



**In re AFO (Subject) (Miscellaneous Application E167 of 2021)
[2025] KEHC 14841 (KLR) (Family) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E167 OF 2021
PM NYAUNDI, J
OCTOBER 23, 2025
IN THE MATTER OF THE MENTAL HEALTH ACT (CAP
248) LAWS OF KENYA
AND
IN THE MATTER OF AFO
(THE SUBJECT)**

BETWEEN

AAFO APPLICANT

AND

ZAF RESPONDENT

RULING

1. By Judgment dated 8th November 2024, the Applicant and Respondent were appointed as joint guardians of the Subject herein. The Subject is the biological father of the both the Applicant and the Respondent herein. By application dated 1st July 2025 presented under Sections 27, 28, 29, 30 and 31 of the *Mental Health Act* and Order 40 Rules 1,2 and 4 of the Civil procedure rules and Sections 1A, 1B and 3A of the *Civil Procedure Act*, the Applicant seeks the removal of the respondent as a Co-Guardian.
2. The Application is supported by affidavit sworn on even date, in which the applicant lays the basis for the removal of the respondent. The grounds are that are that the respondent has not being cooperative, she has declined to attend meetings, frustrated the appointment of new estate managers, delayed the opening of a joint account, withheld information from the applicant. The actions and inactions of



- the respondent pose a risk to the estate of the Subject as there are liabilities to the estate that are not being settled.
3. The Respondent's replying affidavit is sworn on 12th August 2025. It is her averment that it is the applicant who is uncooperative and her attitude has made it difficult for them to act as co-guardians. She avers that she is timeously setting bills and other liabilities of the estate.
 4. The Applicant has sworn a further affidavit on 22nd August 2025 in which she reiterates her earlier averments and states that the respondent is misappropriating and wasting the estate.
 5. The application was canvassed via written submissions. The Applicants submissions are dated 28th August 2025. She frames the issue for determination as-
 1. Whether the 1st interested party, ZAF should be removed as manager
 6. She restates the averments in her application and affidavit. She invites the Court to exercise its powers under Section 31 of the [Mental Health Act](#) to remove her as co- Guardian and Manager of the subject's estate.
 7. The respondent's submissions are dated 12th September 2025 and agrees that the issue for determination is; whether a basis has been laid for her removal as co Guardian and manager of the subject's estate. She submits that the application is without merit.

Analysis and Determination

8. The orders issued by the Court on 8th October 2024 were to the effect that-
 - i. A Declaration hereby issues that the subject, AFO is a person suffering from Mental Disorder, within the meaning of Section 2 of the [Mental Health Act](#) Cap 248, the Laws of Kenya.
 - ii. That AAFO and ZAF are appointed as Guardians and managers of the estate of the subject as provided under Sections 26, 27 and 28 of the [Mental Health Act](#) Cap 248 Laws of Kenya.
 - iii. That AAFO and ZAF shall have joint physical and legal custody of the Subject at his primary residence at Adams Arcade and all the children of the Subject shall have unrestricted access to the Subject. Provided that AAFO and ZAF shall in consultation manage and make decisions regarding the care of the Subject and management of his affairs
 - iv. That AAFO and ZAF are hereby appointed managers of the estate of AFO under Section 28 of [Mental Health Act](#) to manage his 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.
 - v. That Pursuant to this appointment AAFO and ZAF shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging AFO
 - vi. In accordance with Section 27(4) of the [Mental Health Act, 2022](#) AAFO and ZAF shall cause within 30 days the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate AFO
 - vii. The proceeds of rent and other revenue from the AFO'S properties be deposited in an account opened and operated jointly by the AAFO and ZAF. The proceeds will be used among other expenses to cater for the AFO'S needs and upkeep, especially medical care and specialized nursing care.



- viii. AAFO and ZAF shall file in this court bi-annual returns of the status of AFO'S estate. The 1st report shall fall due on 30th June 2025.
 - ix. Mention on 10th July 2025 to confirm compliance
 - x. Each party shall bear their own costs.
9. A guardian may be removed if they are no longer able to perform their duties, or are abusing their position or if the guardianship is no longer considered necessary. In the current matter, the guardianship is still necessary. The Court is presented with a situation where the joint guardians are unable to cooperate for the sake of safeguarding the welfare of the Subject.
10. As is evident the Guardians were required to submit to court and the Public Trustee an inventory of the property belonging to the subject and submit bi annual returns of the status of the estate of the subject. The first report was to be submitted on 30th June 2025 and the matter slated for mention on 10th July 2025.
11. This has not been complied with. Instead the Court is considering an application for the removal of one of the Guardians. As the parties' posture before the Court, none of them has found it necessary to advise the Court on the condition of the subject. The Court is primarily focused on the welfare of the Subject, it is unfortunate that the parties wish to task the court with the responsibility for superintending their relationship.
12. In my view this is a case that favours the removal of both the guardians.
13. The orders of 8th November 2024 were not a suggestion. The guardians are to have submitted a report to Court. I will extend the time of filing that report to 27th November 2025, in the event the guardians are unable to submit the reports as directed under paragraph 41 (v) and (viii) of the judgment delivered on 8th November 2024, I will consider an application for the removal of both the guardians.
14. The matter will be mentioned on 27th November 2025 to confirm the reports have been files. All the children of the deceased will attend the mention.
15. Each party will meet their own costs. The costs of this application will not be charged on the estate of the subject.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23rd DAY OF OCTOBER, 2025.

P. M. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

No appearance by parties

