



In re Application for Appointment as Guardian Ad Litem of MNC (Family Miscellaneous Application E028 of 2025) [2025] KEHC 19066 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19066 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E028 OF 2025**

FN MUCHEMI, J

DECEMBER 18, 2025

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA

AND

**IN THE MATTER OF AN APPLICATION FOR
APPOINTMENT AS GUARDIAN AD LITEM OF MNC**

IN THE MATTER OF

JNK APPLICANT

RULING

Brief Facts

1. The application for determination dated 11th November 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 applicant as the subject's legal guardian ad litem and manage his estate particularly bank account number 01116074923000 in Co-operative Bank Thika Branch.
2. The applicant is the wife to the subject who is said to be suffering from Alzheimer's dementia and co-morbid cerebellar atrophy. The applicant states that they had to employ a full time caregiver to look after the subject as he cannot look after himself. The applicant further states that the expenses of hiring a full time care giver and purchasing the subject's medication have become draining on the family's expenses and she is unable to financially provide for the care of the subject and especially medical expenses.
3. The applicant avers that prior to his illness, the subject was a pensioner who held an account at Co-operative Bank, Thika Branch in Account number 01116074923000. The applicant further avers that since she is unable to sustain the standard of life and care that the subject requires, it would be in the best interests if the court allowed her access to his bank account in the said account to enable her



- continue giving him a decent standard of life despite his illness. The applicant states that as guardian she undertakes to provide to her children and the court, an account on how the funds shall be utilized.
4. The applicant testified as PW1 and stated that she got married to the subject in the year 1980 and that the subject fell sick in 2019 and was diagnosed as suffering from dementia. Since then, the subject's health has since deteriorated to the extent that he cannot manage himself hygienically or even physically.
 5. The applicant testified that the subject was a clerk at Kenya Postal Corporation before he retired about 20 years ago and that she looks after the subject while their children buy his medicine and provide for his financial needs. PW1 testified that the subject receives his pension monthly through his Co-operative Bank A/C No.01116074****. However, from August this year, the subject is unable to affix his signature on the withdrawal slips or to do any financial transaction on his own.
 6. PW1 further testified that she also looks after and pays school fees for her grandchild who is 16 years as her mother, PW1's daughter, passed away. The witness testified that they have three surviving children with the subject who have all given their consent to her being appointed the subject's guardian.
 7. In support of the applicant's application, one D M C filed an affidavit dated 25th November 2025 and testified as PW2. He stated that the subject is his elder brother and the applicant is the subject's wife. PW2 testified that the subject suffers from dementia for several years and his health has deteriorated over the past two years. He further testified that the subject is unable to take care of himself and the applicant is the one who takes care of him while his children provide for him financially. The witness stated that the subject is a retired clerk from Postal Corporation. He further stated that he supports the applicant being appointed the guardian of the subject.

Issues for determination

8. 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.

9. 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.
10. 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."
11. 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.
12. According to the medical report from the County Government of Kiambu Dr. Ng'ang'a, a psychiatrist, dated 15th September 2025, the patient suffers from Alzheimer's Dementia and Co-Morbid Cerebellar atrophy. The medical report further indicates that the subject displayed a definitive decline in cognitive function as demonstrated in his mental state examination and was characteristic of his disorder. Further, the report provided that the subject is unable to make any sound or rational decisions for himself and is fully dependent on his wife, to care and provide for him and his basic needs. The subject is not of sound mind and therefore unable to engage in any rational decision to have a decent living.
13. 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 his own affairs.

Whether the applicant should be appointed as guardian to the subject

14. 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.
15. The applicant has stated that she is a wife to the subject. The applicant annexed a letter from the Chief dated 1st October 2025 providing the subject's mental illness which required that his wife and daughter accompany him in carrying out his transactions. The applicant further annexed consents from her three children indicating that they had consented to the applicant being appointed legal guardian and manager of the subject and his estate.
16. Furthermore, the court had the opportunity to examine the subject in court and noted that the subject could not talk or comprehend any questions put to him. The subject looked sickly and weak and had to be held by two of his sons to help him walk.
17. 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.
18. Thus, there being no objection from the family members of the subject and the course of the application being well supported as required under the law, it is my considered view that this application is merited.



19. The application dated 11th November 2025 is allowed in the following terms:-
- a. That the subject is hereby adjudged as a person suffering from mental illness as contemplated under Section 26 of the *Mental Health Act*.
 - b. That the applicant J N K is hereby appointed guardian of the subject.
- That the applicant is appointed as manager of the subject to manage his legal affairs in respect of his estate.
20. This being an ex parte application, there shall be no orders as to costs.
21. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 18TH DAY OF DECEMBER 2025.

F. MUCHEMI

JUDGE

