



**In re DMO (Miscellaneous Application 386 of 2025)
[2025] KEHC 19117 (KLR) (Family) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION 386 OF 2025**

CJ KENDAGOR, J

DECEMBER 17, 2025

**IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248
AND IN THE MATTER OF POP TO BE APPOINTED
GUARDIAN AND MANAGER OF THE AFFAIRS OF DMO**

IN THE MATTER OF

POP APPLICANT

JUDGMENT

Introduction

1. The Applicant herein filed an application dated 17th November 2025 seeking to be appointed as the guardian and manager of the affairs of his brother, DMO, hereinafter referred to as under the *Mental Health Act*, Cap 248 of the Laws of Kenya.
2. The application seeks to appoint the Applicant as a legal guardian of the estate of DMO for the purposes of facilitating his care, managing financial, legal and personal affairs and with powers to manage, sign, access, execute and/or carry out any act incidental to the affairs of DMO (herein referred to as the subject).
3. In particular, the Applicant seeks to be allowed to :
 - i. Manage the Subject's healthcare;
 - ii. Liquidate 2 acres of the subject's land, which is part of the 4 acres being KITALA MUNICIPALITY BLOCK 19/BIDII/XXX in the subject's name.
 - iii. Use the remaining parcel of land to do farming for the upkeep of DMO.
 - iv. Execute documents on behalf of the subject



- v. Settle any payments related to medical costs and upkeep of DMO.
4. The subject, DMO, is a 64-year-old man suffering from schizophrenia, which renders him incapable of managing his affairs. He is unmarried and has no children. The Applicant, who has been taking care of him, faces financial strain and wishes to sell part of Dominic's property to manage his care effectively.
5. The Applicant has provided a medical report from Nakuru Heart Centre dated 27th October 2025 and from Mathari National Teaching and referral hospital dated 28th September 2022 confirming the subject's mental condition, which is critical in determining the necessity of appointing a guardian and manager for his affairs.

Determination:

6. The primary legal issue for determination is whether the Applicant should be appointed as the guardian and manager of the Respondent under the *Mental Health Act*. Additionally, the court must determine whether the Respondent can be declared a person suffering from a mental disorder as defined under Section 26 of the *Mental Health Act*.
7. Section 26 of the *Mental Health Act*, Cap 248 Kenya Law, provides for the appointment of a manager for persons suffering from mental disorders.
 26. ... An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—
 - (a) a supporter of the person with mental illness; or
 - (b) the representative of the person where the person with mental illness has not appointed a supporter.
 - (2) An application under subsection (1) shall be submitted together with an affidavit setting out—
 - (a) the grounds upon which the application is made;
 - (b) the full particulars as to the property and relatives of the person to whom it relates; and
 - (c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness
8. The Applicant has demonstrated through medical evidence that DMO is suffering from schizophrenia and is unable to manage his affairs. The burden of proof in civil matters is on a balance of probabilities, and the Applicant has met this threshold by providing credible evidence of the subject's mental condition.
9. In *Re GMM* [2019] eKLR, the court emphasized the importance of appointing a guardian where it is in the best interest of the person suffering from a mental disorder. Similarly, in this case, appointing the Applicant as guardian and manager would serve the best interests of the Respondent.
10. The medical report submitted by the Applicant corroborates the claim that DMO is suffering from schizophrenia. Under Section 26 of the *Mental Health Act*, such evidence is sufficient for declaring an individual as having a mental disorder.
11. From the foregoing, this court must ensure that such declarations are made with caution and based on substantive evidence to protect the rights and dignity of individuals with mental disorders.



12. Based on the evidence presented, this court finds that it is in the best interest of DMO to have POP appointed as his guardian and manager.
13. Accordingly, this Court hereby allows the application dated 17th November, 2025.
14. The Applicant, POP, is hereby appointed as the guardian and manager of DMO's affairs.
15. As per the provisions of Section 27 (4) and (5) of the *Mental Health Act* Cap 248, a Gazette Notice to be issued informing the public of the appointment of the Applicant as the manager of the estate of DMO.
16. The guardian has also sought authority to liquidate 2 acres of the subject's land in Kitale Municipality Block 19/Bidii/XXX to fund his medical costs and care. I make the following orders regarding this prayer;
 - i. The Guardian is authorized to liquidate a portion as deemed necessary to meet the patient's medical costs and costs of care, the portion shall not exceed 2 acres.
 - ii. The Guardian shall, prior to sale, obtain a valuation of the parcel and file the valuation report with this court.
 - iii. The asset shall not be sold at a price below the valuation report without prior approval of the court.
 - iv. The proceeds from the sale shall be deposited into a bank account held in the name of the patient, with the Guardian as trustee, for the sole benefit of the patient.
 - v. The funds in the account shall only be applied for the benefit of the patient.
 - vi. The Guardian shall, within 30 days of the sale, (a) transmit a copy of the sale agreement, (b) file a report on the sale proceeds, (c) confirm the deposit into the designated account, and (d) provide a breakdown of how the funds will be applied.
 - vii. No further portion may be sold without prior approval by the court.
17. Costs of this application shall be paid out of the subject's estate.
18. The matter to be mentioned within 180 days to confirm compliance.
19. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 17TH DAY OF DECEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Pambo, Applicant

