



**In re LKN (Miscellaneous Application E301 of 2025)
[2026] KEHC 390 (KLR) (Family) (16 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 390 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E301 OF 2025

H NAMISI, J

JANUARY 16, 2026

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248

AND

IN THE MATTER OF LAWRENCE KITUA NDAKA

AND

IN THE MATTER OF AN APPLICATION BY CONSTANCE NZISA KITUA

TO BE APPOINTED AS GUARDIAN OVER THE AFFAIRS AND THE

MANAGER OF THE ESTATE OF THE SAID L K N

IN THE MATTER OF

CNK PETITIONER

JUDGMENT

1. The Amended Petition dated 7 November 2025 seeks:
 - i. This Honourable Court be pleased to appoint Constance Nzisa Kitua as the manager of the estate of Lawrence Kitua Ndaka in accordance with the [Mental Health Act](#) with special permissions pursuant to section 27 of the [Mental Health Act](#);
 - ii. This Honourable Court be pleased to appoint Constance Nzisa Kitua as the guardian of the affairs of Lawrence Kitua Ndaka in accordance with the [Mental Health Act](#) with power to sign and file court documents, bank forms, medical authorisations, legal instruments and to carry other incidental and general functions of the subject matter herein;
 - iii. This Honorable Court be pleased to order sale of the properties named Ngong/ngong 13452 And Ngong/ngong 59058 which are vacant plots and the Applicant herein seeks leave of the



Court to dispose of medication, bills and maintenance of the subject herein to any prospective buyer;

- iv. Representing the subject matter herein, one Lawrence Kitua Ndaka, in legal and administrative matters;
 - v. Doing all such other acts as may be necessary for the benefit of Lawrence Kitua Ndaka;
 - vi. The applicant be at liberty to pray for further orders as it may deem fit.
2. The Petitioner is wife to the Ward. The Applicant and Ward got married in November 1997. A copy of their Certificate of Marriage is attached to the Petition. The couple have four children, now adults, who have expressly consented to the Petition.
 3. The Ward is a septuagenarian retired army officer and businessman, who suffered a catastrophic decline in his cognitive and physical faculties following a series of cerebrovascular accidents (strokes) commencing in 2015. The Petitioner avers that these medical events have rendered the Ward incapable of managing his own affairs, necessitating the intervention of this Court to protect his person and estate from waste, dissipation or neglect.
 4. The medical history of the Ward is detailed in the viva voce evidence of Dr Robert Mathenge and the medical reports filed herein. The Ward's health challenges began in 2015 when he suffered a major stroke affecting the left side of the body. While there was some initial recovery, the condition was compounded by a recurrent stroke in 2016 and a third, more devastating stroke in 2017.
 5. These recurrent neurological events have resulted in a condition characterised by loss of ability to speak or comprehend language effectively, lack of orientation in time and place, persistent weakness in the upper and lower limbs, behavioural changes necessitating psychiatric review and inability to make decisions regarding business or personal care. Dr. Mathenge's prognosis is that improvement is unlikely as the condition has plateaued for nearly 8 years.
 6. The Court takes judicial notice of Miscellaneous Application No. E457 of 2020, In the Matter of Lawrence Kitua Ndaka, heard before Hon. Justice B. Thuranira J.W. In that matter, the Petitioner sought and obtained limited orders on 8 December 2020 to access the Ward's funds held at the United Nations Savings and Credit Co-operative Society Limited (UN Sacco). Those orders were specific and limited in scope, intended to address immediate liquidity needs for family maintenance. The Petitioner now deposes that the 2020 orders are insufficient for the broader management of the estate, particularly regarding the disposition of immovable property and the rectification of title issues that have since arisen or remained unresolved. This necessitates the current, more comprehensive Petition.
 7. The Ward's estate is substantial and includes both moveable and immoveable assets. The properties specifically identified in the Amended Petition and Further Affidavit include:
 - a. Nairobi Block 106/252/210: A residential unit purchased from the National Housing Corporation (NHC), currently requiring the Ward's signature to effect the transfer of the lease.
 - b. Ngong/Ngong 13452 & 59058: Vacant plots which the Petitioner seeks to sell to raise funds for medical care.
 - c. Konza North/Konza North Block 2 (Malili)/1993: A parcel of land registered in the joint names of the Ward, the Petitioner, Dishon Muisyokiio, and Rosemary Mutheu Muathe. The Petitioner alleges the inclusion of the latter two individuals was an error and seeks reconveyance.



- d. Kajiado/Dalalekutuk/6373: Land to be placed under management.
 - e. Bank Accounts & Pensions: Funds held in joint accounts and benefits from the United Nations.
8. In her testimony, the Petitioner explained the practical difficulties she faces with regard to the inability to sign transfer documents for the NHC house despite the loan being cleared, and the financial strain of managing the Ward's medical bills which necessitates the sale of the vacant Ngong plots.
 9. Regarding the Konza property, the Petitioner testified that the title was issued in four names in error and that the third and fourth proprietors (Dishon and Rosemary) should be removed. Notably, she did not produce any written agreement, transfer form, or court order explaining how the alleged error occurred, nor did she produce the third parties in Court to concede to the error.
 10. Regarding the Ngong properties, the Petitioner sought leave to sell them for maintenance. However, upon inquiry by the Court, it is evident that no valuation report was annexed to the Further Affidavit or the Amended Petition. The only annexures were copies of the title deeds.
 11. The Ward was present in court. The Court observed him to be physically frail and unresponsive to the proceedings, consistent with the medical evidence of aphasia and disorientation. The Court dispensed with the need for direct interrogation of the Ward to preserve his dignity, relying instead on the expert medical testimony as permitted under Section 26 of the [Mental Health Act](#).

Analysis & Determination

12. The jurisdiction of this Court is invoked under Section 26(1) of the [Mental Health Act](#) which provides:

The court may make orders— (a) for the management of the estate of any person suffering from mental disorder; and (b) for the guardianship of any person suffering from mental disorder...
13. The term 'mental disorder' is defined in Section 2 of the Act as 'mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind'.
14. While the Act is dated, its interpretation must be aligned with [The Constitution](#). Article 57(d) guarantees older persons the right to receive reasonable care and assistance. Article 54 protects the dignity of persons with disabilities.
15. The modern judicial approach, moving away from a mere status-based determination, requires a functional assessment. It is not enough that a person is ill; the illness must functionally impair their decision-making ability regarding the specific matter at hand (managing an estate).
16. In *Re JWM (A Person with Mental Disorder) [2023] KEHC 1309 (KLR)*, the court held that where medical evidence confirms conditions such as severe dementia, which erodes the cognitive substrate necessary for financial management, the court is duty-bound to intervene.
17. Similarly, the Supreme Court of Kenya, in *In the Matter of the Tribunal Appointed to Investigate the Conduct of Lady Justice Mary Muthoni Gitumbi* affirmed that mental incapacity must be assessed based on the ability to perform the functions of one's office or affairs.
18. Applying these principles to the Ward, the evidence is overwhelming. Dr. Mathenge's diagnosis of multi-infarct dementia, aphasia, and disorientation describes a person who has lost the cognitive tools required to understand the nature and effect of legal and financial transactions. He cannot comprehend the value of money, the nature of a contract, or the implications of selling land.



19. I, therefore, find and declare that Lawrence Kitua Ndaka is suffering from a mental disorder within the meaning of the Act and is incapable of managing his own affairs.
20. Section 26 prioritizes near relatives for appointment as managers. The Petitioner, being the spouse, falls squarely within this category. The courts have consistently held that a spouse, being the partner in life and often the co-owner of matrimonial property, is prima facie the most suitable manager, absent evidence of conflict of interest.
21. The Court reminds the Petitioner that the office of a manager is fiduciary. She acts as a trustee for the Subject. The manager's duty is to apply the estate strictly for the maintenance and benefit of the patient, not for her own enrichment.
22. I am satisfied that the Petitioner is a fit and proper person to be appointed.
23. The Petitioner seeks to sell the Ngong properties (13452 and 59058). Section 27(1) of the Act acts as a statutory brake on the powers of a manager. It states:

A manager so appointed shall not, without the special permission of the court— (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist..
24. A court cannot grant special permission in a vacuum. To act in the best interests of the Ward, the Court must ensure the property is sold at market value.
25. In the case of *In re Estate of Esther Wanjiru Ng'ang'a (Deceased)* [2024] KEHC 1580 (KLR) the Court emphasized that dealing with estate property requires transparency and valuation to protect the beneficiaries.
26. In this Petition, the Petitioner has failed to annex a valuation report for the Ngong properties. She asks the Court to authorize a sale without disclosing the estimated value. This is a dangerous lacuna. If the Court were to grant an open-ended order, the properties could be sold for a song, depleting the Ward's estate to his detriment.
27. While the *Mental Health Act* is silent on the specific mechanics of best interest, this Court is persuaded by the principles elucidated in the UK Court of Protection case of *In re P (Statutory Will)* EWHC 163 (Ch) and the Mental Capacity Act 2005 (UK), which, though not binding, offer persuasive guidance on the universal principles of managing incapacitated persons' estates. The decision to sell must be one the Ward would have made if capable, balanced against the objective necessity of his care.
28. Here, the sale is necessary for medical bills. However, a prudent owner would not sell without a valuation. Therefore, the manager cannot sell without one.
29. Consequently, I will grant the permission to sell subject to strict conditions. The Manager must procure a valuation report from a registered valuer. This report must be filed in Court to establish a reserve price. No sale shall be concluded below this reserve price without further leave of the Court.
30. Regarding Nairobi Block 106/252/210 property (NHC House), the requirement is the administrative completion of a contract where the Ward is the beneficial owner. Section 32 of the Act empowers the Manager to execute conveyances in the name of the patient. This prayer, therefore, is proper for this Court's consideration.
31. Section 33(1) of the Act mandates that every manager shall, within six months of appointment, deliver to the Court and to the Public Trustee an inventory of the property and, annually thereafter, an account of the property. Courts have often observed a culture of non-compliance with this section. In



this matter, given the authorization to sell immovable property, this Court will strictly enforce Section 33. The Manager must account for the proceeds of the Ngong land sale to ensure they are utilized for the Subject's medical care and not diverted.

32. In consideration of the foregoing, this Court finds merit in the Petition and grants the following orders:
- i. A declaration is hereby issued that LAWRENCE KITUA NDAKA is a person suffering from a mental disorder within the meaning of Section 2 and Section 26 of the *Mental Health Act* and is, by reason thereof, incapable of managing his own affairs.
 - ii. Constance Nzisa Kitua is hereby appointed as the Guardian of the person and Manager of the estate of the said Lawrence Kitua Ndaka.
 - iii. THAT the Petitioner 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 Manager is authorized to manage the estate of the Ward generally, including:
 - a. To demand, recover, and receive all debts, monies, pension dues, and benefits due to the Ward.
 - b. To access, operate, and manage all bank accounts held in the sole name of the Ward or jointly with the Petitioner.
 - c. To represent the Ward in all legal proceedings and administrative matters affecting his person or estate.
 - v. The Manager is hereby authorised to sell and transfer the properties known as Ngong/ngong 13452 And Ngong/ngong 59058 for the purpose of raising funds for the medical care and maintenance of the Ward. The proceeds of the sale shall be deposited in a designated bank account for the Estate and applied strictly for the benefit, maintenance, and medical care of the Ward.
 - vi. Before entering into any agreement for sale, the Manager shall file in this Court a Valuation Report for the said properties prepared by a registered Valuer. The properties shall not be sold for a consideration less than the market value indicated in the said Valuation Report.
 - vii. The Manager is authorized to execute all necessary documents to effect the transfer of the property Nairobi Block 106/252/210 from the National Housing Corporation to the joint names of the Petitioner and the Ward.
 - viii. Pursuant to Section 33 of the *Mental Health Act*, the Manager shall file with this Court and the Public Trustee:
 - a. A full inventory of the assets and liabilities of the Ward within six (6) months of the date of this order.
 - b. Annual accounts of the administration of the estate thereafter.
 - ix. The costs of this Petition shall be borne by the estate of the Ward.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JANUARY 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT



Delivered on virtual platform in the presence of:

Petitioner: Mr Muuo h/b Mr. Mulekyo

Court Assistant: Lucy Mwangi

