



REPUBLIC OF KENYA



KENYA LAW
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**In re Guardian Ad Litem of JK (Family Miscellaneous Application
E027 of 2025) [2026] KEHC 2082 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E027 OF 2025**

FN MUCHEMI, J

FEBRUARY 19, 2026

IN THE MATTER OF

GMK APPLICANT

RULING

Brief Facts

1. The application for determination dated 17th November 2025 seeks for orders of adjudging JK (the subject) to be suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act* and to appoint the applicant as the subject's legal guardian ad litem to handle the subject's legal interests in respect of Civil Case MCELC/125/2024 where he is the defendant.
2. The applicant is the son of the subject who is currently 72 years old and suffering from dementia characterized by deterioration in memory, attention, logical reasoning, language and ability to perform daily tasks and a decline in cognitive functioning. The applicant states that the subject is fully dependent on a caregiver, his movements are limited, his speech is impaired and his memory undependable.
3. The applicant states that the subject bought land LR. No. Gatuanyaga/Ngoliba Block 12/xxxx from one MWM, mother to the plaintiff in Civil Case No. MCELC/125/2024 on 19th October 1999 and immediately took possession. The said property is subject to the said proceedings before the Thika Magistrate's Court whereby the subject has been sued by JMM. The matter was coming up on 19th November 2025 for directions due to the issue of the subject's mental health that has affected his competence to conduct his case.
4. The applicant avers that the family has agreed that he be appointed the guardian ad litem to safeguard the interests of the subject over the suit land as the subject is mentally impaired and cannot coherently defend himself in the matter before the court.



5. In support of the applicant’s application, one IK filed an affidavit dated 3rd December 2025 and testified as PW3. He stated that the subject is his father and the applicant his brother. PW3 confirmed that his father’s mental health had declined rendering him unable to properly function as his movement is limited, speech impaired, confused and unaware of his surroundings. The witness further testified that as a family they agreed to nominate the applicant to be appointed guardian to represent the subject in defending the ongoing case being Thika MC ELC Civil Case No. 125 of 2024.

Issues for determination

6. The main issues for determination are as follows:-
 - a. Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
 - b. Whether the applicant should be appointed as guardian to the subject.

The Law

Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248

7. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.
8. Section 2 of the Act defines “person suffering from mental disorder” as follows:-

“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”
9. Section 26 provides for custody, management and guardianship
 1. 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 by any near relative or by any other suitable person.
 2. Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate of the guardian of any such person.
 3. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.
10. The medical report by Dr. Linet Kendi, a psychiatrist, dated 30th October 2025, the patient is said to be suffering from dementia with comorbid major depressive disorder. The medical report further



indicates that the subject displayed a definitive decline in cognitive function as demonstrated in his mental state examination and was characteristic of his disorder. Further, the report provided that the subject is unable to make any sound or rational decisions for himself and he therefore requires close supervision and assistance from his next of kin in most aspects of daily living.

11. It is apparent from the medical report that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing his own affairs.

Whether the applicant should be appointed as guardian to the subject

12. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
13. The applicant has stated that he is a son of the subject. The applicant annexed a consent from his mother and siblings indicating that they had consented to the applicant being appointed legal guardian and manager of the subject and his estate.
14. During the hearing the court had the opportunity of examining the subject and noted that the subject was unable to give coherent and comprehensive evidence in his case in the lower court based on his responses to questions put to him. The subject could not remember the case number of his case and neither could he tell where his case had reached.
15. Order 32 Rule 15 of the Civil Procedure Rules provides:-

The provisions contained in rules 1 to 14, so far as they are applicable shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

16. Consequently, there being no objection from any of the family members and the course of the application being well supported as required under the law, it is my considered view that the prayer for appointment of the petitioner as guardian ad litem of the subject is well grounded and merited. In my considered view, the application dated 17th November 2025 is successful and is hereby allowed in the following terms:-
 - 1 (a) That the subject JK is hereby adjudged to be suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act*.
 - 2 (b) That the applicant GMK is hereby appointed guardian ad litem of the subject JK to represent the subject in Thika MELC No.125 of 2024.
17. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

