



**In re FEA (Miscellaneous Application E021 of 2025)
[2025] KEHC 16134 (KLR) (Family) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E021 OF 2025
H NAMISI, J
NOVEMBER 7, 2025
IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248
AND
IN THE MATTER OF AN APPLICATION FOR THE APPOINTMENT
OF A GUARDIAN FOR FEA (A PERSON OF UNSOUND MIND)**

IN THE MATTER OF

JEA APPLICANT

RULING

1. Before the Court is Notice of Motion dated 6 January 2025 seeking:
 - i. Spent;
 - ii. That FEA (the Subject) herein be declared a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#);
 - iii. That this Honourable Court be pleased to appoint the Petitioner as guardian in respect of FEA and grant them custody, care and management of the Subject in accordance with the [Mental Health Act](#), with powers to sign, access, withdraw, execute and/or carry out any act incidental to the affairs of the Subject;
 - iv. That the petition for guardianship herein be heard on priority basis;
 - v. That the Application is not opposed or objected to;
 - vi. That there in on record a medical reports dated 26 November 2024, 11 October 2024 and 24 September 2021 issued by Dr. Miguel Ley Nacher, Dr. M. M. Okonji and Dr. Wakhandu



respectively, and the local administrator's letter of 17 September 2024 by Assistant Chief Kevin Sagala;

- vii. Spent;
 - viii. That costs be in the cause.
2. Needless to say, the drafting leaves a lot to be desired.
 3. The Applicant is a daughter to the Ward. The Ward has four other children. Their consents are attached to the Application.
 4. The Applicant wishes to be appointed as Guardian to her father because the Ward has suffered a stroke in the past, and currently suffers from Alzheimer's and dementia. The Applicant states that the Ward lives with her in the United Arab Emirates, where she works. The Applicant normally takes the Ward to a centre for the elderly, where he interacts with people his age. He is 80 years old.
 5. In her Supporting Affidavit, the Applicant avers that in 2021, the Ward was diagnosed as having features of depressive illness. In October 2024, the Ward was diagnosed to be suffering from left ventricular hypertrophy and old frontotemporal infarct. The Applicant avers that the Ward is unable to perform normal activities and has been on home care for the last 24 years.
 6. Attached to the Affidavit were Medical Reports. The first medical report dated 29 October 2025 does not indicate any diagnosis of a mental disorder or any dementia. The second report dated 24 September 2021 noted that the Ward presented with forgetfulness, which consisted of mislaying items and inability to recall recent events. Once again, there is no conclusive diagnoses of dementia. The third report dated 26 November 2024 indicates a diagnosis of mixed dementia (vascular and senile). The neurological examination revealed that the Ward was fully alert and oriented in three spheres.
 7. The Court had an opportunity to speak to the Ward. He confirmed that whilst he may have been unwell previously, he was feeling so much better. He had good orientation, he knew his location, the day and had a good recollection of Kenyan history. He had good recollection of his past employment and could remember all his children.
 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 dementia, the same is mild and limited to forgetfulness. It has not prevented him from taking care of his daily actions. He is capable of managing himself with daily activities. He is not a danger to himself or to others and is unlikely to act in a manner offensive to public decency. The most recent medical report dated 26 November 2024 indicates that the Ward has stable vascular dementia with no acute neurological deficits or recent exacerbation.

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 is still able to take care of himself, 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. I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOVEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Ms. Okoth

Court Assistant: Lucy Mwangi

