



MWW & another v JLKH; MWH (Interested Party) (Miscellaneous Cause E080 of 2025) [2026] KEHC 528 (KLR) (Family) (23 January 2026) (Ruling)

Neutral citation: [2026] KEHC 528 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

MISCELLANEOUS CAUSE E080 OF 2025

PM NYAUNDI, J

JANUARY 23, 2026

IN THE MATTER OF: SECTION 26, 27,28(1) & (2) AND 32 OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF: ORDER 32 RULE 15 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF: JLKH-

AND

PERSON SUFFERING FROM MENTAL UNSOUNDNESS

AND

IN THE MATTER OF: SECTION 26, 27,28(1) & (2) AND 32 OF THE MENTAL HEALTH ACT

AND

**IN THE MATTER OF: APPLICATION FOR APPOINTMENT AS
GUARDIANS AND MANAGERS OVER THE AFFAIRS OF JLKH**

BY

BETWEEN

MWW 1ST PETITIONER

ODMJ 2ND PETITIONER

AND

JLKH RESPONDENT

AND

MWH INTERESTED PARTY



RULING

1. This ruling related to Notice of Motion dated 21st March 2025 in which the applicant seeks for orders that-
 - a. Spent
 - b. That based on the submitted medical reports, the Honourable Court be pleased to issue orders for production of the Respondent subject herein before Court to enable questioning of the subject by the Honourable Court and the applicants under Order 32 rule 15 of the Civil procedure Rules, 2010 for a proper inquiry either in Court or chambers, to establish whether by reason of, unsoundness of mind the Respondent subject herein is incapable of protecting his general interests and incapable of giving an account of what he knows concerning the case Milimani –ELC Miscellaneous No. 108 of 2019 MWH & 2 Others vs Dennis Kahore Nzioka (Being Sued as the Legal Representative of the Estate of Willy Kahore Wanjiku alias Nicholas Ndambuki (Deceased) & Others (Interested Parties).
 - c. That the honourable Court be pleased to order a medical examination upon the respondent subject herein and a current medical report by a psychiatrist to be availed and/ or the psychiatrist to testify as to the subject’s mental condition
 - d. That the parties herein be directed to undertake the said judicial examination and inquiry and avail a current medical psychiatrist report as the Court may direct.
 - e. That pending the hearing and determination of the petition, this Honourable Court be pleased to stay the proceedings in Milimani ELC Miscellaneous No. 108 of 2019- MWH & 2 Others vs Dennis Kahore Nzioka (Being Sud as the Legal Administrator of the Estate of Willy Kahore Wanjiku alias Nicholas Ndambuku (Deceased) & Others (Interested party)
 - f. That costs of this application be costs in the cause
2. The Application is supported by the affidavits of both the applicants. In response to the application the respondent has filed a preliminary objection, grounds of opposition and a replying affidavit.
3. The applicants aver that they are the wife and son of the respondent respectively. The application has been prompted by what the applicants states are the irrational actions of the respondent which in their assessment are tantamount to him recklessly discarding of his inheritance. It is submitted that he has a history of mental illness as per medical report dated 4th November 2011.
4. The irrational actions are said to be, unilaterally entering into a consent to compromise a matter pending in Court; Milimani ELC Miscellaneous No. 108 of 2019 MWH & 2 Others vs Dennis Kabare Nzioka (Being sued as the Legal Administrator of the Estate of Willy Kahore Wanjiku alias Nicholas Ndambuki (Deceased) & Others (Interested Parties)
5. It is submitted that his actions, if not stopped will not only jeopardise his rights but those of the other rightful beneficiaries of the estate of MWH (Deceased).
6. The Preliminary Objection is framed as hereunder-

Take Notice the Respondent shall during the hearing of the application dated 21st March 2025 raise a preliminary objection on the following points of law:-



1. The suit herein is incompetent, misconceived and null and void ab initio
2. The 1st Petitioner is not the Respondent's wife.
3. The Respondent is married to one WBK only.
4. The marriage between the respondent and one WBK is registered and was celebrated as a civil marriage under Section 6 (1)(b) of the Marriage Act No. 4 of 2014.
7. In addition the respondent has filed grounds of opposition dated 10th April 2025 and sworn replying affidavit sworn on even date, in which he basically reiterates the grounds upon which the preliminary objection is raised. He states that he has obtained the requisite consents from the beneficiaries of the Estate and that in any event the applicants and the interested party are strangers to the Estate. He denies that he suffers from any mental illness.
8. Directions were given that the Preliminary Objection and the Notice of Motion would be canvassed via written submissions and heard contemporaneously. The Applicant's submission are dated 27th August 2025. It is submitted that the Preliminary objection must fail as it does not meet the test set out in Attorney General & Another vs Andrew Mwaura Githinji & Another [2016] eKLR; Mary Wanjiku Githatu vs Esther Wanjru Kiarie [2010] eKLR and the locus classicus case Mukisa Biscuits Manufacturing Limited vs Westend Distributors Limited (1969) EA 696.
9. On the 2nd issue, it is submitted that the Court is mandated by the Mental Health Act to compel the attendance of the respondent so as to determine the status of his mental health. Reference is made to the decision in Re Estate VFM (Patient) [2020] eKLR. It is submitted that the applicant has not countered the medical report on record by presenting a report that confirms that he is of sound mental health. It appears the applicant's impute ill motive on the part of the respondent's counsel, by stating that he has influenced the respondent to waste away his inheritance.
10. The respondent's submissions are dated 8th October 2025. He frames the following as the issues for determination
 - a. Whether there is any evidence that the respondent suffers from mental illness, within the meaning of Section 2 of the Mental Health Act
 - b. Have the Petitioners met the statutory requirements in their Petition.
 - c. Whether the Petitioners are suitable to be appointed Guardians or Managers of the Respondent's affairs should the Court find that the respondent suffers from mental illness.
11. It is submitted that there is no evidence of mental illness of the respondent and reference made to the decision in Re RMK [2017] eKLR, the respondent further challenges the veracity of the medical report on record. It is submitted that the applicant's have presented the case in the wrong forum and they should ventilate the issues they have in the ELC matter pending before Court.
12. On the 2nd issue it is submitted that the Petition itself is defective as it is not supported by the relatives of the respondent, who is the subject and reference made to the decision in Re JWN (2025) KEHC 11357 (KLR).
13. The respondent invites the Court to exercise its discretion as to whether or not to summon the respondent for examination and submitted that even if the respondent were to be found to be suffering from a mental disorder, the applicants are not suited to be appointed as Guardians.



Determination

14. Having considered the pleadings herein and the submissions filed, I discern the following to be the issues for determination
- a. Whether the preliminary objection has merit?
 - b. Whether the applicants have met the legal threshold for the orders sought?
 - c. What are the consequential orders the Court should make?
 - d. Who should pay costs of the suit?
15. On the 1st issue, it is well established by judicial precedent the test to be applied in determining the merits of a preliminary objection, this was well articulated in the leading decision of *Mukisa Biscuit Manufacturing Co Ltd –vs. - West End Distributors (1969) EA 696*. The Court stated as follows;
- a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion
16. The preliminary objection as framed challenges the locus standi of the 1st Petitioner to present the Petition as it is alleged she is not a spouse of the respondent. For this sole reason the Preliminary Objection must fail. Whether or not the applicant is a spouse is clearly a matter to be resolved by adducing evidence. The Supreme Court expressed itself thus in *Independent Electoral & Boundaries Commission v Cheperenger & 2 others (Civil Application 36 of 2014) [2015] KESC 2 (KLR) (15 December 2015) (Ruling)*. It was stated as follows; -
- The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection— against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits... In the instant matter, we consider the objector to have moved her motion, more as a sword than a shield. Such a course is not to be permitted, as it is apt to occasion an injustice to the applicant, and indeed, to the wider public interest.
17. The 2nd issue therefore is whether the Notice of Motion is merited. From what I can glean, the applicant's and interested party are perturbed by the respondent's conduct of the proceedings in *Milimani ELC Miscellaneous No. 108 of 2019 MWH & 2 Others vs Dennis Kabare Nzioka (Being sued as the Legal Administrator of the Estate of Willy Kahore WANJIKU alias Nicholas Ndambuki (Deceased) & Others (Interested Parties)*, they are persuaded that his actions are on account of mental illness and rely on a medical report dated 4th November 2011. The respondent denies that he is mentally ill and contends that the applicant's are seeking to have access to the subject land when they have no



legal status. He has attached consents signed by his siblings as evidence that his actions have the backing of the other beneficiaries of the Estate of their deceased mother.

18. The application for the Court to make an inquiry into the mental health status of the respondent is presented under Order 32 of the Civil procedure rules, it is evident to me that the Court referred to in rule 15 thereof, is the Court in which the case is filed. The applicant in presenting this Notice of Motion is seeking to bestride two horses at the same time. This is physically impossible and amounts to an abuse of Court process. The Court that will make the inquiry is the Court before which the applicant's wish to challenge whether or not the respondent should continue. If he has declined to appear before that Court as it is alleged they can invite the Court to make any inference necessary, but not institute a separate cause for that purpose.
19. The applicant's are evidently seeking to wrestle the conduct of the matter from the respondent and the route they have elected is to challenge his compos mentis. In *John Patrick Machira v Patrick Kahiaru Muturi* [2002] KEHC 616 (KLR) the Court stated-

It is a very serious thing to say of, and concerning a person, that such person is a person of unsound mind or suffers mental disorder. The law presumes that every person is mentally sound, unless and until he is proved mentally disordered. And, even where one person is shown to be unsound mind one must always bear in mind that the degrees of mental disorder are widely variable, and in competency to do any legal act or inability to protect one's own interests, must not be inferred from a mere name assigned to the malady from which a person may be suffering. The validity of ordinary contracts entered into by persons of unsound mind depends mainly on the circumstances which accompany the act. If there is nothing unreasonable in the conduct of the person of unsound mind and the party with whom he contracts has no knowledge or suspicion of his mental disorder, the contract will be binding on the person of unsound mind and his representatives.
20. They seek the Court's assistance in this regard. In the matter of *Gerishon Kirima* [2009] eKLR, the Court was emphatic that it in applications of this nature, the Court would not come to the assistance of a party alleging the mental illness of a subject. It rested with the applicant to demonstrate that the Subject was indeed on account of a mental illness, incapable of managing his affairs and therefore in need of appointment of a guardian/ manager.
21. The fact that the applicant's seek to rely on a report prepared 14 years ago to stymie a pending matter in Court smirks of mischief, especially as this was not raised at the inception of the action but when the respondent elected to conduct the matter in a manner that they did not agree with. The respondent's rejoinder remains unchallenged and uncontroverted by the applicants. At the end of the day, it is not for the respondent to show he is of sound mind, there is a presumption of sanity that has to be dislodged by the applicants. They have failed to do so.
22. On consequential orders that this Court can make, I am guided by the fact that proceedings under the *Mental Health Act* are not intended to be contentious as the orders are sought for the protection of the Subject and his property. In the instant case, the respondent (subject) declines the appointment of the applicants as his guardians in any event. I have had to ask myself what would be the purpose served in setting down the Petition for hearing. The respondent submits he is well; he is representing himself herein, he is opposed to the appointment of the applicants as guardians over him. The applicant's contend he is being misadvised by his Counsel, that is not an issue to be resolved by seeking him to be declared non compos mentis.
23. In the circumstances in addition to dismissing the Notice of Motion, I am inclined to strike out the Petition so that the parties can canvass the contest they have before the proper forum.



24. Accordingly these are the final orders
- a. The Preliminary objection is dismissed
 - b. The Notice of Motion dated 21st March 2025 is dismissed.
 - c. The Petition dated 21st Marc 2025 is struck out for being an abuse of Court process
 - d. Each party will bear their own costs
25. Parties at liberty to appeal, any party exercising their right to do so within 30 days.
- It is so ordered.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

P.M. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant.

No appearance for parties.

