



**In re FMGR (Subject) (Miscellaneous Application E056 of 2025)
[2026] KEHC 157 (KLR) (14 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E056 OF 2025**

G MUTAI, J

JANUARY 14, 2026

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT
OF A GUARDIAN AD LITEM AND MANAGER**

AND

IN THE MATTER OF FMGR(THE SUBJECT)

BETWEEN

MPREF APPLICANT

AND

NCBA BANK INTERESTED PARTY

JUDGMENT

1. The subject of this application is FMGR . Ms. FMGR is an 86-year-old retired teacher. The applicant, MPREF, is her niece and her primary caregiver. The subject lives with the applicant in Mombasa.
2. The applicant seeks to be appointed as the guardian ad litem of the subject and the manager of her estate. The estate includes bank accounts maintained with the interested party at the NCBA Moi Avenue Branch, to wit: account numbers 65603xxxxx, 656037xxxx, 6560370xxx, and a joint account number 790628xxxx. These accounts have the funds necessary for the subject’s medical treatments, medication, physiotherapy, home care assistance, and basic living expenses.
3. The applicant thus filed the Notice of Motion dated 10th December 2025 seeking to be granted the necessary orders.

The application

4. The application is dated 10th December 2025. Vide the said application, the applicant seeks the following order: -



1. That this honourable Court be pleased to declare that FMGR , aged 86 years, is a person suffering from a mental disorder within the meaning of section 26 of the [Mental Health Act](#), occasioned by advanced/severe Parkinson’s disease, and is thereby incapable of managing her personal affairs and financial matters;
 2. That this honourable Court be pleased to appoint MPREF, the applicant herein and primary caregiver, as the guardian of the subject’s person;
 3. That this honourable Court be pleased to appoint the applicant as the manager of the estate of FMGR , limited to all bank account nos. 65603xxxxx, 656037xxxx, 6560370xxx, and the joint account no 790628xxxx, all held in the name of the subject at the NCBA Bank.
 4. THAT this Honourable Court be pleased to issue an order directing NCBA Bank to:
 - (a) Grant the Applicant full access to all accounts held at NCBA Bank- Moi Avenue Branch, Mombasa, being account numbers 65603xxxxx, 656037xxxx, 6560370xxx, and joint Account No. 790628xxxx belonging to FMGR ;
 - (b) List the Applicant as a signatory to the said accounts;
 - (c) Allow the Applicant to operate, control, withdraw from, deposit into, manage, and make all necessary financial decisions regarding the accounts for purposes of the Subject’s treatment, care, and daily needs.
 5. THAT this Honourable Court be pleased to authorize the Applicant to use the funds withdrawn from the Subject’s accounts strictly for:
 - (a) Medical treatment and medication;
 - (b) Hospitalization bills;
 - (c) Home-care support;
 - (d) Basic necessities including food, accommodation, and personal care items.
 6. THAT the costs of this Application be provided for.
5. The application is based on the affidavit of the applicant and Dr. Vinesh P Vaghela and the grounds stated in the body of the application, which state, in the main, that the subject has advanced Parkinson’s disease, a progressive neurodegenerative disorder that significantly impairs movement, cognition, speech, coordination, balance, and the ability to perform daily functions. The said disease has rendered the subject unable to manage her financial affairs, make coherent decisions, or access funds for immediate and essential needs. It was further averred that there are funds in the named accounts which can be used to treat the subject.
6. The applicant attached a medical report prepared by Dr. Vaghela on 28th November 2025, and an extract of the subject’s bank statement in respect of bank account number 6560370xxx, which shows that as at 31st October 2025, she held a credit balance of Kes. 530,480.09 in the said account.

Proceedings

7. When the Notice of Motion, the subject of the judgment was filed, this Court ordered the applicant to have the subject examined by a psychiatrist at Port Reitz Hospital. The Court directed that the matter would be heard on 18th December 2025 in open Court. All the witnesses were to be present in open Court.



8. The matter was heard on 18th December 2025. Counsel for the applicant, Mr Lawrence Obonyo, submitted that it would be in the interest of justice to allow the application, as the ailment afflicting the subject was at an advanced stage. The subject was in urgent need of treatment and care. Thus, it was necessary that the applicant be granted access to the accounts. Upon the conclusion of the hearing, the Court reserved its ruling for 14th January 2026.

Analysis

9. I have perused the foreigner identity card of the subject. According to the said document, she was born on 3rd August 1939 and is a British citizen. The report prepared by Dr Vaghella states that the subject has been under the good doctor's care since 2008. It was the doctor's finding that the subject has advanced/severe Parkinson's disease, which had confined her to a bed or a wheelchair, and she cannot write or sign anything. He further stated that the subject could only communicate in monosyllabic words.

The Applicable Law

10. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the *Mental Health Act*, as amended in 2022. A manager's duty is to safeguard the property of the subject. The appointment of a manager must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said Act provides that:-

“A manager shall perform the manager's duty under this Act responsibly, taking into account the best interests of the estate of the person who is suffering from mental illness.”

11. Under the *Mental Health Act*, the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. MPREF is not a “supporter” of the patient, as she wasn't appointed in writing as such. It is, however, my finding that, being the niece of the subject, as well as her caregiver and nearest relative, she is a “representative” within the meaning of the Act and therefore has the locus standi to file the instant application.

Analysis of the Facts and the Law

12. In re CWN (a person suffering from mental disorders) [2022]eKLR the Court stated:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders, the petitioners must adduce evidence sufficient to satisfy the Court, firstly that the patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the patient is incapable of managing her own affairs.”

13. I would add that the third test is whether the application is in the subject's best interest. People with mental illnesses have diminished capacities to manage their affairs. Their situation is analogous to that of children. The court must, therefore, be sure that the application was filed in the subject's interest. In addition, the orders that the court issues must be aimed at achieving the said goal.
14. The estate of the subject includes bank accounts maintained with the interested party at the NCBA Moi Avenue Branch, to wit: account numbers 65603xxxxx, 656037xxxx, 6560370xxx, and a joint account number 790628xxxx. The applicant seeks access to the said accounts to pay the subject's medical bills, purchase medication, and cover the subject's living expenses.



15. I have read the reports written by Dr Vaghella. I am satisfied that FMGR has mental illnesses. Based on the submissions I received and the report from a medical professional, the subject is unable to manage her own affairs. It will therefore be in her best interest that a manager/guardian-ad-litem is appointed to manage her estate. The manager/guardian ad litem will ensure that he receives the most appropriate care possible and that his estate is not wasted. Parkinson's disease has no cure, and given her advanced age, the subject's condition is only going to get worse, not better.

Determination and Disposition

16. The applicant's affidavit and the report of Dr. Vaghela all indicate that the subject is unable to manage her affairs. The applicant, as the primary caregiver, is in the best position to manage her estate. The applicant will ensure that the subject receives the most appropriate care possible, that her estate is not wasted or lost, and that her best interest is protected.

17. I am satisfied based on the evidence adduced that the patient has a mental illness. There is therefore a case for the appointment of the applicant, the guardian ad litem of FMGR, and the manager of her estate. In the circumstances, I order as follows: -

1. The applicant, MPREF, is hereby appointed as the guardian ad litem of the subject FMGR, and also as the manager of her estate;
2. MPREF shall manage the subject's estate but will not have the power to sell, charge, or otherwise alienate her immovable property, without the leave of the Court;
3. Further to the foregoing, MPREF shall have full access to all accounts held at NCBA Bank, Moi Avenue Branch, Mombasa, being account numbers 65603xxxxx, 656037xxxx, 6560370xxx, and joint Account No. 790628xxxx belonging to FMGR and shall be a signatory to the said accounts with powers to operate, control, withdraw from, deposit into, manage, and make all necessary financial decisions regarding the accounts for purposes of the Subject's treatment, care, and daily needs;
4. Pursuant to section 27(4) of the [Mental Health Act](#), the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette;
5. The manager/guardian ad litem shall file an inventory and statement of account of the estate of the patient within 6 months of the date hereof.
6. I make no orders as to costs as this is a non-contentious matter under the [Mental Health Act](#).

18. It is so ordered.

DATED AND SIGNED AT MOMBASA, THIS 14TH DAY OF JANUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Obonyo, for the Applicant;

Esther - Court Assistant.

