



**In re CWK (Miscellaneous Application E275 of 2025)
[2025] KEHC 17516 (KLR) (Family) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E275 OF 2025
PM NYAUNDI, J
NOVEMBER 28, 2025
IN THE MATTER OF AN APPLICATION UNDER MENTAL
HEALTH ACT
AND
IN THE MATTER OF CHARLES WATHINI KIIRU
AND
IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL
PROCEDURE RULES, 2010
AND
IN THE MATTER OF MENTAL HEALTH ACT, CHAPTER 248
(AS AMENDED BY THE MENTAL HEALTH
(AMENDMENT) ACT, 2022) OF THE LAWS OF KENYA
AND
IN THE MATTER OF THE RIGHTS OF OLDER MEMBERS
OF SOCIETY UNDER ARTICLE 57 OF THE CONSTITUTION**

BETWEEN

**MWW (SUING AS GUARDIAN WIFE AND NEXT OF KIN OF
CWK) APPLICANT**

AND

NATIONAL BANK OF KENYA RESPONDENT



JUDGMENT

1. The application presented under Article 57 and 159 of *the Constitution* of Kenya, 2010 Sections 26, 27 and 28 of the *Mental Health Act*, Cap 21, Section 3 of the *Judicature Act*, Order 32 Rule 15 of the Civil Procedure Rules, 2010; and all other enabling provisions of the law supported by an affidavit dated 19th August, 2025 the Applicant herein M W W seeks the following orders that; -
 - i. Spent
 - ii. Spent
 - iii. She be appointed as Guardian and personal representative of C W K estate hereinafter referred to as “the patient”.
 - iv. This Honorable Court be pleased to grant leave to the Applicant to enable her access the patient’s Bank Account Number 01xxxxxxxxx00 held at National Bank of Kenya Limited – Head Office Branch and manage the same on his behalf.
 - v. In the event of deficit in medical and upkeep expenses in respect of the patient herein, any of the properties jointly owned by the Applicant and the patient herein, be disposed off.
 - vi. Costs of the application be borne by the Applicant.
2. That the Applicant is a retired Civil Servant residing at Kasarani, Nairobi County. The subject is her husband who is 69 years old and was diagnosed with stroke for over 3 years, he is unable to speak or write thus suffering from mental infirmity due to physical defects that have rendered him incapable of communicating his wishes or thoughts to others or executing received information from others or attending to his affairs.
3. The Applicant further stated that their union was blessed with two adult children namely; D S K and D N W who have consented to the application.
4. Prior to the subject illness, he was the family’s primary breadwinner. Following his incapacitation, it has become untenable for the family to meet his medical expenses and other rehabilitation –related needs.
5. That the Applicant has been directed by the Respondent, National Bank of Kenya Limited to submit an Order from the Honourable Court so that she can access funds held at the subject’s Bank Account, Head Office Branch.
6. That the subject needs daily need such as physiotherapist nursing care and medical attention, generally all of which require financial resources. The subject was diagnosed with stroke on the 13th May, 2025, he was taken to Bristol Park Hospital and Nairobi West Hospital which managed the condition and discharged to continue recuperating at home.
7. That due to the overwhelming financial burden, the subject was discharged from hospital and is now under continuous home care, under care of the Applicant.
8. It’s the Applicant’s averment that without access to the subject’s financial resources, the Applicant is unable to meet the subject’s physiotherapy and attendant expenses as well as other family financial obligations.
9. The Application is supported by a report dated 6th October, 2025 from Dr. Ng’ang’a a Consultant Psychiatrist, from Thika Hospital which states that the subject is unable to walk, talk, write due to



disability suffered following stroke , he was diagnosed with dementia and the subject was advised to continue supportive management. Reports from other Doctors, confirmed the subject has been suffering from storke.

10. The Court interviewed the subject and his consent was obtained alongside his two children.

Determination

11. 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.

12. I have considered the evidence adduced in Court and I am persuaded that the Applicant is best placed to provide adequate care to the subject and ensure is wellbeing.

13. It is in the subject's best interest that the Applicant is appointed as her personal representatives to ensure that there is medical attention in the future.

14. In the circumstances the Application dated 29th July, 2025 is allowed and with the following orders:

- a. C W K is hereby declared as suffering from a mental disorder under Section 26 of the *Mental Health Act* (Cap 248).
- b. M W W is hereby appointed Section 27 of the *Mental Health Act* as the Guardian of C W K the subject herein
- c. M W W is hereby appointed manager of the estate of C W K 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 M W W shall deliver to Court and the Public Trustee, within 6 months, an inventory of the property belonging C W K.
- 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 C W K.



- f. As Manager of the Estate of the C W K the Petitioner may dispose of the property only with the sanction of the Court.
- g. The matter will be mentioned before court on 25th 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 28TH DAY OF NOVEMBER, 2025.

P. M. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Ms. Muiruri for Applicant

