



**In re Estate of SADH (Miscellaneous Civil Case E003 of 2025)
[2026] KEHC 89 (KLR) (16 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 89 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
MISCELLANEOUS CIVIL CASE E003 OF 2025**

FR OLEL, J

JANUARY 16, 2026

**IN THE MATTER OF AN APPLICATION BY WLH TO BE APPOINTED GURDIAN
AD LITEM & LEGAL MANAGER OVER THE AFFAIRS OF THE ESTATE OF SADH**

BETWEEN

WLH APPELLANT

AND

RA 1ST RESPONDENT

AD 2ND RESPONDENT

RULING

A. Introduction

1. The Application before this court is the Notice of motion application dated 26th November, 2025 brought pursuant to the provisions of Order 51 rule 1 of the Civil procedure Rules, and Section 3,3A & 3D of the *Mental Health Act*, Cap 248 Laws of Kenya. The Applicant’s seeks for orders that;
 - a. Spent.
 - b. That this Honourable Court be pleased to issue an Order Compelling the 1st Respondent to immediately and Unconditionally surrender to the Petitioner the Subject’s National Identity Card and his Mobile phone, namely OPPO A16K
 - c. That Costs of this Application be provided for.
2. The Application is supported by the grounds on the face of the said application and the supporting affidavit of the Applicant, who depones that this court had appointed her as one of the guardians of the “subject” herein one ADH and also granted her physical custody of the said person, who was an invalid, and was totally depended on her for his daily/basic needs. In compliance with the court



order earlier issued, the 1st respondent had delivered the “subject” to her home on 1st November 2025, but inexplicably failed to surrender the “subjects” National Identity card and Mobile phone (OPPO A16K), Which act was detrimental to the “Subject” well-being, as he needed to access essential health services through Social Health Authority (SHA) and could not do so without the said items.

3. Despite formally requesting for these documents from the 1st respondent through parties respective advocates, the 1st respondent had remained adamant in his continued retention of the said items, which act was not only unlawful, but was in done in blatant disregard of the earlier court orders issue. The applicant thus prayed that this Application be allowed to enable her overcome the administrative hurdles she was facing in taking care of the “Subjects” health. Granting the orders sought would also not prejudice the 1st respondent in any manner and was also just and equitable given the circumstances herein.
4. The 1st respondent opposed this Application through his replying Affidavit dated 13th January 2026, where he deponed that, the subject was mentally unstable and from his pay slip which he had accessed, he had noted that the subjected had many loans charged to his pay slip running to Millions of shillings, yet no explanation had been offered as to how the said sums were utilized and thus he believed that it was the Applicant who had been manipulating the ‘ Subjects’ account in collusion with financial institutions to the “Subjects” detriment.
5. The respondent further deponed that having discovered these financial indiscretions, he had filed a complaint with the DCI-Marsabit relating to the fraudulent dealing of the Applicant bank Account, vide OB NO 24/2/12/25 and left the “Subjects” National identity card and OPPO phone under the custody of DCIO-Marsabit to facilitate investigations regarding the issues raised. The Application filed was therefore made without merit and he urged the court to dismiss the same.

B. ANALYSIS & DETERMINATION

6. I have carefully considered the Application and Replying affidavit filed in opposition thereto and the yardstick is for the court to balance or weigh the scales of justice by ensuring that welfare and interest of the subject herein, “ADH” is well looked after, while ignoring the dysfunctional and toxic relationship which prevails between the Applicant and the 1st respondent.
7. The issues of financial impropriety raised by the respondent is a red herring, and an afterthought, given the fact that the complaint to DCI-Marsabit is filed on 02.12.2025, way after this Application had been filed and one cannot help but to draw the conclusion, it is a diversionary tactic to muddle the water for selfish gain. Be that as it may vide this courts ruling dated 21st October 2025, the 1st respondent is now a co-guardian, of the “Subject” herein and will have a say should before any future financial obligation is incurred.
8. Secondly both the phone and National identity card belong to the “subject” herein and it is only logical that the primary care giver has access to both to enable her assist the “subject” get medical care. It is also common ground that to access SHA services the patient’s National identity card is needed and an OTP Number is sent on the patient phone for verification. Therefore retaining the same with DCI will be detrimental to the subject herein.

DISPOSITION

9. Considering all relevant factors, I do find that the Notice of Application dated 26th November 2025 has merit and the same is allowed in terms of prayer (2) with costs to the Applicant.



10. The 1st respondent is directed to go to DCI-Marsabit to collect the “subjects” National identity card and OPPO A16K phone and forward the same to the Applicant within 7 days of issuance of this order, and if he fails to do so, then the DCIO-Marsabit will release the said items directly to the Applicant without any conditionality attached thereto.

11. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MARSABIT THIS 16TH DAY OF JANUARY, 2026.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 16TH DAY OF JANUARY, 2026.

In the presence of;

N/Afor Applicant

N/Afor Respondent

Mr. JarsoCourt Assistant

