



REPUBLIC OF KENYA



**In re MNK (Subject) (Miscellaneous Civil Application E072 of 2025)
[2025] KEHC 18714 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL APPLICATION E072 OF 2025
MA ODERO, J
DECEMBER 19, 2025
IN THE MATTER OF MUGO NGONINA KIBETHI
AND
IN THE MATTER OF MENTAL HEALTH ACT (CAP 248)
AND
IN THE MATTER OF AN APPLICATION FOR ACCESS OF
BARAKA SACCO ACCOUNT NO. 5988-01-0093**

**IN THE MATTER OF
PKM APPLICANT**

JUDGMENT

1. Before this Court is the Amended Notice of Motion dated 10th December 2025 by which the Applicant Peter Mugo Kabiru seeks the following orders:-
 - “1. Spent.
 2. That the Court be pleased to appoint Peter Kabiru Mugo as the legal guardian of his elderly father Mugo Ngonina Kibethi.
 3. That subsequent to 2 above the Applicant be granted access to Baraka SACCO account No. 5988-01-0093 of Mugo Ngonina Kibethi to operate the same on his behalf.
 4. That the Manager of Baraka SACCO be ordered to effect order 3 above.”
2. The application which was supported by the Applicant’s affidavit of even date was canvassed by way of oral evidence on the virtual platform.



3. The Applicant told the court that he was a son to the subject Mugo Ngonina Kibethi. The Applicant told the court that the subject was a widower who resided in Karatina in Nyeri County. He stated that the subject who is elderly has been ailing and is senile and therefore is not in a position to manage his own affairs. The Applicant seeks to be appointed as the legal guardian for the subject.

Analysis And Determination

4. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of a patient (subject) as follows:-

“Order 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 and 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 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 of such members of his family for maintenance, but need, in such case, make any order as to the custody of the person suffering from mental disorder.” [Own emphasis]
5. I have considered the petition before the court, the evidence adduced before the court as well as the documents annexed to the Petition. In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental disorder rendering him incapable of managing his own affairs.
 6. Annexed to the application is a medical report prepared by DR Suindu Musau of Karatina Hospital. Upon assessment the subject was found to be unable to walk, he had to use a wheelchair. He was noted to have poor memory and disorientation. The subject was unable to carry on a conversation with the Doctor. The doctor noted that the subject was fully dependant on caregivers.
 7. PW2 Jennifer Wanjiru Mugo, Pw3 Joseph Wachira Mugo, Pw4 Lucy Njeri Mugo, Pw5 Stephen Murage Mugo And Pw6 Anne Muthoni Mugo are all children of the subject. They all confirm that their father has been ailing for a long time. That he is senile and requires full time care. The siblings confirm that they are aware of the Application and have no objection to the same.



8. I was able to see the subject on the virtual platform. He was an elderly gentleman who was lying in his bed. The subject did not respond when spoken to. He had a vacant look and appeared oblivious to his surroundings.
9. Section 28 of the *Mental Health Act*, provides for the management of the estate of a person who is found to be mentally incapacitated.
10. In the case of RE N. M. K (2017) eKLR, the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

“In considering an application brought under section 26 and 27 of the *Mental Health Act* the court is guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers from a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [Own emphasis]

11. The Applicant is the son of the subject. His siblings have all consented to this application. I have no doubt that the Applicant is best placed to manage the affairs of the subject as legal guardian.
12. Finally I am satisfied that this application has merit. The same is hereby allowed and this court makes the following orders;-
 1. The subject Mugo Ngonina Kibethi is declared to be a person suffering from a mental disorder within the terms of section 26 of the *Mental Health Act* Cap 248 laws of Kenya.
 2. The Applicant Peter Kabiru Mugo is hereby appointed as the legal guardian for the subject and manager of his affairs.
 3. The Applicant is to be granted access to manage and operate the account of the subject being Account No. 5988-01-0093 held at Baraka SACCO.
 4. No orders on costs.

DATED IN NYERI THIS 19TH DAY OF DECEMBER 2025.

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MAUREEN A. ODERO

JUDGE

