



**In re DPMOO (Miscellaneous Application E108 of 2023)
[2023] KEHC 23530 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E108 OF 2023
RE ABURILI, J
OCTOBER 13, 2023**

**IN THE MATTER OF AN APPLICATION FOR AN APPOINTMENT
OF GUARDIAN AD LITEM FOR DPMOO (A PERSON WITH
SEVERE COGNITIVE IMPAIRMENT/SENILITY/DEMENTIA)**

IN THE MATTER OF

HAO APPLICANT

RULING

1. This Originating Summons dated 1st August, 2023 invokes section 26(1), 27 and 28 of the *Mental Health Act*, cap 248 of the Laws of Kenya, order 31 rule 15 and order 37 rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and seeks the following prayers:
 - a. That this court do make a determination that DPMOO (the subject person) herein has degenerated into senility and or dementia or severe cognitive impairment and requires guardianship for the management of her affairs and those of her estate and or the estate of her late husband Dr. Oluoch Okeyo wherein she is the sole administrator/beneficiary of the said estate, pursuant to a grant and certificate of confirmation thereof issued on 30th July 1999 and 30th September 1999 respectively in Kisumu High Court Succession cause No. 95 of 1997.
 - b. That the applicant be authorized to act as guardian, agent and or manager of the estate of the subject person, with full power and authority to manage all the affairs of the subject person including receiving payments into, and paying out of the Bank account or accounts of the subject person in particular, account of Josana Academy in Cooperative Bank of Kenya Limited account Number 016920100xxxxx at Cooperative BANK House Branch, Nairobi
 - c. That the appointment do also confer upon the applicant the status of next friend of the subject person
 - d. That costs of the application be provided for.



2. The application is supported by the affidavit of HAO who makes the application with full approval of all her siblings who have given their consent as filed with the application herein. The applicant is an adult of sound mind and the daughter to the subject. She deposes that the subject is her mother and the administratrix of the estate of their late father Dr Oluoch Okeyo who died on 29th November 1996. That the grant was issued to the subject and later confirmed with all the assets devolving to the subject. That among the properties of the estate of their late father are Kisumu/Municipality/Block4/623 which was charged to Cooperative Bank of Kenya Limited to secure a loan granted to Josana Academy, the family business private School which was also jointly owned by the subject and her late husband.
3. That due to loan repayment default, in January 2023, the said property-School was sold by Cooperative Bank of Kenya Limited in exercise of its statutory power of sale and that any surplus can only be made to the subject herein or in pursuant to a court order. that the subject is however incapable of transacting any business as she is suffering from advanced severe degenerative mental condition as shown by the annexed mental assessment report dated 2nd July, 2023. That the subject is resident of Uganda where she is being cared for by Suubi Okeyo, one of her sons and that orders sought herein are necessary in order for the subject's affairs and the affairs of the estate of her late husband can be managed in accordance with the law and that she requires finances for her upkeep and her medical needs. That without the formal court order, the estate of the subject and of her late husband cannot be managed or distributed in accordance with the law.
4. Among the alleged liabilities listed in the estate are kshs 8,813,489.29 cts owed to Kenya Development Corporation the successor to Kenya Industrial and Commercial Development Corporation; Kiptiness & Odhiambo Associates kshs 6,000,000; Otieno ragot & Company Advocates kshs 3,132,558.25.
5. From the annexed mental assessment report, the subject person has been suffering from such severe cognitive impairment for over ten years and that her children were oblivious of her condition as they thought that it was due to merely old age.
6. That she cannot manage herself and her memory is lost to the extent that she has no level of concentration or recognition of her children and surroundings and she cannot even remember to eat unless she is reminded by her caretaker.
7. There are claims against the school which she co-owned with her late husband as well as legal fees claimed by advocates who represented the school before it was sold this year.
8. The subject person is the sole administratrix and beneficiary of the estate of Dr. Oluoch Okeyo which estate she is unable to manage due to the severe cognitive impairment.
9. I had the opportunity to interview the children of the subject who appeared in court virtually on whether they consented to the applicant being appointed guardian ad litem for the subject person who is their mother and they confirmed as such. The applicant's siblings are Suubi Okeyo an ICT professional resident of Uganda and living with the subject in Mutungo, Kampala, Lydia Akinyi an educator residing in Nairobi aged 51 years, Hellen Agutu an adult of sound mind residing in Nairobi, a telecommunications manager, The other two children who are also adults of sound mind and whose consents are on record are Omitto Maryanne. The last two were not present in court.
10. Mr. Wasike advocate for the applicant submitted briefly reiterating the grounds and depositions urging the court to grant the orders sought.



Analysis and determination

11. I have considered the application and submissions by counsel for the applicant. Two main issues arise for determination in this application and these are:
 - 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 to manage the estate of the subject and that of Dr. Oluoch Okeyo, her late husband where she was the sole administratrix and beneficiary.

Issues and the Law **Whether the subject should be declared as suffering from mental disorder-severe cognitive impairment/ dementia or senility pursuant to the *Mental Health Act*, Cap 248.**

12. The *Mental Health Act*, Cap 248 of Laws of Kenya 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.
13. 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.”
14. 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.
15. The Medical Report by Dr. Janet Nakidde, PhD from Department of Psychiatry, Makerere University School of Medicine and College of health Sciences reveals that the subject is suffering from dementia with severe cognitive impairment and that she e has poor cognitive functions rendering her fully dependent on others. Dr. Nakidde is a Clinical Psychologist/Lecturer, Department of Psychiatry at the Makerere University.
16. It is apparent from the doctor’s report that the subject is suffering from a mental disorder as per Section 2 of the *Mental Health Act* and further that due to a medical condition contemplated under Section



26 of the Act she is incapable of managing her own affairs and the affairs of the estate of Dr. Oluoch Okeyo which she is the sole administrator and beneficiary. The doctor's report is thus conclusive on the mental status of the subject. No evidence to the contrary has been produced.

Whether the applicant should be appointed as guardian ad litem to the subject

17. As stated above, Section 26 of the [Mental Health Act](#) gives this 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 though preference will be given to a relative.
18. The applicant has deposed that she is the daughter of the subject and has filed a consent from two of her siblings while the other siblings appeared in court virtually and this court interviewed them and they indicated that they had no objection to the orders sought being granted to their sister the applicant herein. All children of the subject who is a widow are adults of sound mind.
19. I also note that there is no evidence or record challenging the granting of the prayers sought in the application. Being a daughter of the subject, the applicant is thus a close relative of the subject.
20. I have carefully perused the detailed report by Dr. Janet Nakidde a Clinical Psychologist who examined the subject on 2nd July 2023 and confirmed that the subject was born in 1939 and is now aged 83 years old, almost attaining 84 years and she confirmed that the subject person has absolutely no testamentary capacity.
21. I have also observed that the family business school was sold by the Cooperative Bank of Kenya because there was a loan that was not being serviced and that there are other claims affecting the subject from Advocates as well as other creditors namely, Kenya Development Corporation.
22. I am satisfied that the applicant has established before this court that the subject is incapable of conducting any business or transaction or managing her own affairs as well as the affairs of the estate of her late husband Dr. Oluoch Okeyo. Neither can she settle any liabilities nor claim any debts due to her by debtors including the surplus money received from the proceeds of sale of the family business school Josana Academy.
23. I therefore find and hold that the application dated 1st August 2023 is merited and it is hereby allowed in the following terms:
 - a) That the subject DPMOO herein is hereby declared incapable of conducting her business or managing her affairs and the affairs of the estate of her deceased husband, Dr. Oluoch Okeyo in Kisumu HC Succession Cause No. 95 of 1997.
 - b) That the applicant herein HAO is hereby appointed guardian ad litem to represent the Subject person herein DPMOO in all matters and with full authority to manage all the affairs of the subject and that of the estate of the deceased Dr. Oluoch Okeyo—deceased including receiving payments and paying out of the subject's bank account or accounts and more specifically, account of Josana Academy in Cooperative Bank of Kenya Limited account Number 016920100xxxxx at Cooperative BANK House Branch, Nairobi for a period of One year only from the date of this judgment.
 - c) That the prayer for appointment of the applicant as next friend is declined as the law only contemplates appointment as guardian ad litem and not next friend in matters of this nature.
 - d) That there will be no order as to costs.
13. It is hereby so ordered. This file is closed.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF OCTOBER, 2023

R. E. ABURILI

JUDGE

