



REPUBLIC OF KENYA



**In re AWNW (A Person Suffering From Mental Disorder) (Petition E268 of 2025)
[2025] KEHC 13348 (KLR) (Family) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PETITION E268 OF 2025
PM NYAUNDI, J
SEPTEMBER 26, 2025
IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248) OF LAWS OF KENYA
AND
IN THE MATTER OF AWNW (A PERSON SUFFERING FROM MENTAL DISORDER)
AND
IN THE MATTER OF PETITION BY “SWN TO BE APPOINTED AS
GUARDIAN AND MANAGER OVER THE AFFAIRS AND ESTATE OF AWNW
IN THE MATTER OF
SWN APPLICANT**

JUDGMENT

1. The Applicant filed Notice of Motion dated 18th August, 2025 under certificate of urgency and presented under Order 51 Rule, 1 of the Civil Procedure Rules Section 1A and 1B and 3A of the *Civil Procedure Act*, 2010, Section 10 of the *Judicature Act* and Rule 16 and 17 of the High Court Practice and Procedure Rules which Application is supported by her affidavit seeking that:-
 - a. She be appointed as a Legal Guardian for AWNW (AWNW) whom it is stated that on account of critical illness is prevented her from discharging her affairs and protecting her interests.
 - b. To have the authority to fully manage the affairs of the subject for her benefit and to avoid waste, and to also wade of speculators trying to take advantage of her mother (subject herein) since the subject is now unable to access any of all the assets.
 - c. She be given orders to enable her defend the suits filed against the subject and to also file counter-claim and suits against trespassers who have taken advantage of the subject of infirmity to the detriment of the Estate of her late father.



2. The Application proceeded by way of viva voce evidence on 27th August, 2025. SWN (SWN) (Petitioner herein) is the only child of the subject herein. The subject is 80 years old and has been suffering from old age related illness particularly the neurological disorders that have culminated in dementia. The Applicant states that the subject was married to her late husband JHGW who died testate on 4th January, 2012 appointing his wife to be the Administratrix of his Will which was granted on 1st November, 2012 as per annexed copy.
3. It is the Applicant's statement that on 7th August 2025, the subject was served with Summons of Court to Enter Appearance and defence in the following suits.
 - i. ELC Case No. E 362 of 2025-NAIROBI
CGK –vs- AWN (Being sued as the Administratrix of the Estate of the late JHGW)
 - ii. ELC No. E 363 of 2025 – NAIROBI
HKM – Vs- AWWN (Being sued as the Administratrix of the estate of the late JHGW)
 - iii. High Court Succession Cause No. 1392 of 2012 *Estate of JHGW (deceased).
4. Consequently, the subject was served with 2 applications by way of Notice of Motion dated 23rd July 2025 seeking injunctive orders and an inhibition to be registered against Land Reference No. XXXXX registered in the name of JHGW (deceased) as per annexed copy of the Notice of Motion.
5. It's the Applicant's disposition that there has never been any claim against the estate of JHGW (deceased) until now when the subject fell ill and is unaware of her surroundings.
6. The Applicant further stated that the subject is the registered proprietor of the following assets: -
 - i. Thika Municipality/Block X/X (measuring 2.129 Ha)
 - ii. L.R No. XXXXX/53 (measuring 0.1799 Ha (Thika)
 - iii. Thika Municipality Block/7/XXX (measuring 0.3000 Ha)
 - iv. Thika Municipality Block 9/XXX (measuring 0.0219 Ha)
 - v. L.R No. XXXX/1417 (measuring 0.3279 Ha)
 - vi. Thika Municipality/Block. 24/XXX (measuring 0.0800 Ha)
 - vii. Nginda-Samar Block 2/XX (measuring 1.999 Ha)
 - viii. Kwale/Majoreni/XXXX (measuring 2.0 Ha)
 - ix. LOC. 1/Kigio/T.XX (measuring 0.052 Ha)
 - x. Thika Municipality/Block. 24/XXXX (measuring 0.0801 Ha)
 - xi. LOC. 1/Kigio/T. 24 (measuring 0.052 Ha)
 - xii. L.R No. XXXX/XXXX (measuring 0.1086 Ha)
 - xiii. LOC. 1/Kigio/T.25 (measuring 0.052 Ha)
 - xiv. L.R No. XXXX - Plot No. 423 – Thika Greens Investments Limited-Certificate No. 365.
7. The Applicant also affirmed that the subject is the proprietor of St. David's Group of Schools Thika with a student population of over 1000 students and the Applicant manages the schools after her



mother (the subject) felt ill. However, the Applicant's decisions are hampered by lack of full mandate to do that which the subject could have done if she was in full health.

8. The Applicant further affirmed that her mother (subject herein) operates the following bank accounts:
-

Family Bank – Thika Branch

- a. St. David's Primary School – Account Number XXXXXXXXXXXXX
- b. St. David's Plainview Academy – Account Number XXXXXXXXXXXXX
- c. Angelica Wangui Ndungu – Account Number XXXXXXXXXXXXX

Equity Bank – Thika Branch

- a. St. David's Primary School – Account Number XXXXXXXXXXXXX
- b. Susan Ndung'u and Angelica Ndung'u – Account Number XXXXXXXXXXXXX
- c. Angelica Wangui Ndungu – Account Number XXXXXXXXXXXXX

H.F.C.K – Thika Branch

- a) AWN and or Susan W Ndung'u - Account Number XXXXXXXXXXXXX

9. That the Petitioner's mother (subject herein) also holds shares in the following Companies: -

- a. 413 shares – Delamere Flats – Certificate No. XXX
- b. 1,652 shares – Delamere Flats – Certificate No. XXX
- c. 8 shares – Agricultural & Industrial Holdings Ltd-Certificate No. XXXXX
- d. 1,680 shares – Co-operative Bank
- e. 2,200 shares – Safaricom PLC
- f. 2,277 shares – NCBA Group PLC

10. The Application is supported by the Reports from both Dr. Herman Ekea a Consultant Neurologist and Physician dated 21st October 2021 together with Dr. Onyancha Pacifica a Consultant Psychiatrist dated 15th August, 2025. The reports confirmed that the subject was diagnosed with Advanced Alzheimer's Dementia. Therefore, the Doctors surmises the subject's condition as follows: -

The subject has an advanced Alzheimer's, Hypertension, Diabetes Melitus, Atrial Fibrillation and Severe Pulmonary Hypertension and the subject is progressively worsening severe memory impairment, severe impairment of decision making, reasoning and judgment and currently the subject is on several medications but still unstable thus supporting the guardian to be appointed.

11. The Court interviewed the subject and it was evident that she was non-responsive.
12. It's the Applicant's disposition that the subject needs constant specialized nursing due to her mental condition and it is of paramount importance that be allowed to utilize her resources including selling of any asset, if need be to take care of her.



Determination

13. The provisions of the [Mental Health Act](#) ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The [Mental Health Act](#), at Section 26 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.
 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 and guardian of any such person.
 3. Whereupon 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.
14. I have considered the evidence adduced in Court and I am persuaded that the Applicant is best placed to provide adequate care to the subject and ensure is wellbeing.
15. It is in the subject's best interest that the Applicant is appointed as her personal representative to ensure that funds are available for her upkeep and further medical attention in the future as well as preserve her estate.
16. In the circumstances the Notice of Motion dated 18th August, 2025 is allowed, with the following orders:
 - a. AWNW (AWNW) is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
 - b. SWN (SWN) is hereby appointed under Section 27 of the [Mental Health Act](#) as the Guardian of AWNW (AWNW)
 - c. SWN (SWN) is hereby appointed manager of the estate of AWNW (AWNW) under Section 28 of [Mental Health Act](#) to manage her estate including any 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.
 - d. Pursuant to this appointment SWN (SWN) shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging AWNW (AWNW)
 - e. 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 of AWNW (AWNW)
 - f. As Manager of the Estate of the AWNW (AWNW) the Applicant may dispose of the property only with the sanction of the Court.



- g. The matter will be mentioned before court on 6th November 2025, to confirm compliance.
- h. Costs to be met out of the Estate of the Subject.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2025.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Mwaura for Petitioner

