



**In re IKTK (Subject) (Miscellaneous Application E271 of 2025)
[2026] KEHC 3279 (KLR) (Civ) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3279 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E271 OF 2025

SN RIECHI, J

MARCH 5, 2026

**IN THE MATTER OF AN APPLICATION/PETITION
UNDER THE MENTAL HEALTH ACT CAP 248**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
GUARDIANSHIP AND MANAGER OF THE ESTATE OF ITK**

BETWEEN

RK PETITIONER

AND

IKTK SUBJECT

JUDGMENT

1. Before this Court for determination is a petition dated 8th August,2025 filed by the Petitioner in which she has petitioned;
 1. That this court declares IKTK to be incapable his personal and financial affairs by reason on illness.
 2. The petitioner be appointed as the guardian of IKTK to manage his personal,medical,estate and financial matters.
 3. Grant any other order the court deems fit.
2. The petition is premised on the grounds that the subject is 77 years old and is presently incapacitated due to mental impairment illness as confirmed by the medical report marked “RK-1” attached to the petition. The illness rendered the subject incapable of making informed decisions concerning his affairs.



3. The petition was supported by an affidavit sworn on even date in which he reiterated averments in the grounds of the petition.
4. This application was canvassed by way of *viva voce* evidence on the online platform.
5. The subject Ismael Tuiyot Kaitany testified as follows;

“I am staying in Karen. I am 80 years old. I stay with my wife RCK. I used to work. Sometimes speaking is difficult but...I am healing. We have five children. They take care of me. They are joking with my land. They want to take my property. My wife takes care of my property.”
6. RCK testified that she is the subject’s wife. They married in 1982. They have five children namely Dr. Faridah, SK, HK, RK and IK. The petitioner testified they stay in five acre Karen with the subject and she wants to be given authority to manage his assets. The Petitioner testified further that his mental health is going down and she cannot remember things. He is suffering from dementia. He is 77 years old and she is 67 years old. The petitioner testified that the subject has been taken for treatment by Dr. Jude and Dr. Gichoka of Nairobi Hospital. It was her testimony that the subject can perform normal daily activities. His only problem is memory declining. He is conversant with normal things. She testified she is the subject’s principal caregiver and prays to be allowed to assist in decision making.
7. SCK, HKK, FCK and RKK testified that the subject is their father and confirmed to court that they support the petition.
8. The court has exhaustively considered all the material placed before it, the main issue for determination is whether the court should declare the subject as a person suffering from mental illness so as to grant the guardianship and management orders as sought in the petition herein.
9. Section 2 of the *Mental Health Act* Cap 248 provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
10. The court in *Re NMK* [2017] eKLR considered what should guide the court when applying Section 26 and 27 of Cap 248. The court 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.”
11. The Petitioner has sought orders that this court to declare the subject as a person suffering from mental illness and therefore incapable of managing his affairs. The petitioner is also seeking to be appointed as Guardian and Manager of the subject.



12. To merit the above orders the Petitioner must adduce evidence to satisfy the Court firstly that the subject is a person suffering from a mental illness under the *Mental Health Act* and secondly that the subject is incapable of taking care of his affairs.
13. The Petitioner informed this court that the subject mental health is going down and he is suffering from dementia. She testified that the subject has been treated by Dr. Jude and Dr. Gichoka. The Petitioner produced in support copies of medical reports 14th June 2025 and 13th June 2025 prepared by Doctor. NJules Fidele, a Neurologist at Avenue Healthcare and Dr. Philip Muysoka, a consultant cardiologist/Physician.
14. To establish whether the subject suffers from a mental illness this court had an opportunity to observe and interview the subject on the online platform and noted that the subject. I noted that the subject is suffering from dementia but the same has not affected his capacity to know what is happenings within his surroundings. He was also coherent in speech. I have also perused the medical reports on record and they confirm that the subject suffers advanced dementia and his mental impairment has deteriorated since 2022 and he is unable to make sound judgement or make informed decision. Also, the Petitioner during her testimony confirmed to this court that the subject is suffering from dementia. She also confirmed to this court that the subject is able to walk, he can perform the normal daily activities. The subject's children were in court during hearing and they confirmed they support the petition.
15. Based on the above evidence and material availed to this Court, I find that the subject suffers from dementia however the same has only affected his ability to make major decisions in respect of his property and take care of his property.
16. This court therefore finds that the subject is able to articulate himself clearly. He has a mental capacity to appreciate time, space and events. However, this court find that the subject is not able to make complicated decisions. I therefore find that the subject is not suffering from mental illness to make him incapable of managing his affairs but the subject needs assistance in making decision in respect of business, property and health.
17. In conclusion I make the following orders;
 1. The subject IKTK does not suffer from mental illness under section 26 of *Mental Health Act*.
 2. This court hereby appoints RCKK as the Guardian of the subject IKTK.
 3. This court also appoints RCK Kaittany and IKTK jointly as Managers of the affairs and estate of the subject IKTK
 4. In accordance with the provisions of Section 33 of the Mental Act, the managers RCK Kaittany and IKTK will furnish an Inventory and annual statement of the subject's estate to this court and the Public Trustee as required by the law.

DATED AND DELIVERED AT NAIROBI THIS...5TH ... DAY OF...MARCH , 2026.

S. N. RIECHI

JUDGE

