



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**In re EMM (Subject) (Family Miscellaneous Civil Case E002 of 2025)  
[2025] KEHC 15332 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15332 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
FAMILY MISCELLANEOUS CIVIL CASE E002 OF 2025**

**TM MATHEKA, J**

**OCTOBER 24, 2025**

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

**AND**

**IN THE MATTER OF EMM 86 YEARS**

**AND**

**IN THE MATTER OF AN APPLICATION BY**

**IN THE MATTER OF**

**JMM ..... PETITIONER**

### **RULING**

1. What is before me is the petition dated 14/1/2025 brought by JMM.
2. He avers and depones that he is the son of EMM the subject of this petition, who is 86 years old. He seeks that EMM be adjudged to be of unsound mind/mental infirmity and incapable of protecting/safeguarding her interest generally including when suing/being sued.
3. In that event, he seeks that he be appointed the manager/guardian of the subject, to collect and preserve and manage without disposing, any property owned/family owned by the subject.
4. The petition is supported by his affidavit sworn on 14/1/2025 and the annexures ; a mental health status report from the office of the CEO Makueni County Referral Hospital signed by Dr. J.Masila - and stamped 2/12/2024.
5. The doctor states that the patient has a current mental illness (dementia) reducing her testamentary capacity.
6. Her speech, perceptions memory, concentration, judgment and insight are marked as abnormal.



7. I heard oral evidence.
8. The applicant testified that the subject is his mother and that since the family had ELC No. 18/2018 her blood pressure went up, she began to have swollen feet, and became forgetful. He expressed the view that his mother could no longer continue representing herself in the said case. That his desire was to take care of her property while safeguarding her property. He testified that he and his siblings had agreed that he was to take over the case - and could only do so if he was allowed to be her guardian.
9. I also heard the subject. She was coherent save for forgetfulness and evident frailty.
10. The petition was not contested.
11. The counsel for the applicant relied on MMM V AMK [2016] eKLR.
12. Having considered the evidence before me, having heard and seen the subject - I am persuaded that she may not be in a position to protect her own interests and in particular the pursuit of the ELC No. 18/218. It is evident from her testimony that it is stressful to her as she refers to it as the “Kitheka” her husband left her that it is her livelihood yet someone has sued her to take it away.
13. Having considered the evidence, the authority cited - I allow the petition to extent that the applicant will have authority to safeguard the subject, her property - but in particular to take over and prosecute the ELC No. 18/2018 on her behalf.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 24<sup>TH</sup> OCTOBER 2025**

**MUMBUA T MATHEKA**

**JUDGE**

Court Assistant - Chrispol

Counsel for Applicant: Mr. Hassan

