



**In re SGW (A Person Suffering from Mental Disorder) (Family Miscellaneous Application E018 of 2025) [2025] KEHC 18917 (KLR) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18917 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY MISCELLANEOUS APPLICATION E018 OF 2025**

**FN MUCHEMI, J  
DECEMBER 18, 2025**

**IN THE MATTER OF  
ENN ..... APPLICANT**

**JUDGMENT**

1. This petition dated 21<sup>st</sup> August 2025 seeks for orders of adjudging SGW (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 manager with powers to run the subject's affairs including executing legally binding documents on his behalf.
2. The petitioner is the aunt of the subject who has had a long history of mental illness including suffering from severe and chronic mental disorder since childhood which was confirmed by the mental assessment report by Dr. Linet Kendi dated 17<sup>th</sup> July 2025.
3. The petitioner states that on 14<sup>th</sup> June 2025, the subject was involved in a road traffic accident at Bluepost area on Thika-Kenol Highway resulting in injuries. The petitioner seeks to be appointed as the subject's guardian and manager to institute a suit for compensation on his behalf.
4. The petitioner testified as PW1 and stated that the subject was involved in a traffic accident in June 2025 and the injuries he sustained affected his mental and physical condition. The subject is unable to manage himself or his affairs. The petitioner further stated that the subject lives in his parents house which is 30 metres from her place and she checks up on him regularly. She also cooks for him and generally takes care of him.
5. In support of the petitioner's application, one Samuel Gachuhi Kimani, an uncle to the subject filed an affidavit dated 24<sup>th</sup> November 2025. The deponent further testified as PW2 and stated that the subject's parents are both deceased and the subject has been under the care of family members including the petitioner. PW2 further testified that the subject has a long history of mental illness owing to his inability to manage his affairs. The subject was involved in a road traffic accident at Blue Post Area



whereby he sustained injuries which worsened his mental condition. PW2 stated that they agreed as a family that the petitioner be appointed as the guardian of the subject.

### Issues for determination

6. 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 as well as manager of the Estate of the subject.

### The Law

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

7. 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.
8. 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.”
9. 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.
10. According to the medical report by Dr. Linet Kendi of Apex Specialist and Diagnostic Centre dated 17<sup>th</sup> July 2025, the patient was diagnosed with schizophrenia with no morbid intellectual disability. The subject was found to have a longstanding history of mental health challenges dating back to childhood. The report further indicated that the subject presented a severe and chronic mental disorder which significantly affects his cognitive and functional abilities. The report further provided that the



subject's condition predated the accident and appeared to have been exacerbated by the traumatic event thus requiring psychiatric care and long term multidisciplinary support and supervision.

11. The court had the opportunity to observe the subject and noted that the subject was able to recognize the petitioner as his aunt and he stated that she fed him as he could not cook for himself. The subject further stated that he was involved in an accident but he could not recall where it was. He further stated that he sustained injuries on the face.
12. 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 petitioner should be appointed as guardian to the subject as well as manager of the Estate of the subject**

13. 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.
14. The petitioner stated that she is the aunt of the subject. The petitioner's nephew filed an affidavit to support the petitioner being appointed the legal guardian and manager of the subject and his estate particularly in instituting a suit to claim compensation following the road traffic accident and injuries sustained by the subject.
15. Thus, there being no objection from any 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 the prayer for appointment of guardian ad litem and manager of the subject's estate is well grounded and merited.
16. The petition dated 21<sup>st</sup> August 2025 is hereby allowed in the following terms:-
  - a. That the subject is hereby adjudged to be suffering from mental impairment as contemplated in Section 26 of the Mental Act.
  - b. That the petitioner Emma Nyambura Ngugi is hereby appointed as guardian to the Subject as well as manager of his estate including execution of legal documents on his behalf.
17. This being an ex parte petition, there shall be no orders as to costs.
18. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 18<sup>TH</sup> DAY OF DECEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

