



**In re CAO (Family Miscellaneous Application E079 of 2024)  
[2024] KEHC 15762 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15762 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
FAMILY MISCELLANEOUS APPLICATION E079 OF 2024**

**RE ABURILI, J**

**DECEMBER 9, 2024**

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF GUARDIAN  
AD LITEM FOR CAO (A\_ PERSON SUFFERING FROM MENTAL DISORDER)  
UNDER SECTIONS 26 OF THE MENTAL HEALTH ACT, 3 AND 3A OF THE  
CIVIL PROCEDURE ACT AND ORDER 51 OF THE CIVIL PROCEDURE RULES**

**IN THE MATTER OF**

**DSO ..... 1<sup>ST</sup> APPLICANT  
JOA ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court for determination is the Notice of Motion dated 24<sup>th</sup> October, 2024 in which the two applicants DSO and JOA seek the following orders:
  - a. That the court be pleased to appoint DSO and JOA as guardians of CAO
  - b. That costs of the application be in the cause.
2. The application is not opposed or objected to.
3. The grounds upon which the application is predicated are that the subject CAO is suffering from a progressive memory loss associated with Alzheimer’s dementia and cognitive disorientation which condition makes it impossible for her to make sound judgments. That she is unable to take care of her own affairs as contemplated in section 26 of the [Mental Health Act](#) hence she needs legal guardianship to manage her affairs and that it is in the interest of justice that the orders sought are granted.
4. The applicants have deposed in their joint affidavit that they are biological children of the subject as shown by copies of their identity cards annexed and the court also had the opportunity to verify the said identity cards against that of the subject who was brought to court in a wheelchair on the directions of the court.



5. The applicants also annexed a mental assessment report by Dr Linda Nyamute, dated 2<sup>nd</sup> October, 2024 indicating that the subject had a stroke in 2019. She is 86 years old and that her current severe dementia significantly impairs her judgment, cognitive functioning and her financial capacity as she cannot recall previous financial management experience.
6. I had the opportunity to interview the subject and although she was responsive, she could not hear well. She appeared well groomed and supported by two young ladies who pushed her around in a wheelchair. She knew her surroundings but appeared incoherent.
7. Section 26 of the *Mental health Act* provides that:
8. In the circumstances, and having considered the mental assessment report filed, I hereby declare the subject CAO a person suffering from from a mental disorder under Section 26 of the *Mental Health Act*.
9. Consequently, I proceed and appoint the two applicants herein DSO and JOA as guardians in respect of CAO and grant them custody, care and management of the Subject in accordance with the *Mental Health Act*, with powers to sign, access and or withdraw any funds on her behalf, execute and/ or carry out any act incidental to the affairs of the subject CAO.
10. However, the guardians herein shall be required to furnish this court with a full inventory of the Subject's assets and a statement of account showing the sums of money realized or received and disbursed by them on account of the Subject's estate; within 6 months from the date of this judgment.
11. The appointment herein shall cease should the subject depart from this universe.
12. Decree to issue.
13. The parties are at liberty to apply further.
14. Subject to the filing of the inventory and statement of account on the subject's estate within 6 months, this file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 9<sup>TH</sup> DAY OF DECEMBER, 2024**

**R.E. ABURILI**

**JUDGE**

