



**CDN v JNM (Miscellaneous Application E257 of 2024)  
[2025] KEHC 13322 (KLR) (Family) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13322 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**MISCELLANEOUS APPLICATION E257 OF 2024**

**PM NYAUNDI, J**

**SEPTEMBER 26, 2025**

**IN THE MATTER OF SECTION 26,27,28,29 AND 32 OF  
THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN APPLICATION BY JNM TO BE APPOINTED GUARDIAN  
OVER THE AFFAIRS OF PMG (A PERSON SUFFERING FROM MENTAL DISORDER)**

**AND**

**IN THE MATTER OF AN APPLICATION BY JNM TO BE APPOINTED GUARDIAN  
OVER THE AFFAIRS OF PMG AND ADMINISTRATOR OF HIS ESTATE**

**IN THE MATTER OF GUARDIANSHIP OF SUBJECT- PMG**

**BETWEEN**

**CDN ..... APPLICANT**

**AND**

**JNM ..... RESPONDENT**

**RULING**

1. JNM, the wife of PMG (the subject) filed a Notice of Motion dated 6<sup>th</sup> November 2024 presented under Sections 26,27,28, 29 and 32 of the Mental Health Act, Order 32 Rules 15 of the Civil Procedure Act, Article 43(1) (a), (b) of the Constitution of Kenya 2010 seeking an order that she be appointed as a Legal Guardian for PNM.
2. The application was heard and determined by this court vide a judgment dated 21<sup>st</sup> November 2024. The court issued the following orders;



- i. PMG is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
- ii. JNM is hereby appointed under Section 27 of the [Mental Health Act](#) as the Guardian of PMG.
- iii. JNM is hereby appointed manager of the estate of PMG under Section 28 of the [Mental Health Act](#) to manage his estate including such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
- iv. Pursuant to this appointment, JNM shall deliver to court and the Public Trustee within 6 months, an inventory of the property belonging to PMG.
- v. In accordance with Section 27 (4) of the [Mental Health Act](#), 2022, the Applicant shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate PMG.
- vi. As manager of the estate of PMG, the Applicant may dispose of the property only with the sanction of the court.
- vii. The matter will be mentioned before the court on 20<sup>th</sup> March 2025 to confirm compliance.
- viii. Costs to be met out of the Estate of the subject.

**a. The costs of the Petition shall**

3. CDN then a Notice of Motion dated 3<sup>rd</sup> February 2025 seeking the following orders;
  1. Spent.
  2. Spent.
  3. Spent.
  4. Spent.
  5. The Honorable Court be pleased to make a mandatory permanent order that the Petitioner/her agents allow the applicant and minors unfettered and unconditional access to the subject.
  6. The Honourable Court be pleased to order for an examination of PMG by a qualified mental health practitioner.
  7. The Honourable Court be pleased to set aside the orders granted on November 21 2024 in its entirety.
  8. Such further or alternative reliefs as this Honourable Court may deem fair and just in the interest of justice and in the best interest of the child.
  9. Costs be borne by the estate of the subject.
4. The application was supported by the Affidavit of even date sworn by the applicant.

She avers that she was in a relationship with the subject, PMG. She cohabited with him until 2022. The subject is the father of her two children, KAL and KS. The subject provided for her and the minors. Since the subject's illness, the minors have been under her care and maintenance. She avers that the minors are entitled to parental care and protection which includes equal responsibility for



- both parents to provide for the children. Efforts to access the subject have been futile since the subject cannot communicate.
5. She asked the court to compel the subject's wife to allow the minors access their father. She avers that the declaration that the subject is suffering from mental illness is premature as there is no report before this court ascertaining his mental health. She urged the court to allow the prayers so that the minors are not prejudiced by unfulfilled parental responsibilities. That the application has been brought timeously, in good faith and the Petitioner stands to suffer no prejudice
  6. The Respondent opposed the application by filing a Replying Affidavit dated 5<sup>th</sup> March 2025. She also filed a Preliminary Objection of even date
  7. The Preliminary Objection is framed as follows-
    1. This Honourable Court lacks jurisdiction while exercising jurisdiction under the *Mental Health Act* to consider and determine issues falling within the jurisdiction of the Children's Act, Act No.29 of 2022.
    2. This Honourable Court lacks jurisdiction to consider the following issues which fall within the jurisdiction of the Children's Act, Act No. 29 of 2022 including;
      - a. The issue of paternity.
      - b. Maintenance of alleged children.
      - c. Grant of orders of access by children to their alleged father and vice versa.
      - d. Re-examination of the mental condition of PMG for the benefit of the alleged children.
      - e. The question of parental responsibility.
      - f. That the Applicant having not been enjoined into these proceedings as a party lacks locus standi to seek the orders sought in the application herein.
  8. In her affidavit she avers that this court lacks jurisdiction to entertain the Applicant's application because the issues raised should be determined by the Children's Court. She argued that the Applicant lacks locus standi to file the current application as she was not part of the proceedings and has not filed an application to be enjoined as a party in these proceedings. She denied that the subject cohabited with the applicant at any given point and given that the subject was retired, it was impossible for him to be living in two towns. She argued that the subject lived with her in 2022 in Nakuru and not Kisumu as alleged by the applicant. She avers that the children allegedly belonging to the subject do not bear his name. The applicant was married to one, VLA and one of her children bears his surname. She denies the allegation that the subject was providing for the applicant and her children. She argues that the subject denies being the father of the minors and has no intention of seeing the minors. She urged the court to strike out the application with costs.
  9. The Application was canvassed via written submissions.

### **Applicant's Submissions.**

10. The Applicant's submissions are dated 27<sup>th</sup> May 2025. It was her submission that she is a necessary party in these proceedings hence there is no need for her to file an application to be enjoined as a party. She argued that the fact she was cohabiting with the subject and had two children with him is enough proof that she has an interest in these proceedings.



11. On the issue of jurisdiction, she submitted that her application raises question as to the determination and declaration that the subject is suffering from a mental disorder under Section 26 of the *Mental Health Act*. She further submitted that her application seeks for provision of immediate family members as provided under Section 27 of the *Mental Health Act*. She argued that this court has the jurisdiction to issue the orders as prayed.

### **Respondent's Submissions.**

12. The Respondent's submissions are dated 30<sup>th</sup> April 2025. On the issue of jurisdiction, it was submitted that this court is limited to the provisions of Section 28 of the *Mental Health Act*. That the issues raised by the applicant fall within the jurisdiction of the Children's Act No. 29 of 2022. Reliance was placed on the decision of MNK v AOK [2022] eKLR.
13. That the prayer for mental assessment arises from the allegation that the subject is the father of the minors. She argued that the Children's Court has powers to make orders relating to mental health of alleged parents and the paternity of the children. Reliance was placed in the case of JAO v CGM and Another 2013 KEHC 6692 KLR.
14. On the issue of locus standi, it was her submission that the Applicant was required to obtain leave to be enjoined as an interested party in these proceedings. Reliance was placed on the decision of County Assembly of Mandera County v Mandera County and Another (Reference 1 of 2018) [2020] KESC 57 (KLR) (Civ). Relying on the decision of Salim Khamis Said Balleth v Hamza & Ors, Civil Appeal No.180 of 2023, it was her submission that since the applicant has no locus standi, the issue of jurisdiction should not arise and therefore, this court should not entertain the application before it.

### **Analysis and Determination.**

15. On locus standi on the part of the Applicant I am unable to take the restrictive view suggested by the respondent/ Guardian as the Act under Section 2A and 2B promotes the safeguarding of the rights of the Subject. This includes making orders for review of his mental health status as sought by the Applicant. Accordingly, I find that as a person who seems to have some association with the Subject she can present this Application.
16. It is trite law that jurisdiction is everything and a Court cannot deal with a matter in respect of which it has no jurisdiction. The locus classicus in this regard is the celebrated Court of Appeal case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR where Nyarangi, JA stated:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
17. Jurisdiction is a crucial matter in any proceedings and is donated either by statute or *the constitution*. It is what gives a court or tribunal authority to entertain and decide any matter placed before it. The Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR expressed itself as follows on the question of jurisdiction;

"A Courts jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second respondents in his submission that the issue as to whether a court of Law has jurisdiction to entertain a matter before it,



it not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively. In this matter of Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011, Where *the Constitution* exhaustively provides for the jurisdiction of a Court of Law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of Law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of Law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

18. In the application before Court the Applicant has not presented proof of paternity and dependence by the minors on the Subject. What has been presented is a record of MPESA transactions between the Subject and the Applicant. My reading of Section 27 of the *Mental Health Act* does not suggest that the Court has the mandate to inquire into and establish who the dependants of the Subject are when as in the present case it is disputed. Where paternity is contested, this question has to be first determined in a court of competent jurisdiction.
19. Section 73 of the *Children Act* establishes a court to be known as the Children’s Court which shall, in the first instance, have jurisdiction to hear and determine all matters relating to children. Therefore, a dispute involving the determination of the paternity and parental responsibility in respect of a child shall, in the first instance, be determined by the children’s court.
20. . This court has no jurisdiction, in the first instance, to hear a case concerning children because that jurisdiction is exclusively that of the Children’s Court.
21. The Preliminary Objection dated 5<sup>th</sup> March 2025 therefore is merited and allowed on the ground that this court lacks jurisdiction to hear and determine the application dated 3<sup>rd</sup> February 2025. The application dated 3<sup>rd</sup> February 2025 is hereby dismissed.
22. The Applicant seeks that the Court directs that there be a further examination of the Subject to confirm his mental health as it is her belief that he is recovering now and the Orders of Guardianship should be discharged.
23. The Aim of the Act as stated in the Long title is to-
  - provide for the prevention of mental illness, to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness; and for connected purposes.
24. The Court therefore is within its mandate to make inquiry into the current mental health of the Subject especially in a case like this, where his incapacitation was occasioned from critical illness from which it is said that he is gradually recovering.
25. Accordingly, I direct that the Guardian herein, JNM, facilitate the examination of the Subject by a qualified psychiatrist at Mathari National Teaching and Referral Hospital to determine his mental health status.
26. The Costs of the assessment will be met out of the Estate of the Subject.
27. The matter will be mentioned on 23<sup>rd</sup> October 2025 to receive the report.
28. This Order to be served upon the Medical Officer in Charge of the Mathari National Teaching and Referral Hospital



29. Parties at liberty to exercise their right of appeal within 30 days.

30. There shall be no order as to costs

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**P. M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Fardosa Court Assistant

Ngethe for Petitioner/Respondent

