



**In re Estate of SKI (Miscellaneous Application E248 of 2025)
[2026] KEHC 51 (KLR) (Family) (16 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 51 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E248 OF 2025

H NAMISI, J

JANUARY 16, 2026

**IN THE MATTER OF SECTIONS 26, 27, 28, 29
& 30 OF THE MENTAL HEALTH ACT, CAP 248**

AND

IN THE MATTER OF ESTATE OF SKI

IN THE MATTER OF

MMI 1ST PETITIONER

JRI 2ND PETITIONER

JUDGMENT

1. The Petition dated 19 September 2025 seeks that this Court be pleased to:
 - i. Declare that the Respondent, SKI, is suffering from mental infirmity and is incapable of managing her affairs within the meaning of sections 26 and 28 of the [Mental Health Act](#);
 - ii. Appoint the Petitioners herein, MMI and JRI, as the legal guardians and managers of the estate of the Respondent, with full authority to:
 - a. Manage her finances and property;
 - b. Execute legal, medical and financial documents on her behalf;
 - c. Settle her debts, obligations and medical expenses;
 - d. Generally safeguard her welfare and interests in accordance with the law.
 - iii. Issue any such further or other orders as the Court may deem fit and just in the circumstances;



- iv. Make no order as to costs, as this Application is brought in the best interest of the Respondent.
2. The Petitioners herein aver that the Ward, a 64-year-old retired lady, has succumbed to the ravages of Senile Dementia, a neurodegenerative condition that has eroded her memory, cognitive faculties, and ability to function independently. The Applicants bring this Petition in their capacity as children of the Ward, seeking the legal imprimatur to access their mother's funds held in various financial institutions in order to pay for her escalating medical bills, daily maintenance, and nursing care.
 3. The Ward is an adult female of Kenyan nationality, born in 1961. The evidence presented indicates that she is a single mother who raised her two children without the assistance of a spouse.
 4. The 1st Petitioner is the biological son of the Ward. He is a businessman residing in Ruai, Nairobi. The 2nd Petitioner is the biological daughter of the Ward. She is 25 years old and also resides in Ruai. The filial relationship is confirmed by the Birth Certificates annexed to the Supporting Affidavit.
 5. The family's living arrangement is pertinent to the question of guardianship. The 1st Petitioner testifies that he lives with the Ward in Ruai. The Ward occupies her own house within the same compound or locality, but she is no longer capable of independent living. She is assisted by a full-time house help, Pamela Akinyi, and receives constant supervision from her children. This factual setup demonstrates an existing structure of care which the Petitioners seek to formalize and resource.
 6. The deterioration of the Ward's health has been progressive. According to the oral testimony of the 2nd Petitioner, the family began noticing signs of mental decline in 2021. A formal medical diagnosis was sought and obtained in 2022.
 7. The Petitioners rely on two primary medical documents. The Nairobi Hospital Radiology Report dated 2 September 2022, a CT scan of the head, indicates Mild ventricular dilatation, dilated cortical sulci, sylvian fissures, basal cisterns and the subarachnoid space and Bilateral periventricular white matter hypodensities. The conclusion is Diffuse brain atrophy and Leukoaraiosis.
 8. From my research, I discern that brain atrophy refers to the loss of brain cells (neurons) and the connections between them. In the context of a 60-year-old patient, such diffuse atrophy is the hallmark physiological evidence of dementia. Leukoaraiosis indicates disease of the white matter, often associated with vascular dementia or cognitive decline. This provides objective, physiological corroboration for the behavioural symptoms described by the family.
 9. The Afya Precise Medical Center Report dated 5 July 2025, authored by Titus K. Muriuki, Head of Clinical Services, serves as a recent update on the Ward's condition. It states that the Ward has been on medication since 2021 for senile dementia. The condition requires continuous management, confirming the chronic and irreversible nature of the ailment.
 10. The Petitioners' testimony reinforces these findings. The 2nd Petitioner stated that the Ward's memory is shrinking and that her brain cannot come back to normal. The medicines are to regulate her condition. This lay description accurately aligns with the medical reality of progressive dementia, where the goal of treatment is management of symptoms rather than a cure.
 11. On 5 November 2025, this Court conducted an inquiry into the mental condition of the Ward. This interaction is mandated by Section 26(3) of the *Mental Health Act*, which requires the Court to make an inquiry before making orders. It is also a fundamental aspect of the Court's duty to ensure that the subject of the application is not being deprived of their rights on frivolous grounds. This Court is satisfied, based on this direct interaction, that the medical reports provided are accurate. The Ward is physically present but cognitively absent regarding the management of her affairs.



12. With respect to her estate, the Ward is not indigent. She has accumulated savings and assets during her working life. However, these assets are currently frozen due to her inability to provide valid instructions to the financial institutions holding them.
13. The Petition identifies three key institutions where the Subject holds accounts:
 - i. Standard Chartered Bank Kenya Limited.
 - ii. HFC Limited (Housing Finance Company).
 - iii. Nacico Sacco Society Limited.
14. The Petitioners explicitly state that they are unsure of the exact quantum of funds in these accounts, a common predicament in such cases where the parent loses capacity before disclosing full financial details. They seek access not for their own benefit, but to look after the Ward, for her medication and house manager.

Analysis & Determination

15. The deprivation of an individual's legal capacity is a grave judicial act. It strikes at the very heart of personhood, autonomy, and the constitutional right to dignity guaranteed under Article 28 of *The Constitution*. It is a jurisdiction that this Court exercises with extreme caution, circumspection, and a deep sense of responsibility. As Lord Donaldson MR observed in the English case of *Re MB (Medical Treatment)* EWCA Civ 3093 (cited with approval by the Supreme Court of Kenya in *MMG v Tribunal Appointed to Investigate the Conduct of Hon. Justice MMG* [2023] KESC 73 (KLR), the capacity to decide is fundamental to human agency. Therefore, the presumption of capacity must prevail until displaced by cogent, compelling, and medically sound evidence.
16. In *Hon. Lady Justice Mary Muthoni Gitumbi* case, the Supreme Court noted that while the *Mental Health Act* is silent on mental capacity, the test is functional. The Court cited with approval the English definition from the *Mental Capacity Act 2005*, stating that a person lacks capacity if they are unable to understand, retain, or weigh information relevant to a decision.
17. Applying the *Gitumbi* case functional test to the present case, Can the Ward understand that she has bills to pay? Her testimony suggests she believes she is just in the house doing nothing. The medical evidence of brain atrophy confirms a physiological inability to retain memory. There is no evidence she can weigh the pros and cons of liquidating assets for her care.
18. I, therefore, find that mental infirmity occasioned by Dementia as pleaded by the Petitioners is legally synonymous with mental disorder under the Act for the purposes of this Petition.
19. Section 26(1) of the Act establishes a hierarchy for applicants:

An application... may be made, in the following order of priority... by

SUBPARA (a)

a spouse;

SUBPARA (b)

a relative;

SUBPARA (c)

any other person...



20. The Ward has no spouse. The Petitioners are her biological children. They hold the highest priority under the law. The letter from Senior Chief Anderson Cheruimot provides administrative confirmation of this family unit.
21. Having considered the pleadings, the evidence, the applicable law, and the overriding interest of justice, I am satisfied that the Petition has merit. I, therefore, make the following orders:
- i. The Ward is hereby declared to be a person suffering from a mental disorder, specifically Dementia, within the meaning of Sections 2 and 26 of the *Mental Health Act*, and is consequently incapable of managing her own affairs.
 - ii. MMI (ID No. 2813) and JRI (ID No. 37****14) are hereby appointed as the joint Legal Guardians of the person of the Ward and Managers of her estate pursuant to Sections 26 and 28 of the *Mental Health Act*.
 - iii. The Petitioners shall cause a notice of this appointment to be published in the Kenya Gazette within thirty (30) days of this order, as required by Section 27(4) of the *Mental Health Act*;
 - iv. The Managers are hereby authorized to:
 - (a) Manage and administer the estate of the Ward for her maintenance, medical care, and general welfare;
 - (b) Access, operate, and withdraw funds from the Ward's bank accounts held at Standard Chartered Bank Kenya Limited, HFC Limited and Nacico Sacco Society Limited;
 - (c) The Managers are authorized to demand, collect, and receive all income, dividends (specifically from Nacico Sacco), pensions, or other monies due to the Ward;
 - (d) The Managers shall apply the funds to pay all debts, medical bills, insurance premiums (NHIF/SHIF), and expenses for the daily upkeep and house-help salaries for the Ward.
 - v. The Managers SHALL NOT sell, mortgage, charge, lease for a period exceeding three years, or otherwise alienate any immovable property belonging to the Ward without a specific, prior order of this Court.
 - vi. The Managers are directed to file a full and accurate Inventory of the assets and liabilities of the Ward within sixty (60) days from the date hereof;
 - vii. The Managers shall file a statement of accounts annually with the Deputy Registrar of this Court, detailing the income received and the expenditure incurred on behalf of the Ward.
 - viii. I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 16 DAY OF JANUARY 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Petitioners: Mr. Mwaura

Court Assistant: Lucy Mwangi

