



**In re Application for Guardianship for PMK (Family Miscellaneous Application E313 of 2025) [2025] KEHC 16609 (KLR) (Family) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16609 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**FAMILY MISCELLANEOUS APPLICATION E313 OF 2025**

**H NAMISI, J**

**NOVEMBER 14, 2025**

**IN THE MATTER OF AN APPLICATION UNDER SECTIONS 2, 26, 27, 28  
AND 29 OF THE MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA;**

**AND**

**IN THE MATTER OF AN APPLICATION BY GAK TO BE  
APPOINTED AS GUARDIAN OVER THE AFFAIRS OF PMK**

**AND**

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP FOR PMK**

**IN THE MATTER OF**

**GAK ..... PETITIONER**

**JUDGMENT**

1. The Petition dated 24 September 2025 seeks:
  - i. That the said PMK be declared to be suffering from mental disorder pursuant to sections 2 and 26 of the *Mental Health Act*;
  - ii. That this Honourable Court be pleased to appoint the Petitioner as the Guardian of the affairs of PMK in accordance with the *Mental Health Act*;
  - iii. That this Honourable Court be pleased to appoint the Petitioner as the manager of the estate of PMK in accordance with section 27 of the *Mental Health Act*, with special permissions to access PMK's funds held in the following accounts for his medical care and personal upkeep:
    - a. Funds in PMK's Mpesa mobile phone number 07XXXXXXXXX;



- b. Funds in the money market fund held at NCBA Unit Trust with Portfolio Code 16XXXX; and
    - c. Funds held in Kenya Finance Bank Ltd Account Number FDP/4XX/18XXX in the name of PMK;
  - iv. The Petitioner be authorized to administer the finances of the Subject in order to manage the patient's medical and personal care and well being;
  - v. Costs in the cause;
  - vi. Any other reliefs the Court deems just and fit to meet the ends of justice.
2. The Petitioner is wife to the Ward. The Applicant and Ward got married in May 2017. A copy of their Certificate of Marriage is attached to the Petition. The couple have two children, born in 2020 and 2023.
3. According to the Petitioner, on 3 April 2025, the Ward suffered an acute ischemic cerebrovascular accident. He further suffered hypovolemic shock secondary to acute gastroenteritis while undergoing treatment. The conditions have remained progressive and have worsened with time, leaving the Ward under the care of the Petitioner at home. The Petitioner avers that she is unable to cater for the Ward's nurse homecare and physiotherapy services.
4. The Petitioner further avers that due to the Ward's condition, he has become forgetful and suffers consistent loss of memory, confusion and poor judgement and cannot make logical decisions. The Petitioner avers that due to this condition, the Ward is incapable of handling himself as the condition has rendered him mentally incapable of handling his own affairs.
5. Currently, the Ward resides with the Petitioner at their family home in Kiambu. The Petitioner caters for the Ward's upkeep and treatment.
6. Also attached to the Petition is a copy of a Medical Report dated 3 September 2025 prepared by Dr. Osman MD, Westlands General and Specialist Hospital, Nairobi. The Doctor also appeared in Court and testified as to the Ward's condition. He stated that the Ward suffered a massive stroke and was admitted at the facility for over a month. He was discharged on 19 May 2025. Currently, the Ward has follow up sessions as an outpatient. It was the Doctor's testimony that the Ward is doing much better, but he is not a position to make critical decisions. In the Doctor's view, the Ward is not able to take care of himself. His motor functions are lacking. He is not in a position to make critical decisions. It is not a permanent condition. He can get better, but this will take some time.
7. The Court had an opportunity to see and speak to the Ward. Although he had lost his speech, the Ward was able to communicate by nodding or shaking his head. From my observation, the Ward was fully conversant of issues, although incapable of verbalising his thoughts. He may need some assistance in managing his affairs.
8. Section 26 of the *Mental Health 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
9. In *In re KN (Subject)* [2024] KEHC 3321 (KLR), the Court stated:
- “Mental Illness are health conditions which is reflected by changing emotions, thinking or behavior. Mental illness take many forms. Some are mild and only interfere in limited ways with daily life. Other Mental conditions are so severe that they may need care in hospital or assistance of a care-giver.”
10. I have carefully considered all the material placed before me. Though the Ward may suffer from speech impairment and difficulty in making complex decisions, he is still aware of his surroundings. He is not a danger to himself or to others and is unlikely to act in a manner offensive to public decency.
  11. Where the Court finds that the Ward suffers from mental illness which is mild as to enable him take care of his daily activities, but is unable due to the illness to manage efficiently the activities of his estate, the Court can make orders for management of the estate. This is necessary to prevent waste and mismanagement and safeguard the assets. This is from the realization that not all mental illnesses reach the statutory threshold of impairing one’s ability to take care of himself. Where it is shown that the said person needs a guardian or manager to help manage the estate, the Court will make the orders.
  12. Section 27 of the *Act* provides:
    1. The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including—
      - a) an order making provision for the maintenance of the person;
      - b) an order making provision for the maintenance of members of the person’s immediate family who are dependent upon the person; and
      - c) an order making provision for the payment of the person’s debts
    2. The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
    3. The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
    4. The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.
    5. Within fourteen days of the Gazette Notice under subsection (4), any person may lodge an objection to the person appointed as manager.



13. In this instance, noting that the Ward's condition is improving, albeit slowly, I hereby appoint the Applicant as his manager, as provided under section 28 of the Act. For the avoidance of doubt, section 28 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 Trustee Act.
  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 Trustee Act 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.
14. The Manager's 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 his estate.
15. Further, the Petitioner is hereby allowed to access the following accounts, for purposes of catering for the medical and personal needs of the Ward:
  - a. Funds in PMK's Mpesa mobile phone number 07XXXXXXXXXX;
  - b. Funds in the money market fund held at NCBA Unit Trust with Portfolio Code 16XXXXX; and
  - c. Funds held in Kenya Finance Bank Ltd Account Number FDP/4XX/18XXX in the name of PMK.
16. I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2025.**

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**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:



Petitioner: Mr. Seko

Court Assistant: Lucy Mwangi

