



**In re WN (Family Miscellaneous Application E019 of 2025)
[2025] KEHC 16954 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E019 OF 2025
FN MUCHEMI, J
NOVEMBER 13, 2025
IN THE MATTER OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF WN(A PERSON SUFFERING FROM A MENTAL DISORDER)
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIAN AD LITEM OF WN
IN THE MATTER OF
AW APPLICANT**

RULING

Brief Facts

1. The application for determination dated 26th August 2025 seeks for orders of adjudging WN (the subject) to be suffering from a mental disorder pursuant to Section 26 of the [Mental Health Act](#) and to appoint the applicant as the subject's legal guardian ad litem in Kiambu MCELC Case No. 4 of 2021 where the subject is the plaintiff.
2. The applicant is the daughter of the subject who was diagnosed with senile dementia in May 2022 after recurrent episodes of memory loss, lack of concentration, talking to self and loss of direction in movements.
3. The applicant states that the subject instituted a matter in Kiambu Law Court vide MCELC Case No. 4 of 2021 regarding land parcel Tigoni/Tigoni Block X/Kiambaa Kawainda XXXX which was issued to the subject under Certificate No. AXXXX. The subject is a shareholder in Kiambaa Kawainda Company Limited, a land buying company and she is the registered and beneficial owner of the suit land Tigoni/Tigoni Block 1/Kiambaa Kawainda XXXX. The suit land has since been unlawfully



allocated and possessed by a third party and every attempt to have the said third party vacate the land became futile leading the subject to filing the suit. It is deposed that due to her ill health she cannot prosecute the said suit.

4. The applicant avers that the MCELC matter has come up for hearing on two occasions but has been adjourned due to the subject's incapacity to testify in court.
5. The applicant testified as PW1 and stated that her sister one MM lives with the subject at Makuyu. She further deposed that the subject is over 80 years old and is sick suffering from senile dementia thus she is unable to represent herself in the MCELC Case. The applicant further urged the court to appoint her legal guardian over the subject to take over her matter being ELC Case No. 4 of 2021 for purpose of prosecuting the case.
6. In support of her application, the applicant's siblings one MMN and SWN filed Affidavits in which they deposed that the subject is their mother and that they are aware of Kiambu MCELC Case No. 4 of 2021 case has not proceeded for hearing due to the subject's mental disorder which has rendered her incapable of prosecuting the said case. The subject is the plaintiff in the said suit but due to her deteriorating health, senile dementia and severe memory loss, lack of concentration, she is unable to comprehend, follow or participate with her case. It is deposed that the subject gets agitated and angry every time she loses her memory. Her blood pressure hikes during such moments and she sometimes collapses.
7. The deponents further state that the subject is unable to manage her affairs and depends on her children who take care of her. It was further deposed that the subject is under regular medication and check up visits at Ruiru Sub County Hospital.
8. The deponents state that they do consent to the applicant who is their sister be appointed guardian ad litem to prosecute the subject's case.

Issues for determination

9. The main issues for determination are as follows:-
 - a. Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 - b. Whether the applicant should be appointed guardian as litem in respect of the subject's case Kiambu ELC No. 4 of 2021.

The Law

Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.

10. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.
11. Section 2 of the Act defines "person suffering from mental disorder" as follows:-

"person suffering from mental disorder" means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse."



12. Section 26 provides for custody, management and guardianship
 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 of the guardian of any such person.
 3. Where upon 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.
13. According to the medical report from Ruiru Sub County Hospital dated 18th June 2025, the patient was diagnosed with senile dementia in 2022 after recurrent episodes of loss of memory, lack of concentration, talking to self a lot and losing direction in movements. The report further indicated that the subject is not reliable in giving any official information or its equivalent due to memory impairment.
14. The court had the opportunity to observe the subject and noted that the subject was able to give the names of her children who were seated next to her. The subject stated that she had been unwell and she was unable to take care of herself. The subject stated that she has a pending land case in Kiambu court and that she needed assistance in prosecuting the matter as she was unwell.
15. It is apparent from the medical report that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing her own affairs.

Whether the applicant should be appointed as guardian to the subject

16. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
17. The applicant has stated that she is a daughter of the subject. The applicant's siblings filed affidavits to support the application seeking for orders of appointment as the legal guardian and manager of the subject and her estate particularly in prosecuting the matter in Kiambu ELC Case No. 4 of 2021(formerly Nairobi High Court ELC Case No. 192 of 2016) over suit land Tigoni/Tigoni Block 1/Kiambaa Kawainda XXXX.
18. This application was not opposed and the course of the application being well supported as required under the law, it is my considered view that the application is merited and is hereby allowed in the following terms.
19. That the subject Wangeci Njoroge is hereby adjuge to be suffering from a mental disorder under Section 26 of the [Mental Health Act](#).



20. The applicant AW is hereby appointed guardian ad litem of the subject Mary Wangeci to prosecute the subject 's case at Kiambu No. MCELC No.4 of 2021 for the benefit of the subject and her family.
21. This being an ex parte application, there shall be no order as to costs.
22. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE

