



**In re Application for Appointment as Guardian Ad Litem of CNK (Miscellaneous Civil Application E121 of 2025) [2025] KEHC 17632 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17632 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION E121 OF 2025  
FN MUCHEMI, J  
NOVEMBER 27, 2025  
IN THE MATTER OF AN APPLICATION FOR  
APPOINTMENT AS GUARDIAN AD LITEM OF CNK**

**IN THE MATTER OF**

**MGN ..... 1<sup>ST</sup> APPLICANT  
PMN ..... 2<sup>ND</sup> APPLICANT**

**RULING**

**Brief Facts**

1. The application for determination dated 15<sup>th</sup> July 2025 seeks for orders of adjudging CNK (the subject) to be suffering from a mental disorder pursuant to Section 26 of the [Mental Health Act](#) and to appoint the applicants as the subject's legal guardians.
2. The applicants are the sons of the subject CNK who is said to be suffering from a psychiatric condition known as acute psychotic disorder. The applicants aver that the subject is a defendant in Thika ELC Case No. 79B of 2022 (formerly Thika CMCC No. 25 of 2024) Felix Mwangi Muhindi vs CNK & Others in respect of land L.R. No. Ruiru/Kiu Block 2 (Githunguri)/3637 where he is jointly registered as proprietor with others. As a result of the subject's mental condition, he has become mentally incapacitated to conduct the case which last came up for hearing on 13<sup>th</sup> March 2025. The case was adjourned due to the subject's mental incapacity. The case has been scheduled for mention on 29<sup>th</sup> September 2025 for purposes of confirming appointment of a guardian ad litem.

**Issues for determination**

3. 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 as guardian to the subject.

## **The Law**

### **Whether the subject should be declared as suffering from mental disorder pursuant to the [Mental Health Act, Cap 248](#)**

4. 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.
5. 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.”
6. 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.
7. According to the medical report from Mathari National Teaching & Referral Hospital dated 15<sup>th</sup> April 2025, the patient is suffering from confusion and bizarre behaviours following the demise of his wife. Further according to the medical report by Joseph Njeru, a clinician in Githunguri Health Centre dated 8<sup>th</sup> March 2025, the patient is suffering from depression and senile dementia. The medical report further indicated that the subject is unable to transact in any business on his own.
8. It is apparent from the medical reports 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 his own affairs.

### **Whether the applicants should be appointed as guardians to the subject**

9. Section 26 of the Act gives courts 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.



10. The applicants have deposed that they are sons of the subject and annexed a letter from the Chief dated 10<sup>th</sup> May 2025 showing the children of the subject and indicating that the family of the subject had consented to the applicants being appointed legal guardians of the subject. Furthermore, the court had the opportunity to examine the subject in court and noted that the subject confirmed that he had a land case in Thika Law Courts. He said that he has been sick for about three (3) years and he is unable to represent himself. He depends on the 1<sup>st</sup> applicant for his personal needs, hygiene and financial needs.
11. Order 32 Rule 15 of the Civil Procedure Rules provides:-

The provisions contained in rules 1 to 14, so far as they are applicable shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.
12. It is noted that there is no objection from any of the family members of the subject to this application. The application is well supported by the applicant's affidavit and medical reports of two doctors as required under the law.
13. In my considered view, the applicants satisfied the requirements of Section 26 of the *Mental Health Act* as well as those of Order 32 Rule 15 of the Civil Procedure Rules. For these reasons, I hereby allow the application.
14. The applicants are hereby appointed as guardians ad litem of the Subject CNK to prosecute on his behalf Thika ELC Case No.79 B of 2022 Felix Mwangi Njoroge vs CNK.
15. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

