS 9TH DAY OF JULY 2024 IN THE PRESENCE OF

Court Assistant: Oigo

Applicant and her counsel are absent

