



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re JKG (Miscellaneous Application E051 of 2025)  
[2026] KEHC 314 (KLR) (20 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS APPLICATION E051 OF 2025  
DO CHEPKWONY, J  
JANUARY 20, 2026  
IN THE MATTER OF MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA  
AND  
IN THE MATTER OF JKG**

**IN THE MATTER OF  
RWK ..... PETITIONER**

**RULING**

1. Vide a Petition dated 15<sup>th</sup> October, 2025 brought under Section 26 and 28 of the [Mental Health Act](#), Cap 248 of the Laws of Kenya, the Applicant RWK seeks for the following orders:-
  - a. That JKG is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#), Cap 248 of the Laws of Kenya.
  - b. That RWK by herself or her appointed agents be appointed as the Manager of the Estate of JKG which includes any such description of movable or immovable property, moneys, legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right take over and/or institute any litigation and/or claims and also to include not of any person but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.
2. The Petition is based on the grounds as set out on its face and reiterated in the Verifying Affidavit of the Petitioner. According to the Petitioner, she is the wife to the subject, JKG who is sixty (60) years old suffered a stroke in the year 2025. The Petitioner avers that she has been taking care of him since then as his memory is not intact, and he is unable to compose or construct sentences in conversations, comprehend others and has to use caregivers to assist with feeding and toilet use and has been undergoing physiotherapy as indicated in the medical report dated 3<sup>rd</sup> June, 2025. For all these, the Petitioner holds that she is the one who has been catering for the subject's medical bills.



3. It is the Petitioner's averment that the subject has several properties in his name as well as businesses, and a bank account being Cooperative Bank Account No. 0110XXX and other dealings and affairs of similar kind which he is unable to manage due to his medical condition.
4. Therefore, the Petitioner seeks orders that the subject be adjudged to be a person suffering from mental disorder and for her appointment as his guardian and manager over his affairs, and that it will be in the interest of justice that the application be allowed.
5. The matter came up for hearing on 1<sup>st</sup> December, 2025 and the Petitioner, RWK testified and confirmed that she was the wife of the subject, having been married to him for the past twenty-six (26) years and had been blessed with three (3) issues namely IGK aged twenty six (26) years, FWK aged twenty-three (23) years old and CMK aged twenty (20) years old. She indicated that F and C were in college and at home respectively. The Petitioner has also gone on to confirm that the subject suffered a stroke in May, 2025 and since then he has been unable to manage his affairs that he requires a caregiver. Her evidence was confirmed by her three (3) children who testified as PW2, PW4 and PW5. The subject who testified as PW3 and stated that he could not remember his ID Number. And although he could identify his children's names, he could not give their proper ages to court. It is worth noting that the subject was stationary as he testified.
6. The Petitioner produced copies of Marriage Certificate, Medical Report dated 3<sup>rd</sup> June, 2025 and Identity Cards for herself and children as PExhibit 1, 2, 3 and 4 respectively.

### **Analysis and Determination**

7. To determine the Petition dated 15<sup>th</sup> October, 2025, I have read through the Supporting Affidavit sworn by the Applicant, examined the exhibits attached thereto, alongside the testimonies of the Petitioner and children and the subject to confirm and assess his mental and physical capacity or ability to understand the environment and circumstances.
8. The law on an applications such as the present one is made under Section 26 of *Mental Health Act*, Cap 248 Laws of Kenya which gives the court judicial power over persons and estates of persons who are shown to be suffering from mental disorder and/or any incapacity. Section 26 of the Act provides as follows:-

“26. Application for administration

1. 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.
  3. A notice of the application under Subsection (1) shall, in such manner as the court may direct, be served upon the—
    - a. person in respect of whom the application is made; or
    - b. where an application is made by a supporter to the representative of the person with mental illness.
  4. Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.
  5. The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.
  6. The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—
    - a. court to examine the person; or
    - b. person to be examined by a qualified registered mental health practitioner.
9. The court is also guided by the decision in the case of *Re N M K [2017] eKLR* wherein the court considered and set out the principles that should guide the court when applying the provision of Section 26 and 27 of Cap 248. Therein it was held as follows:-
 

“In considering an application brought under Sections 26 and 27 of the *Mental Health Act*, the Court is guided by three main factors:

  - i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
  - ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
  - iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”
10. On 26<sup>th</sup> November, 2025, the court heard the Petitioner identified herself by her National Identity Card Number 239112xxx. She confirmed that she is the wife to the subject, having been married to him for twenty-six (26) years and that they have been blessed with three (3) adult children being IGK (26), FWK (23) and CMK (20). She stated that the subject suffered a stroke in the year 2025 and had been undergoing treatment at AAR and Avenue Hospitals alongside attending physiotherapy sessions at Karen rehabilitation centre. She confirmed that the children are aware of the application.



11. The court also examined the subject's children being PW2 CMK of ID Number 308853xxx, PW4 FWK of ID No. 39305xxx and PW5 IGK of Passport No. BK004XXX and they testified and confirmed the mental condition of their father who suffered stroke, the effects thereof and that they were all supportive of the application that their mother, the Petitioner herein, be appointed as guardian over his affairs.
12. The court also examined PW2, the subject herein and observed that he was stammering while taking his oath but managed to complete it. He told court that his name was JKG but could not remember his Identity Card Number. He stated that he lives in Ikinu, identified his wife by her name and said that they had been married for twenty-six (26) years and had been blessed with three (3) children whom he identified by their correct names but stated that they were aged 4 years, 4 years and 3 years respectively. On being asked where he was, the subject told court that he was at Kiambu Hospital.
13. The court has further perused the medical report from Restore Hospital dated 3<sup>rd</sup> June, 2025 which shows that the subject lacked insight and his attention and memory were not intact as he could not remember immediate recent and remote thing that had happened, his speech was slow and judgment was poor and that he had aphasia.
14. In the instant case, having considered the Petition, the Supporting Affidavit together with the annexures therein alongside the testimonies by the Petitioner, their children and subject, the court has also perused and confirms that the Petitioner is the lawful wife of the subject herein as evidenced by the Certificate of Marriage, Serial No.XXX, solemnised on 24<sup>th</sup> August, 2013. The court also finds and confirms from the testimonies of the Plaintiff<sup>2</sup>, subject and their children (PW1, PW2, PW3, PW4 and PW5 herein, that the Appellant suffered a strike in the year 2025, which has rendered him forgetful, incoherent in his speech and incapable of feeding or using the toilet on his own. The medical report from Restore Hospital dated 3<sup>rd</sup> June, 2025 confirms that the subject suffers a mental disability and poor memory that he needs assistance of caregivers.
15. From the examination of the subject, the court observed and noted that he cannot fully comprehend information in that, although he remembered the names of his wife and children, he did not know their ages well, what they do or where he was.
16. From the findings hereinabove, given the testimonies of the Petitioner, the subject and their children alongside the medical evidence and the fact that there is no objection on the part of the subject's children and or any other person, the court is satisfied that the orders sought are merited. Thus, the Petitioner dated is hereby allowed in the following terms:-
  - a. That JKG be and is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#), Cap 248 of the Laws of Kenya.
  - b. That RWK by herself or her appointed agents be and is hereby appointed as the Manager of the Estate of JKG which includes any such description of movable or immovable property, moneys, legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right take over and/or institute any litigation and/or claims and also to include not of any person but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.
  - c. That the costs of this application be borne by the Estate of the said JKG.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20<sup>TH</sup> DAY OF JANUARY, 2026.**



**D. O. CHEPKWONY**

**JUDGE**

In the presence of:-

M/S Muthoni for Petitioner

Court Assistant – Martin/Sakina

