



In re AAR (A Person Suffering from Mental Disorder) (Miscellaneous Application E030 of 2025) [2026] KEHC 63 (KLR) (Family) (16 January 2026) (Ruling)

Neutral citation: [2026] KEHC 63 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS APPLICATION E030 OF 2025

H NAMISI, J

JANUARY 16, 2026

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

AND

IN THE MATTER AAR (A PERSON SUFFERING FROM MENTAL DISORDER)

**AND IN THE MATTER OF AN APPLICATION BY MWT TO BE APPOINTED
MANAGER OF THE ESTATE AND GUARDIAN AD LITEM OF AAR**

BETWEEN

MWT APPLICANT

AND

BRM RESPONDENT

RULING

1. The Notice of Motion dated 22 January 2025 seeks:
 - i. That this Honourable Court hereby appoints the Applicant herein as Guardian and/or next friend and/or Manager of the Subject’s estate and to conduct legal proceedings on behalf of the Subject; owing to an inquiry that established that the Subject is suffering from mental disorder and is incapable of managing her own affairs;
 - ii. That AAR be declared to be suffering from mental disorder as defined in the [Mental Health Act](#), Cap 258 Laws of Kenya;
 - iii. That this Honourable Court be and is at liberty to grant any other further orders as the Court may deem fit and just to grant in the circumstances and in the interest of the Subject;



- iv. That costs incidental to this suit be borne by the Respondent.
2. The Applicant is the mother of the Ward, who is aged 52 years old. The Ward is the wife of the Respondent, their union having been solemnised at the Fellowship Bible Baptist Church, Kangemi. According to the Applicant, the union between the Ward and Respondent was blessed with one child, currently aged 12 years.
3. The Application is premised on the grounds on the face thereof and supported by an Affidavit sworn by the Applicant. The Applicant also appeared in Court and gave her testimony, to the effect that the Ward suffered a stroke, which affected part of her body including her brain. The Ward was treated at various medical facilities including Nopri Medical Clinic and Metropolitan Hospital. Attached to the Supporting Affidavit are 3 medical reports. A report from Nopri Medical Clinic dated 30 May 2024 indicates that the Ward had stopped talking and exhibits abnormal behaviour.
4. There is also a Medical Report dated 7 October 2025 from Mathare National Teaching and Referral Hospital that indicates that the Ward suffers from Schizophrenia and hypertension with CVA. The Applicant's case is that the Ward is incapable of managing her own affairs or instructing counsel in a pending divorce matter (Divorce Cause No. E374 of 2023) and necessitating the appointment of a surrogate decision-maker to protect her estate from dissipation by the Respondent, the estranged husband.
5. The record indicates that the Respondent was duly served with the pleadings and hearing notice. The Affidavit of Service sworn by Kevin S. Wanjala on 27 June 2025 confirms that service was effected electronically upon the Respondent's Advocates on record in the related divorce proceedings, M/s Amalemba & Associates Advocates, via email. Despite service, the Respondent has neither entered an appearance, filed a Replying Affidavit nor appeared during the mentions and hearing of the Application. Consequently, this matter has proceeded as undefended. However, the Court is mindful of the gravity of stripping an individual of their legal capacity or displacing a spouse from their statutory priority. The Court, therefore, does not treat the non-appearance of the Respondent as an admission of the claim, but as a waiver of the right to contest the irrefutable evidence presented.
6. At the hearing, the Ward was presented before the Court, to enable the Court to form an independent judicial opinion regarding the Ward's cognitive presence and ability to comprehend proceedings. The Ward was non-responsive and did not react when called. This inquiry is a mandatory procedural safeguard through which the Court reassures itself that the Application is not a tool of oppression by relatives seeking to control a person's assets, but a necessary intervention for a person who is truly non compos mentis. My observation of the Ward confirmed a state of aphasia and mutism, rendering her functionally incapable of instructing counsel or managing her affairs.
7. The convergence of the judicial inquiry and the triplicate medical evidence lead to an inescapable conclusion: The Ward suffers from a dual diagnosis of a neurological deficit (post-stroke aphasia/dementia) and a psychiatric disorder (Schizophrenia). This condition has obliterated her legal capacity to act independently. She falls squarely within the definition of a person requiring a manager and guardian under the law.
8. Historically, Kenyan law operated under a "medical model" of disability, where a diagnosis of "unsound mind" automatically stripped an individual of legal capacity. This was codified in the old [Mental Health Act](#) (Cap 248) and remains the terminology used in Order 32 Rule 15 of the Civil Procedure Rules.
9. However, the enactment of the Mental Health (Amendment) Act, No. 27 of 2022 marked a paradigm shift. This Amendment aligns Kenyan law with the United Nations Convention on the Rights of



Persons with Disabilities (CRPD), specifically Article 12, which espouses the principle of "Equal Recognition before the Law."

10. Section 3K of the 2022 Act explicitly states:

A person with mental illness has a right to recognition before the law and shall enjoy legal rights on an equal basis with other persons in all aspects of life.

11. This creates a fascinating legal tension. On one hand, the Civil Procedure Rules contemplate a 'Guardian ad Litem' or 'Next Friend' for a person of unsound mind, suggesting substituted decision-making. On the other hand, the [Mental Health Act](#) 2022 advocates for 'Supported Decision Making' through a Supporter rather than a guardian.

12. In Petition No. 10 (E013) of 2022, Hon. Lady Justice Mary Muthoni Gitumbi vs. Tribunal Appointed to Investigate Her Conduct, the Supreme Court grappled with the definition of mental incapacity. The Court observed that the [Mental Health Act](#), prior to full operationalization of the amendment, did not clearly define 'incapacity' but focused on 'disorder'.

13. While the law prefers 'support', there are factual scenarios where the disability is so severe—such as advanced dementia or, in this case, severe stroke-induced cognitive failure—that support is impossible because the subject cannot express a will or preference to be supported. In such cases, the Court must revert to its *parens patriae* jurisdiction to appoint a Manager and Representative (functionally a Guardian) to prevent a vacuum in protection. Therefore, if the litigant cannot understand the proceedings, a Next Friend must be appointed.

14. The Respondent, as the spouse, would ordinarily have priority to be appointed Manager of the Estate and Guardian. Section 26 of the [Mental Health Act](#) allows for appointment of a near relative. In succession law, the spouse is first in line. However, this priority is not absolute. It is rebuttable by evidence of a conflict of interest. In *In Re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR, the Court emphasized that the discretion to appoint must be exercised in the best interest of all concerned.

15. In this case, the conflict is glaring. The Ward and Respondent are adversaries in Divorce Cause No. E374 of 2023. Order 32 Rule 4(1) of the Civil Procedure Rules expressly forbids a person from being a Next Friend if their interest is adverse to that of the minor, or person of unsound mind, or if they are a defendant in the suit. The Applicant alleges the Respondent has deserted the Subject and is dissipating the matrimonial property (L.R. No. 27903/69).

16. It would be legally absurd to appoint the Respondent to manage the estate of a person he is divorcing, or to conduct litigation against himself. The Applicant, being the mother and current caregiver, is the only suitable person under Order 32 Rule 15.

17. The Ward owns property, specifically L.R. No. 27903/69, Pipeline, Nairobi. The Applicant fears dissipation. Section 26 of the [Mental Health Act](#) empowers this Court to make orders for the management of the estate. I am satisfied that the Applicant should be appointed Manager of the Estate. However, to safeguard the Ward's proprietary rights against any future conflict or mismanagement, I will impose a restriction on the sale of immovable property without leave of the Court. This aligns with the protective mandate in Section 27 of Act.

18. The record indicates the Ward has a minor child, M.W.H, aged 12 years. The Applicant is currently caring for this child. Under Article 53(2) of [The Constitution](#), the child's best interests are paramount. The appointment of the Applicant as Manager will facilitate access to funds for the child's maintenance and education, which the Ward is currently unable to provide.



19. Having considered the Application, the Affidavits, the Medical Reports, and the prevailing law, I find that the Applicant has proved her case on a balance of probabilities. The Ward is in dire need of legal and administrative protection.
20. Therefore, this Court makes the following orders:
- i. A declaration is hereby made that Akilen Asante Ritho (ID No. 11XXXXXXXXXX5) is a person suffering from mental disorder within the meaning of the *Mental Health Act* and is a person of unsound mind for the purposes of Order 32 Rule 15 of the Civil Procedure Rules, rendering her incapable of managing her own affairs or protecting her interests in legal proceedings;
 - ii. MWT (ID No. 3XXXXXX64) is hereby appointed as the Manager of the Estate and Guardian ad Litem / Next Friend of the Ward for the purpose of all legal proceedings;
 - iii. The Applicant is granted leave to prosecute, conduct, and finalize Divorce Cause No. E374 of 2023 on behalf of the Ward and any subsequent Matrimonial Property Cause, to ensure the Ward's interests are protected against the Respondent.
 - iv. The Manager shall have the authority to:
 - (a) Demand, receive, and recover all income, rents, and debts due to the Ward;
 - (b) Utilize the income for the medical care, maintenance, and welfare of Ward and her minor child, M.W.H
 - (c) Manage and preserve the property known as L.R. No. 27903/69, Pipeline, Nairobi.The Manager Shall Not sell, charge, mortgage, gift, or transfer any immovable property belonging to the Ward without a specific, written authority from this Court.
 - v. The Manager shall file a comprehensive inventory of the Ward's assets and a report on the Ward's health status with the Deputy Registrar of this Court within 90 days of this Ruling, and subsequently every 12 months.
 - vi. The costs of this Application shall be borne by the Estate of the Ward.

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:

Applicant: Mr. Simiyu h/b Mr. Munikah

Court Assistant: Libertine Achieng

