



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re RAN (Subject) (Miscellaneous Application E021 of 2025)
[2025] KEHC 15943 (KLR) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15943 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E021 OF 2025**

A MABEYA, J

NOVEMBER 7, 2025

**IN THE MATTER OF SECTION 26, 27 AND 28 OF THE
MENTAL HEALTH ACT, CAP 248. LAWS OF KENYA**

AND

**IN THE MATTER OF ARTICLES 28, 43(10(A) & (E)
AND 57 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTION 3 & 3A OF THE CIVIL PROCEDURE ACT
(CAP 21) AND ORDER 51 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010**

AND

IN THE MATTER OF RAN (PERSON SUFFERING FROM INCAPACITY)

AND

**IN THE MATTER OF AN APPLICATION BY HOA FOR
ORDERS OF GUARDIANSHIP AND MANAGEMENT**

JUDGMENT

1. RAN ('the Subject') aged 63 years is the wife Dr. HOA ('the Petitioner'). On 22/1/2022, the Subject was admitted to Aga Khan Hospital, Kisumu with a diagnosis of a left sided malignant infarct of her brain. She required emergency brain surgery (Decompressive craniectomy) which involved the removal of half her skull to preserve her life. Due to severity of brain injury, she became permanently incapacitated. She is unable to walk or speak normally. A Medical Report from Aga Khan Hospital, Kisumu dated 21/8/2024 show that she is incapable of taking care of herself or make any cognitive decision.
2. On 8/9/2025, the applicant took out an Originating Summons under sections 26, 27 and 28 of the [Mental Health Act](#) and sought to be appointed as the Guardian of the Subject and therefore her



Manager under section 26 of the *Mental Health Act*. I should point out here that it should have been a Petition.

3. On 3/11/2025, he appeared in Court and testified on oath. He confirmed the contents of the Originating Summons as narrated above. He produced the Medical Report from Aga Khan Hospital, Kisumu to support his contestations.
4. The Court has carefully considered the statements in the Originating Summons and the Supporting affidavit. It has also considered the testimony of the applicant as corroborated by the documentary evidence that he produced.
5. Section 2 of the *Mental Health Act*, Cap 248 defines a person suffering from mental disorders as: -

“... a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”
6. Section 26 of the said Act provides for the orders that this Court can make upon being satisfied that a person is suffering from mental disorder. It provides for the management of his estate and guardianship. Sub-section 3 thereof provides: -

“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.”
7. In the present case, I have considered the Medical Report dated 21/8/2024 by Aga Khan Hospital, Kisumu. I have also considered the testimony of the applicant. I am satisfied that the Subject suffers from a disorder that makes her incapable of making cognitive decisions for herself. That it is fair and just that her affairs be managed by a Guardian.
8. Accordingly, I allow the Originating Summons dated 8/9/2025 and grant prayer Nos. (1), (2) and (3) thereof. No order as to costs.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF NOVEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

