



**In re BKO (Subject) (Miscellaneous Application E001 of 2023)
[2023] KEHC 20775 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS APPLICATION E001 OF 2023**

PN GICHOHI, J

JULY 20, 2023

**IN THE MATTER OF SECTION 26, 27A & 28 OF THE MENTAL HEALTH
ACT**

AND

**IN THE MATTER OF GUARDIANSHIP AND MANAGEMENT OF THE
ESTATE OF BKO (PERSON WITH MENTAL
DISORDER)**

AND

**IN THE MATTER OF AN APPLICATION BY BNO TO BE
APPOINTED AS THE GUARDIAN AND MANAGER OF
THE ESTATE OF BKO WHO SUFFERS
FROM MENTAL DISORDER**

IN THE MATTER OF

BNO APPLICANT

RULING

1. Through the firm of Maosa & Co Advocates, the applicant moved this court by way of a notice of motion dated April 3, 2023 brought under a certificate of urgency seeking orders that:
 1. Spent
 2. The court be pleased to declare that the subject herein is a person of unsound mind and hence incapable of taking care of his personal interests including safeguarding properties and thus requires the appointment of a guardian *ad litem*.



3. The court be pleased to appointment the applicant herein as the guardian *ad litem* for and on behalf of the subject, who is of unsound mind.
 4. Consequent to prayer (2) above, being granted, the applicant be granted liberty to protect and /or vindicate the subject’s personal and proprietary interests in general including but not limited to filing and /or taking such proceedings, as may be necessary to protect the interests of the subject.
 5. Costs of the application be in the cause.
 6. Such other and/or further orders be made as the court may deem fit and expedient to grant.
2. The grounds are on the face of the application supported by the affidavit sworn by BNO on April 3, 2023 as the wife of the Subject. She depones that they have three adult children who are in agreement that she is the most suitable to be appointed a guardian. Further, she lists all the properties registered in the name of the subject in this matter and also his bank accounts. She explains that the subject is a teacher aged 56 years and but now suffering from a mental disorder for which he has been diagnosed as having severe neurodegenerative dementia namely that is, general loss of memory, general psychomotor slowing, steady cognitive decline and poor memory, recall, orientation, abstract thinking and executive function.
 3. While annexing the doctor’s report, she further depones that owing to the foregoing diagnosis of the subject’s mental health, it is reported that the subject is incapacitated and would need assistance in all basic activities of life as his thoughts were disorganized; his perceptions were poor for reasons that he gave irrelevant responses; his speech decreased in volume, rate and tone; his judgment is poor; his abstraction is poor and he lacks insight.
 4. She further states that he has lived with her as husband in their matrimonial home and has been taking care of him owing to his special needs and that the subject’s Bankers have been regularly assisting her to access his money to cater for his needs but with much difficulties and uncertainties.
 5. She states that she needs to file a suit at the Environment and Land Court and pay the subjects medical bills as he is under consistent medical therapy and under doctor’s supervision hence the justification for the orders sought.

Determination

6. I have considered the application before this court and the several documents including the subject’s identity card, prove of ownership of the property listed by the applicant and also the medical reports and documents from Aga Khan Health Services Kisii, Aga Khan Hospital Kisumu and his Clinical Appointment Card.
7. Section 26 of the [Mental Health Act](#) gives this court jurisdiction to deal with such an application as it provides that:

- “(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.”

8. This court had directed that the subject be brought before this court. This is in appreciation that some interaction with a subject as the one before this court can reveal even to an ordinary right-thinking person that there is something not right with the subject owing to his gestures and general response to simple questions. This would be a precaution that somehow, he is still on the path described by the applicant and as reflected in the documents annexed. This was done physically in open court and when only the parties to this case were allowed in the courtroom.

9. Through question-and-answer session between this court and the subject which are recorded in this court file, the court established that the subject was well groomed, responded happily in good English language. Responding to a question to establish if he appreciated, he was in court, he told the court that he was somewhere in Kisii, came on his own. Though the applicant and their children were in court, he looked around and told this court that BNO (his wife) was at home and that he did not know where the children were.

10. I am satisfied that the Subject has a mental incapacity and no doubt needs to be taken care of. As agreed even by the Subject’s adult children, the Applicant who is their mother and wife to the Subject is the most suited to do that work. She can only adequately and seamlessly do that work if authorised by this Court.

11. Under section 28 of the Act, this court has power to make the orders sought as regards the Subject for it provides that:

“(1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.”

12. As regards the power of the manager in respect of the estate, section 27 provides that:

“(1) Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist: Provided that—

(i) a manager so appointed shall not, without the special permission of the court—

(a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;

(b) lease any such property for a term exceeding five years; or

(c) invest in any securities other than those authorized by section 4 of the Trustee Act (Cap 167);

(ii) no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which



he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.”

13. In the circumstances, I am satisfied that the applicant urgently needs the orders sought. I find merit in this application dated April 3, 2023 and allow it in the following terms.

1. The Subject herein BKO be and is hereby declared a person of unsound mind and hence incapable of taking care of his personal interests including safeguarding properties and thus requires the appointment of a guardian ad litem.
2. The applicant herein BNO be and is hereby appointed the guardian ad litem for and on behalf of the subject herein BKO and in accordance with the law.
3. No orders as to costs.

Orders accordingly.

DATED, DELIVERED AND SIGNED AT KISII THIS 20TH DAY OF JULY 2023.

PATRICIA GICHOCHI

JUDGE

In the presence of;

Ms Biyaki for the Ex-Parte Applicant

Kevin Isindu Court Assistant

