



In re Estate of MOJ (A Person Suffering from Mental Illness) (Family Miscellaneous Civil Case E039 of 2025) [2025] KEHC 14983 (KLR) (15 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY MISCELLANEOUS CIVIL CASE E039 OF 2025**

G MUTAI, J

OCTOBER 15, 2025

**IN THE MATTER OF THE ESTATE OF MOJ (A
PERSON SUFFERING FROM MENTAL ILLNESS)**

IN THE MATTER OF

SOM PETITIONER

JUDGMENT

1. The petitioner, SMO, is the sister of MOJ. I shall hereafter refer to Mr MOJ as “the Ward.” The Ward suffers from mental illness and, as such, is unable to manage himself and requires long-term nursing, medical, and psychiatric care. The Ward cannot make decisions for himself and needs care.
2. The Ward is a beneficiary of the estate of MOJ. The said estate is the subject of the Kadhi Court Succession Cause No E300 of 2024. There is therefore a need to manage his estate and to appoint a guardian over his person.
3. The petitioner therefore sought to have the following orders issued:-
 1. For MOJ to be adjudged to be a person suffering from a mental disorder;
 2. For the petitioner to be appointed as the manager of the estate of the Ward and to be his guardian; and
 3. To receive proceeds/shares from the estate of Jiha Mohamed Omar and to apply the same towards his maintenance and medical care.
 4. According to the judgment of the Hon Aj Ishaq Hussein, Principal Kadhi, the Ward had an inheritance in the estate of his father which he is to share under Islamic Law with his two stepmothers (who jointly got 1/8 share), his grandfather (who got 1/8 share) and sisters SOM, J and D (who each got a share amounting to half what the Ward got).



5. In the doctor’s report written by Dr Omar J Aly on 10th June 2025, the psychiatrist made inter alia the following observations:-His mood was flat and unresponsive;He was not responding to any questions and just looked into space;He looked disoriented in time, date, month, and year, and was mute; andMr. Mohamed appeared “mentally” unwell, and this is despite his mutism.
6. The said doctor concluded that there was a definite need for him to be represented in any undertaking by his nearest kin available.
7. When the matter was filed, I listed the petition for hearing on 23rd September 2025 by way of viva voce evidence. I further ordered that a letter from the chief of the place where the Ward resides be produced, and for the doctor to testify.
8. The matter was heard on 6th October 2025. On the said date, 3 witnesses testified.
9. The first witness was the doctor, Dr Omar J Aly. The doctor presented his report and reiterated that it was necessary to appoint a guardian of the estate of the Ward, as the Ward could not do so himself.
10. The second witness was YMJ . Mr. Yislam is the uncle of SOM and MOJ . He testified that SOM had been taking care of the Ward. He supported the petition and prayed that it be allowed.
11. Ms SOM was the 3rd Witness. She is the petitioner and the Ward's caregiver. The Ward is her brother. She stated that she is a contract worker with Portside. She testified that she petitioned for the grant in respect of their father’s estate. The succession matter was ongoing. It was her evidence that she needed the guardianship so that she could pursue their father’s benefits at the Kenya Ports Authority. She prayed that the Court issue the requisite order.
12. I have considered the pleadings, the documentary evidence, and the oral testimonies of the witnesses. In my view, the issues I need to determine are:-
 1. Whether the patient suffers from mental illness? and
 2. If so, what orders should be issued?
13. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the [Mental Health Act](#), as amended in 2022. A manager’s duty is to safeguard the property of the Ward. The appointment of a Manager must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said Act provides that:-

“A manager shall perform the manager’s duty under this Act responsibly, taking into account the best interests of the estate of the person suffering from mental illness.”
14. Under the [Mental Health Act](#), the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Although SMO is not a “supporter” of the patient, as she wasn’t appointed in writing, it is my finding that being the Ward’s sister, she is his “representative” within the meaning of the Act and, therefore, has the locus to file the instant petition.
15. In re CWN (a person suffering from mental disorders) [2022]eKLR, the Court stated that:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders, the petitioners 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.”

16. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished capacities to manage their affairs, analogous to those of children. Therefore, the court must ensure the application was filed in the patient's interest. In addition, the court's orders must aim to achieve the said goal.
17. The evidence adduced shows that MOJ is unable to talk. Although the doctor was not able to confirm, as he could not talk, it was his opinion that MOJ appeared to have a mental illness. Given the doctor's findings and the Ward's present situation, which this Court was able to observe, it is my view that it is safe to err in favour of a finding that MOJ suffers from a mental illness. Such a finding will be beneficial to him as he will be able to receive treatment.
18. The petitioner averred that MOJ is a beneficiary of his father's estate and is entitled to receive a portion of the said estate. Treatment of mental illnesses is expensive. Being ill, the patient may not appreciate the need for treatment nor be able to manage the treatment regimen. The appointment of the petitioner as the patient's guardian ad litem and manager will enable him to access her funds to pay for nursing care and medication.
19. The Petitioner's testimony and the medical professional's report show that the patient cannot manage his affairs. It will, therefore, be in his best interest that a manager is appointed to manage his estate. The managers/guardians ad litem will ensure that he receives the most appropriate care possible, that his estate is not wasted or lost, and that his interests are protected.
20. I am satisfied, based on the evidence adduced, that the Ward has mental illness. Vascular dementia is a mental illness. There is, therefore, a case for the appointment of the petitioner as the guardian ad litem of the patient, MOJ and the manager of his estate. In the circumstances, I order as follows:-
 1. The petitioner, SMO, be and is hereby appointed as the guardian ad litem of the patient, MOJ, and also the manager of his estate;
 2. SMO shall manage the patient's estate but shall not have the power to sell, charge, or otherwise alienate his immovable property without the leave of the Court;
 3. Pursuant to section 27(4) of the *Mental Health Act*, the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette;
 4. The manager/guardian ad litem shall file the inventory and statement of account of the estate of the patient within six months from the date of her appointment; and
 5. I make no orders as to costs.
21. Orders accordingly.
22. It is so ordered.

DATED AND SIGNED AT MOMBASA, THE 15TH DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Otieno VO, for the Petitioner; and



Arthur - Court Assistant.

