



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re JWN (Subject) (Miscellaneous Application E257 of 2025)  
[2025] KEHC 16636 (KLR) (Family) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16636 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS APPLICATION E257 OF 2025**  
**H NAMISI, J**  
**NOVEMBER 14, 2025**  
**IN THE MATTER OF: ARTICLE 22 OF THE CONSTITUTION OF KENYA,**  
**2010**  
**AND**  
**IN THE MATTER OF: SECTIONS 26, 27 AND 28 OF THE MENTAL HEALTH**  
**ACT, CAP 248 OF THE LAWS OF KENYA;**  
**AND**  
**IN THE MATTER OF: SECTION 3, CIVIL PROCEDURE ACT;**  
**AND**  
**IN THE MATTER OF: ORDER 32, RULE 25 OF THE CIVIL PROCEDURE**  
**RULES;**  
**AND**  
**IN THE MATTER OF: THE ESTATE OF JANE WANJA NJIRU;**  
**AND**  
**IN THE MATTER OF: MARK MBURU KAMAU, THE PROPOSED GUARDIAN**  
**AD LITEM**  
  
**IN THE MATTER OF**  
**MMK ..... PETITIONER**



## JUDGMENT

1. The Petition dated 7 August 2025 seeks:
  - i. That the petitioner, Mark Mburu Kamau, be and is hereby appointed as the Manager and Guardian of the Ward, Jane Wanja Njiru, vested with full authority and responsibility to oversee her personal welfare, medical treatment and the prudent management of her affairs;
  - ii. That the Petitioner shall diligently manage the Ward's affairs and financial resources in strict compliance with the directives and orders of this Honourable Court, and shall hereby be expressly authorised to access the Ward's assets, bank accounts and savings maintained in her designated bank accounts solely and exclusively for the purposes of defraying expenses related to her medical treatment, daily sustenance and overall welfare;
  - iii. That the orders herein shall be served upon all relevant institutions and individuals where the Ward holds accounts, property or interests. These included all banks, SACCOs, mobile money platforms, microfinance institutions, insurance companies, pension schemes, investment firms, government registries and departments, any landlords or property managers, and any other persons or institutions in possession or control of the Ward's assets. This is to prevent any unauthorised access, withdrawal, transfer or use of the Ward's funds, property or other resources by third parties;
  - iv. That there be no order as to costs.
2. The Petitioner is a son to the Ward. The Ward has four other children. Their consents are attached to the Petition. They also appeared before the Court to confirm their consent.
3. The Petitioner wishes to be appointed as Guardian to his mother because the Ward is afflicted by a chronic and progressive neurodegenerative condition dementia which constitutes a profoundly debilitating psychiatric illness. The Petitioner avers that in 2024, the Ward was diagnosed with dementia. Thus, she is incapable of managing her own affairs. According to the Petitioner, the Ward has shown no signs of recovery.
4. Currently, the Ward resides with the Petitioner and his family in Kileleshwa, Nairobi. The Petitioner caters for the Ward's upkeep and treatment.
5. Also attached to the Petition is a copy of a Medical Report dated 30 July 2025 prepared by Dr. Sekhi, Aga Khan University Hospital, Nairobi. Further, Dr Herman Ekea appeared in Court and testified as to the Ward's condition. According to the Doctor, the Ward was first reviewed at Aga Khan on 2 April 2024. She presented with complaints of progressive memory lapses. She would get lost in familiar environments. The assessment was significant for severe memory disturbance. The Ward underwent tests and was reviewed on 30 April 2024 and initiated on medication for the memory problem. The Ward had dementia. The Ward was subsequently reviewed on 30 July 2025, 15 months later. Her score had dropped from 17 to 12, indicating that the memory problem was progressing. The last clinic visit was on 29 August 2025. The Ward is maintained on medicines to help slow down the memory lapse progression.
6. It was the Doctor's testimony that as per the last assessment of the Ward's function on 30 July 2025, she had a score of 12, which is indicative of severe dementia. The Ward has significant defects in her short term and long-term memory, and in managing her own activities and financial affairs. She is classified as person who is disabled and dependent on others on activities for daily living.



7. The Court had a chance to speak to the Ward. The Ward could recall her children and husband. Though she could recall certain personal information, she did not have good recollection of past events or happenings. The Ward kept insisting that there was something wrong with her head. From my observation of the Ward, she suffers some memory lapses and may need assistance in managing her affairs.
8. Section 26 of the *Kenya Mental Health Act 1989* 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
9. I have also considered all the material placed before me. It is apparent that the Ward may experience challenges with her mental health and that she is incapable of managing complex affairs.
10. In the circumstances, the Petition is merited. The Court hereby appoints the Petitioner as the Ward's Guardian ad litem and Manager. Section 28 of the provides the duties of the Manager as follows:
  1. Where a manager is appointed under this Part, the court may, upon considering the nature of the property whether movable or immovable, and subject to subsection (2), make such orders as the court may consider necessary for the management of the estate by the manager.
  2. The manager shall not, without the approval of the court—
    - a. mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
    - b. lease any such property for a term exceeding five years; or c. invest in any securities other than those authorized under the *Kenya Trustee Act 1929*.
  3. A manager shall not invest any funds or property belonging to the estate managed under this section:
    - a. in any company or undertaking in which the manager has an interest; or
    - b. in the purchase of immovable property under the authority of section 4 (1) (d) of the *Kenya Trustee Act 1929* without prior consent of the court.
  4. A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.



5. Every conveyance or other instrument made pursuant to an order of the court under this Part shall be valid.
11. For the avoidance of doubt, Guardian ad litem powers will not include the power of alienation, sale or transfer of the Ward's moveable or immovable assets without leave of Court but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and or defend any action brought by or against the Ward in respect of any of the assets forming part of her estate.
12. I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOVEMBER 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Petitioner: Mrs. Weke

Court Assistant: Lucy Mwangi

