



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re GWN (Subject) (Petition E188 of 2025)**  
**[2025] KEHC 15998 (KLR) (Family) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15998 (KLR)

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

**FAMILY**

**PETITION E188 OF 2025**

**PM NYAUNDI, J**

**NOVEMBER 7, 2025**

**IN THE MATTER OF SECTION 26, 28 (1) AND 28 (2) OF THE**  
**MENTAL HEALTH ACT (CAP 248 OF THE LAWS OF KENYA)**

**IN THE MATTER OF GWN: BEING AN AD LITEM APPLICATION FOR GUARDIANSHIP**

**IN THE MATTER OF**

**RWN ..... PETITIONER**

### **JUDGMENT**

1. The Petitioner filed her Notice of Motion Application dated 18th June 2025 which sought the following Orders:
  - a. Spent
  - b. Pending the hearing and determination of this application the Honourable Court to issue an Order of Stay of Execution of the Judgment delivered on 28<sup>th</sup> August 2023, the resulting decree, warrants of attachment, proclamation notices, and al consequential orders issued in Milimani Commercial Magistrate's Court Civil Case No. MCCOMMSU/E885/2022: Daniel Waithanji Mwangi V Pop Metal Fabricators and Hardware Limited & GWN pending the hearing of this application.
  - c. The Honourable Court to declare the subject herein mentally incapable of managing her affairs under the *Mental Health Act*.
  - d. The Honourable Court be pleased to appoint the Petitioner RWN, as the Legal Guardian of the subject, GWN.
  - e. Costs of this application be provided for.



2. The Application was brought under Order 1 Rule 10, Order 9, Order 22 Rules 22 & 25, Order 42, and Order 51 Rule 1 of the Civil Procedure Rules; Sections 1, 1A, and 3A of the [Civil Procedure Act](#); the [Mental Health Act](#), Cap 248; The Application was premised on the grounds on the face of the application and further by the Supporting Affidavit sworn by RWN on 18th June, 2025.
3. The Application was also canvassed by way of viva voce evidence on 24<sup>th</sup> July, 2025.
4. RWN (PW1) is the daughter of the subject herein along with her three siblings namely; - FNN, ANN and IWN.
5. The subject is 62 years old residing in Nairobi County and has been unwell for almost 2 years. She has been diagnosed with skull chronic osteomyelitis with inflammation of the cervical para-spinal tissues and progressive hearing loss with no improvement despite hearing aids. She uses sign language to communicate her basic needs.
6. That the subject has pending matter in Chief Magistrate's Court COMMSU No. E885 of 2022 (2nd Applicant) alongside Pop Metal Fabricators & Hardware Limited. Consequently, she is unable to represent herself as well as manage her affairs. The subject's husband is deceased. The Petitioner averred that she is the one who is engaged in the general care and management of the subject's affairs.
7. That on 13<sup>th</sup> June 2025, whilst tending the subject at her residence, persons known as Makuri Auctioneers came in and served upon them warrants of execution dated 11<sup>th</sup> June 2025, and proclaimed some household items for the satisfaction of the warrants in Milimani CMCC No. MCCOMMSU/ E885/2022 as per the attached copies. It is her statement that that the proclamation notice shocked them as the subject's condition has been deteriorating for almost 3 years and had no faculty of giving instructions.
8. The Petitioner further averred that after conferring with the advocate who had been handling the matter, she promised to seek legal reprieve from the Court only for her to send them an application filed in Court seeking for stay orders.
9. The Petitioner states that the subject may have issued instructions in the first instance, subject's medical situation or the direness of the same was not properly addressed before the Lower Court at least to participate in the proceedings.
10. That this Petition has been brought promptly and in good faith, purely in the interest of justice and protection of a vulnerable person.
11. It's her disposition that as per the proclamation notice, the proclaimed goods are to be attached and carted away on 18th June, 2025 and devoid of the Court orders herein this application will be rendered nugatory.
12. Unless this Honourable Court intervenes, the subject will continue to suffer substantial and irreparable harm.
13. The Petition is supported by the Report from Dr. Dhara Patel a Consultant Physician, Diabetologist and Endocrinologist the report confirmed that the subject was diagnosed with skull chronic osteomyelitis with inflammation of the cervical para-spinal tissues and progressive hearing loss with no improvement despite hearing aids. The subject uses sign language to communicate her basic needs. The subject has poor balance and requires support on standing and walking and gets episodes of dizziness.
14. Another report from Mr. Charles Muriithi Audiologist dated 16<sup>th</sup> June, 2025. The report confirmed that the subject was diagnosed with hearing loss mid last year 2024. The hearing has been deteriorating



gradually and up to now the subject is unable to hear completely even with the hearing aids. The report also states that the subject has profound hearing loss on both ears.

15. The Court interviewed the subject and it was evident that she could not hear on account of the infection but was able to read the chat she understands and consents to the Proceedings.
16. It is therefore necessary that the Petitioner be appointed as the subject's guardian ad litem to enable her to have locus standi to file the relevant applications before the Lower Court.
17. Issues for determination; -
  - a. The issues of stay of execution of Judgment
  - b. Issue of Mental Health
  - c. Appointment of the Legal Guardian

#### **i. The issue of stay of execution of Judgment**

18. This Court lacks the jurisdiction to issue and orders staying execution in a matter before another court.

#### **ii. Issue of mental health and Appointment of legal guardian**

19. The provisions of the [Mental Health Act](#) ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The [Mental Health Act](#), at Section 26 provides 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.
20. Further, I have considered the evidence adduced in Court as well as the consent from the Petitioner's siblings and I am persuaded that the Petitioner is best placed to provide adequate care to the subject and ensure is wellbeing.
21. It is in the subject's best interest that the Petitioner is appointed as her personal representative to ensure that funds are available for her upkeep and further medical attention in the future as well as preserve her estate.
22. In the circumstances, these are the orders of the Court that; -
  - a. GWN is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).



- b. RWN is hereby appointed Section 27 of the *Mental Health Act* as the Guardian of GWN, the subject herein
- c. RWN is hereby appointed manager of the estate of GWN under Section 28 of *Mental Health Act* to manage her 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 and represent her in legal suits either to defend or present suits on her behalf.
- d. Pursuant to this appointment RWN shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging GWN.
- e. In accordance with Section 27(4) of the *Mental Health Act*, 2022 the Applicant shall cause within 30 days the publication of notice in the Gazette, informing the public of her appointment as the manager of the estate of GWN.
- f. As Manager of the Estate of the GWN the Petitioner may dispose of the property only with the sanction of the Court.
- g. The matter will be mentioned before court on 5<sup>th</sup> February 2026, to confirm compliance.
- h. Costs to be met out of the Estate of the Subject.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEBER, 2025.**

**P. M. NYAUNDI**

**JUDGE**

In the presence of;-

Fardosa Court Assistant

No appearance by parties

