



In re SKT (A Person of Unsound Mind) (Miscellaneous Civil Application E039 of 2024) [2025] KEHC 15384 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15384 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E039 OF 2024**

**E OMINDE, J
OCTOBER 30, 2025**

**IN THE MATTER OF THE ADMINISTRATION OF
THE ESTATE OF PERSON OF UNSOUND MIND ACT**

AND

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA

**IN THE MATTER OF AN APPLICATION FOR AN APPOINTMENT OF
GUARDIAN AD LITEM FOR SKT (A PERSON OF UNSOUND MIND)**

IN THE MATTER OF

RST APPLICANT

RULING

1. By way of an Ex Parte Notice of Motion dated 10th December 2024, the Applicant seeks the following orders:
 1. Spent.
 2. That this Honourable Court do issue an order adjudging and declaring the subject herein SKT as suffering from mental illness pursuant to *Mental Health Act* Cap, 248.
 3. That the Applicant herein be and is hereby appointed as manager of the subject herein SKT's estate which include 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 proceed to take over and/or institute any litigation and/or claims and also to include not only such property as has been originally in possession or under the control of a property into or for which the same has been converted or exchanged and anything acquired by such conversation or exchanged and anything acquired by such conversation or exchange whether immediately or otherwise.



4. That the Applicant herein be appointed as guardian of the subject herein SKT.
2. The Application is expressed to be brought under Order 32 Rule 3(2) of the Civil Procedure Rules and Section 26 of the *Mental Health Act*, Cap 248 Laws of Kenya. It is premised on grounds therein and it is further supported by the Affidavit sworn by the Applicant on the same date.
3. The Applicant deposed that she is the wife to the subject herein SKT, that the subject is a retired teacher having retired in June 2006, that after his retirement he got sick and has been on and off medication until January 2015 where his condition worsened and he lost his memory and general body control which made them to conduct further medical examination and the subject was diagnosed to be suffering from mental illness (severe schizophrenia) that had caused him to totally lost control of himself. That as a result, he cannot live independently and is currently under the full care of the Applicant.
4. The Applicant further deposed that third parties including one David Kebenei have recently trespassed onto the subject's parcels of land and unlawfully tilling and cultivating the same and that one David has even gone ahead and put up a permanent structure on one of the parcels and is in the process of fully alienating the same to himself. She annexed a photo and title documents to show how third parties have continued to illegally till/cultivated and planted crops on some of the parcels forming the subject's estate.
5. The Applicant maintained that unless the orders herein are granted in her favour to enable her move the court appropriately, the subject and his estate stand to suffer irreparably. The Applicant is apprehensive that the said third parties would continue with their illegal acts unabated.

Determination

6. Section 2 of the *Mental Health Act*, defines "person suffering from mental disorder" as follows;

"A 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."
7. The applicant invoked the provisions of Sections 26 of the *Mental Health Act*. Section 26 of the said Act states 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

8. Order 32 Rule 15 of the Civil Procedure Rules provides

“that the provisions contained in Rules 1 to 14 so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the court on inquiry, by reasons of unsoundness of mind or mental infirmity to be incapable of protecting their interests when suing or being sued.”

9. I have considered all the material placed before me. Over and above this, I also caused the subject to be brought to court and I duly examined him. His three children including his wife were also present. From my examination of the subject, what was apparent is that even as the subject was able to clearly express himself in the English language, his presentation was disjointed and incoherent.

10. There is on record a Medical Report by Dr. Dorcas Kogo dated 25th August 2023. Dr Kogo is a Consultant Psychiatrist at the Moi Teaching and Referral Hospital. The report states that the subject is a patient at the hospital who has had a long-standing mental illness which had gone untreated. That upon treatment, he was diagnosed with psychotic symptoms and was then put on treatment.

11. The doctor's report concludes that the subject has a mental disorder as defined by Section 2 of the *Mental Health Act* and that he is therefore unable to manage his own affairs because of this medical condition as envisaged under Section 26 of the Act. The doctor's assessment is therefore definitive on the subject's mental state and there has been no evidence to the contrary.

12. The above being the case, the court upon enquiry is satisfied that the defendant has been adjudged to be of unsound mind and is therefore incapable of protecting his own interests due to unsoundness of mind and/or mental infirmity and for these reasons, the orders being sought in this application are now hereby granted, as prayed with costs in the cause.

READ DATED AND SIGNED AT ELDORET ON 30TH OCTOBER 2025

E. OMINDE

JUDGE

