



**In re CNM (Miscellaneous Case E234 of 2025)
[2025] KEHC 14724 (KLR) (Family) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CASE E234 OF 2025
CJ KENDAGOR, J
OCTOBER 21, 2025**

BETWEEN

LNN APPLICANT

AND

RMM 1ST INTERESTED PARTY

TMM 2ND INTERESTED PARTY

LNK 3RD INTERESTED PARTY

AND

RMM INTERESTED PARTY

TMM INTERESTED PARTY

LNK INTERESTED PARTY

JUDGMENT

1. Before this Court is an Amended Notice of Motion Application 30th September 2025. The Applicant had previously filed another application dated 23rd July, 2025. The Applicant is seeking the following orders: -
 - a.(spent)
 - b. That the Applicant LNK be appointed as guardian/manager of the patient for the duration of the incapacity, until such time as the Court may revoke or modify the order.
 - c. That the Honourable Court do make an order for provision authorizing the Applicant to access and operate the patient’s bank account number 01513.....300 and 01504.....300 held



at Standard Chartered Bank Kenya Limited, Harambee Avenue branch for settlement of the patient's medical care and maintenance expenses upon written concurrence of the three interested parties.

- d. That any other relief that the court may deem just and proper in the circumstances be granted.
2. The application is premised on the following grounds:
 - i. That the patient, Ms. CNM, suffers from hypertension, major depression and dementia. Thus, both her short-term and long-term memory are impaired.
 - ii. That the medical report from the attending physician confirms that the patient is presently in a state of incapacity, rendering her unable to access or make decisions regarding personal and financial affairs.
 - iii. That the Applicant who is the patient's representative and family friend for over 20 years has been in charge of providing the requisite care to her, thus she has the best interest of the patient at heart.
 - iv. To ensure the proper care and payment of medical expenses, the Applicant seeks a court's order to access the funds in the patient's bank account number 01513.....300 and 01504.....300 held at Standard Chartered Bank Kenya Limited, Harambee Avenue branch for the purpose of settling medical bills and supporting the patient's needs as they arise.
 - v. The aforementioned account shall be operated subject to written concurrence of the three interested parties.
 - vi. Further, the interested parties being children of the patient have no objection and consent to the applicant being granted the orders as prayed.
 - vii. There is no existing court order or valid power of attorney that authorizes any other person to manage the patient's financial affairs.
 - viii. Unless the orders sought herein are granted, the patient is likely to suffer irreversible deterioration of their health which may result in severe, possibly life-threatening consequences.
 - ix. It is in the best interest of justice and the patient's well-being that the orders sought herein are granted.
 3. The application is supported by an Affidavit dated 23rd July, 2025 sworn by the Applicant. The Applicant stated that she is well known to the patient's family, having been a family friend for over 20 years and being responsible for her care and well-being as she is in a state of incapacity, rendering her unable to access or make decisions regarding personal and financial affairs, as confirmed by a medical report from the attending physician. She further stated that the immediate family members who are the interested parties in the matter have no objection and consent to her being granted the orders as prayed.
 4. The matter was canvassed by way of viva voce evidence on the online platform in the presence of the subject CNM, who was presented on the Court session platform. She appeared unwell and was unable to speak. The Applicant, who testified as PW1, told the Court that the subject was working at Tetra Pak for many years but is now unwell as she suffers from dementia, besides other ailments. She further told the Court that she has known the subject for more than 40 years, they have maintained a friendship all along as they went to school together, and that the subject stays with a caregiver. She stated that they have agreed with the subject's family members that she be allowed to gain access to the subject's bank account only, so that she can withdraw funds for her use.



5. The interested parties who testified as PW2, PW3 and PW4 told the Court that the subject CNM is their mother, is unwell with dementia, diabetes and hypertension and that she is not aware of sense of person and thus needs a caretaker. They also told the Court that the subject stays with a caretaker nurse and that they signed a consent voluntarily for the Applicant to be granted guardianship orders. The caregiver who testified as PW5 told the Court that she has been taking care of the subject for over 5 years. She also stated that the subject was well, but her health issues have progressed over time and that she now depends on her for everything. She further told the Court that she knows her children, who are the interested parties, RMM, TMM and LNM.
6. The Applicant has sought to be appointed manager and guardian of the subject for the duration of incapacity, until such time as the Court may revoke or modify the order, and in particular be authorized to access and operate the subject's bank account number 01513.....300 and 01504.....300 held at Standard Chartered Bank Kenya Limited, Harambee Avenue Branch for settlement of the patient's medical care and maintenance expenses upon written concurrence of the three interested parties.
7. To merit the above orders the Applicant must adduce evidence sufficient to satisfy the Court firstly that the Patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the patient is incapable of managing her own affairs.
8. In her evidence, the Applicant stated that she has known the Subject for more than 40 years and have maintained a friendship since school where they went together. She told the Court that she understands her role is limited to a bank account, which they agreed with the subject's children that she be allowed to gain access to withdraw the funds for the subject's use.
9. The Court was able to observe the subject on the online platform. The subject looked unwell and was unable to speak.
10. The medical report dated 28th June, 2021 by Dr. Marx M.O Okonji, a Consultant Psychiatrist, was filed in Court. In the said report, the doctor stated that the subject suffers from major depression, hypertension and dementia and is not capable of looking after herself or managing her estate or affairs. He recommended that appropriate steps be taken to get the power of attorney. A second medical report dated 23rd August 2025 and the findings by Dr Okonji show that the subject's condition continues to deteriorate.
11. The interested parties, RMM, TMM and LNM, who are the subject's children, signed a consent dated 23rd July, 2025 and filed it in Court. In the said consent, the interested parties stated that they voluntarily consented to the applicant's application to be appointed to manage and operate the subject's accounts. They described the applicant as a family friend whom they have known for over 20 years.
12. The *Mental Health Act* 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. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
13. 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.



14. Under Section 26 (3) of the Act it provides,

“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 persons, 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.” [own emphasis]

15. Section 28 of the same Act provides for the management of the subject's estate.

16. I have carefully considered the Application, the Affidavit filed in Court, the medical report, the Consent, as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya empowers the Court to 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 any other suitable person.”

17. The Medical Report by the doctor demonstrates that the subject needs assistance and a guardian to manage her affairs.

18. From the evidence produced by the Applicant, the interested parties, the caregiver and the Medical Report on record, I am satisfied of the merit of this Application and I hereby allow prayers 2 and 3 of the Amended Notice of Motion dated 30th September, 2025.

19. The Applicant LNN is hereby appointed as guardian of the Subject CNM and a manager of her estate.

20. The Court issued an order directing the Bank to provide the bank statements, and the order was complied with. The Applicant is hereby authorized to access and operate the patient's bank account numbers 01513.....300 and 01504.....300 held at Standard Chartered Bank Kenya Limited, Harambee Avenue branch, for settlement of the patient's medical care and maintenance expenses. To ensure transparency, any withdrawal may only be made with the written consent of all three interested parties, who are CNM's children.

21. In accordance with the provisions of Section 33 of the *Mental Health Act*, the Applicant shall submit an inventory and annual statement to this Court commencing on 21st October, 2026.

22. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE CTS ONLINE PLATFORM ON THIS 21ST DAY OF OCTOBER, 2025.

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C. KENDAGOR

JUDGE.

In the presence of:

Court Assistant: Beryl

