



In re Guardianship of CWN (Subject) (Miscellaneous Application 7 of 2022) [2025] KEHC 16676 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS APPLICATION 7 OF 2022**

LN MUTENDE, J

NOVEMBER 5, 2025

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

AND

IN THE MATTER OF CWN (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY BTN TO BE APPOINTED GUARDIAN
OVER THE ESTATE AFFAIRS AND MANAGER OF THE ESTATE OF CWN**

AND

IN THE MATTER OF GUARDIANSHIP OF THE SUBJECT – CWN

BETWEEN

BTN PETITIONER

AND

JNM RESPONDENT

RULING

1. In the Amended Notice of Motion dated 6th day of February, 2025 J N M, the Applicant seeks orders thus;
 1. Spent.
 2. Spent.
 3. That this honorable court be pleased to vacate the order of temporary injunction given on 2nd November, 2022, issued on 3rd October, 2022, and registered on 4th November, 2022, in



the register of land parcel numbers Laikipia/Salama Muruku Block 1/1189, Laikipia/Salama Muruku Block 1/535 (Muruku) and Laikipia/Salama Muruku Block 4/19 (Pesi).

4. That the costs of this application be provided for.
2. The application is premised on grounds that the Respondent Bernard Theuri Ndung'u filed an application seeking an order of temporary injunction restraining any transaction on Parcel No. Laikipia/Salama Muruku Block 1/1189, Laikipia/Salama Muruku Block 1/535(Muruku) and Laikipia/Salama Muruku Block 4/191 (Pesi) parcels of land registered in his name; an application that was allowed.
3. That the temporary injunction was registered on the register of the said parcel numbers by the Land Registrar, Rumuruti.
4. That upon hearing of the application through a ruling of 13th September, 2023, the same was struck out for want of jurisdiction.
5. That the said order of temporary injunction issued on 3rd October, 2022 automatically lapsed and as a result the ruling should thus be lifted.
6. That CWN passed away on 4th September, 2024 and the Applicant being elderly would like to subdivide his property but is unable due to the temporary injunction issued on 3rd October, 2022.
7. In a response thereto, the Respondent depones that the subject properties were acquired by the Applicant during pendency of the marriage hence matrimonial properties held jointly with his wife the late C. who passed on after a temporary injunction had been granted on or about 2nd November, 2022.
8. That having been a guardian of the deceased prior to her demise, he cannot proceed in the instant matter as the subject is deceased. As the law confers pursuant representatives of the estate the capacity to sue or be sued.
9. The application was deposed through written submissions. I have considered the application, supporting and opposing affidavits alongside annexures thereto and rival arguments.
10. In the instant application I am invited to re-open this file that was closed on 24th September, 2024 so as to vacate injunctive orders of 22nd November, 2022. This matter was brought under certificate of urgency and upon perusal of the same the learned trial Judge, Kariuki J moved suo moto. Both parties agree that injunctive orders issued were on interim basis.
11. Subsequently, the court considered the application dated 28th October, 2022 and reached a finding that it was not seized of the jurisdiction to entertain the application hence struck it out.
12. Later, another application dated 25th September, 2023 was filed and considered by Ndung'u J who declined to preserve and maintain *status quo* of the estate of CWN including parcels No. Laikipia/Salama Muruku Block 1/1189, Laikipia/Salama Muruku Block 1/535 (Muruku) and Laikipia/Salama Muruku Block 4/191 (Pesi) citing the ruling of Kariuki J delivered on 13th September, 2023 as the claim could not be resolved in the jurisdiction that the Applicant had invoked.
13. The court appreciated that an application for appointment as a guardian of a person suffering from mental disorder or as a manager of the estate of such a person was necessary to protect the interests of the Subject. That although the court had inherent powers to issue preservative orders. The subject legal rights had to be established over the property in issue which had not been done.



14. It was the finding of the court that it would have been necessary for the Respondent to pursue the question of appointment as a *guardian ad litem*. In the result the application dated 25th September, 2023 was dismissed.
15. On 24th September, 2024 the court was informed of the demise of the Subject. In the result, the court found that the petition had been overtaken by events hence abated and the file was closed.
16. At the time of the Subject's demise, it had not been proved if indeed she was mentally incapacitated. Had the Respondent had been appointed as her guardian, the guardianship and management of her interests would have automatically terminated. It is unfortunate that all along the Respondent was proceeding with the matter without authority.
17. On the question of issuance of injunctive orders, both Kariuki and Ndung'u JJ found that they lacked jurisdiction to determine the matter. For an order to be lawful, it must have been made by a court seized of jurisdiction, otherwise the order would be null and void. Jurisdiction is hence the linchpin of the principle of the law and indeed critical.
18. In *Owners of the Motor Vessel "Lilians" v Caltex Oil (Kenya) Ltd* (1989) KLR 1 Nyarangi J (as he the was) stated that;

“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
19. In *Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] KESC 8 (KLR) (23rd October) the Supreme Court held that;

“A court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law. The issue as to whether a court of law had jurisdiction to entertain a matter before it, was not one of mere procedural technicality; it went to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.”
20. The two (2) judges of the High Court having declined to act for lack of jurisdiction, this court of concurrent jurisdiction cannot purport to expand the same by considering the invitation extended.
21. Notably, interim orders were granted prior to the Respondent being appointed as a guardian of the Subject. And, even if he had he been appointed as such, as afore stated, the subject having died the guardianship and management order would automatically have terminated.
22. From the foregoing, this court does not have the power to grant the order sought. For that reason, the application is declined.
23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF NOVEMBER, 2025.

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L. N. MUTENDE
JUDGE

