



In re Application by FK to be Appointed Guardian over the Affairs of the Estate of David Gitonga Amuru (Miscellaneous Application E384 of 2025) [2025] KEHC 18095 (KLR) (Family) (5 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

MISCELLANEOUS APPLICATION E384 OF 2025

H NAMISI, J

DECEMBER 5, 2025

**IN THE MATTER OF AN APPLICATION UNDER SECTIONS 25,
26, 28 (1) AND 28(2) OF THE MENTAL HEALTH ACT, CAP 248**

AND

IN THE MATTER OF DGA(A PERSON INCAPACITATED)

AND

**IN THE MATTER OF AN APPLICATION BY FK TO BE APPOINTED
GUARDIAN OVER THE AFFAIRS OF THE ESTATE OF DGA**

IN THE MATTER OF

FK PETITIONER

JUDGMENT

1. The Petition dated 19 November 2025 seeks:
 - i. That the Applicant, FK, being the legal wife of DG be appointed Guardian ad litem over his person and manager of his estate, assets and bank accounts;
 - ii. The Applicant be granted access to the Patient's bank accounts and financial assets held in Equity Bank K Ltd, Co-operative Bank of Kenya Ltd and Postbank Limited.
2. The Petitioner is wife to the Ward. The Applicant and Ward got married in May 1999. A copy of their Certificate of Marriage is attached to the Petition. The couple have two children, born in 1994 and 2000, respectively.



3. According to the Petitioner, the Ward suffered a severe stroke and multiple conditions that led to his admission at the Intensive Care Unit, Karen Hospital in October 2025. The Ward remains at the hospital under critical care. He is unable to communicate, manage his affairs or participate in any decision-making. The Petitioner avers that the Ward hold several accounts in the 3 named banks, which the Petitioner needs to access in order to obtain funds to offset the hospital bills as well as make adequate preparations for home-based care once the Ward is discharged from hospital.
4. On 27 November 2025, the Court heard from Dr Caroline Shango Irungu, KMPDC NO A5XXX, who is the Ward's primary physician. She stated that the Ward has a team of physicians and nurses, including a Neurologist and Chest Physician, and receives round the clock care at the Hospital. The Doctor informed the Court that the Ward since his admission to the Hospital on 2 October 2025, the Ward had been admitted to the Intensive Care Unit on two occasions. On 22 November 2025, he was transferred to the general ward. His level of consciousness is reduced, at 9/15 on the Glasgow scale. The Doctor stated that the Ward suffers from co-morbidities. He has intra cranial space occupying lesions which we suspect is due to TB and cerebral toxoplasmosis. He also has immune reconstitution syndrome. He will require long term care. His recovery is slow. This will require long term medical and physiotherapy.
5. The Doctor confirmed that the team was preparing for home-based care.
6. The Court was able to observe the Ward, who was asleep in bed.
7. Attached to the Petition is a Medical Report dated 11 November 2025 from Karen Hospital, confirming the position stated by Dr. Irungu. Further attached is a Bill from the Hospital for Kshs 3,220,964/- as at 9 November 2025. In her testimony, the Petitioner stated that as at 26 November 2025, the bill was at kshs 9,666,000/=.
8. There is also a quotation for medical supplies and fittings, estimated at Kshs 725,000/-. It was the Petitioner's testimony that she requires access to the funds to be able to obtain funds to purchase these items in preparation for the home-based care.
9. Additionally, the Petitioner stated that there are other liabilities such as salaries and other overheads for the Ward's various business enterprises that must be paid.
10. Section 26 of the *Mental Health Act* states 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

11. I have carefully considered all the material placed before me. It is evident that the Ward is currently incapacitated and unable to make any financial decisions. However, it would be prudent for his affairs to be managed properly in order to avoid any wastage, while he is in the process of recovery.
12. Where the Court finds that the Ward is unable, due to the illness, to efficiently manage the activities of his estate, the Court can make orders for management of the estate. This is necessary to prevent waste and mismanagement and safeguard the assets. Where it is shown that the said person needs a guardian or manager to help manage the estate, the Court will make the orders.
13. Section 27 of the *Act* provides:
 1. The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including—
 - a) an order making provision for the maintenance of the person;
 - b) an order making provision for the maintenance of members of the person’s immediate family who are dependent upon the person; and
 - c) an order making provision for the payment of the person’s debts
 2. The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
 3. The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).
 4. The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.
 5. Within fourteen days of the Gazette Notice under subsection (4), any person may lodge an objection to the person appointed as manager.
14. In this instance, noting that the Ward’s condition is improving, albeit slowly, I hereby appoint the Petitioner as his manager, as provided under section 28 of the *Act*. For the avoidance of doubt, section 28 provides the duties of the Manager as follows:
 1. Where a manager is appointed under this Part, the court may, upon considering the nature of the property whether movable or immovable, and subject to subsection (2), make such orders as the court may consider necessary for the management of the estate by the manager.
 2. The manager shall not, without the approval of the court—
 - a. mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
 - b. lease any such property for a term exceeding five years; or c. invest in any securities other than those authorized under the *Trustee Act*.
 3. A manager shall not invest any funds or property belonging to the estate managed under this section:
 - a. in any company or undertaking in which the manager has an interest; or



- b. in the purchase of immovable property under the authority of section 4 (1) (d) of the Trustee Act without prior consent of the court.
4. A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.
5. Every conveyance or other instrument made pursuant to an order of the court under this Part shall be valid.
15. The Manager's powers will not include the power of alienation, sale or transfer of the Ward's moveable or immovable assets without leave of Court but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the Ward in respect of any of the assets forming part of his estate.
16. Further, the Petitioner is hereby allowed to access the following accounts, for purposes of catering for the medical and personal needs of the Ward as indicated:
 - a. Co-operative Bank of Kenya Limited, Accounts Number 01XXXX, 01XXX, 01XXXX, 01XXXX, 01XXXX; 01XXXX, which funds shall be remitted directly to the Karen Hospital Ltd in settlement of the outstanding medical bill for David Gitonga Amuru;
 - b. Equity Bank Ltd Accounts Numbers 04XXXX, 09XXXX, 09XXXX and 09XXXX, which funds shall be accessed directly by the Petitioner and used to facilitate the home-based care for the Ward as well as to settle any liabilities in respect of the Ward's business enterprises;
 - c. Postbank Limited Account Number 000XXXX, which funds shall be accessed directly by the Petitioner to settle any liabilities accruing to the Ward's estate.
 - d. The Petitioner shall furnish accounts of the monies spent within 3 months of the date hereof.
17. I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 5 DAY OF DECEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Petitioner: Ms Kinyanjui

Court Assistant: Lucy Mwangi

