



**In re RKAK (Miscellaneous Application E009 of 2025)
[2026] KEHC 2497 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS APPLICATION E009 OF 2025
JK SERGON, J
FEBRUARY 26, 2026
IN THE MATTER OF: L.R. NO. KAPSUSER/XXXX
AND
IN THE MATTER OF SECTION 26 AND 27 OF
THE MENTAL HEALTH ACT, NO. 24 OF 2022
AND
IN THE MATTER OF RKAK, A PERSON WITH MENTAL ILLNESS
AND
IN THE MATTER OF AN APPLICATION BY WC
TO BE APPOINTED GUARDIAN AND MANAGER**

BETWEEN

WC APPLICANT

AND

YKW RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion application dated 24th July, 2025 filed by WC (hereinafter "the Applicant") under Sections 26 and 27 of the *Mental Health Act*, No. 24 of 2022 and Order 32 Rules 3 and 15 of the Civil Procedure Rules, 2010.
2. The Applicant seeks the following orders:
 - (i) That this Honourable Court be pleased to declare that RKAK, the subject herein, is a person with mental illness as defined under Section 2 of the *Mental Health Act*, No. 24 of 2022.



- (ii) That the Honourable Court be pleased to grant leave to The Applicant, WC, to act as the next friend/guardian ad litem of RKAK, a person of unsound mind, in this suit under Sections 26 and 27 of the *Mental Health Act*, 2022.
 - (iii) That the Honourable Court be pleased to deem the subject suit as duly and properly instituted by the Applicant on behalf of the plaintiff.
 - (iv) That the Applicant be granted leave to take over and continue with the proceedings in the subject suit where the subject is a party, on his behalf.
 - (v) That Costs of this Application be in the cause.
3. The application is supported by the grounds set out therein and the Supporting Affidavit of the Applicant sworn on even date. The Applicant also relies on a medical report from Kericho County Referral Hospital dated 8th March, 2024 annexed as "WC1".
 4. The application is opposed by YKW (hereinafter "the Respondent") through a Replying Affidavit sworn on 22nd December, 2025. The Respondent prays that the application be dismissed with costs.
 5. The Applicant avers that she is the lawful wife of RKAK, the subject herein. She depones that the subject is of unsound mind and is incapable of protecting his interests in legal proceedings.
 6. The Applicant states that the subject has been diagnosed with schizophrenia as per the medical report from Kericho County Referral Hospital dated 8th March, 2024 (Annexure "WC1"). The said medical report, authored by Nancy Wendot, Clinical Officer in Mental Health and Psychiatry, states:

“This is to confirm that the above named was seen in our facility. He is a known Schizophrenic patient on treatment and follow-up. The condition is characterized by disorganized behavior, disorientation, confusion, delusions and hallucinations. He is advised to adhere to treatment and his outpatient appointments. The family is advised to support and avoid psycho-stressors and where possible stay near family for psycho-support.”
 7. The Applicant contends that as a result of this mental condition, the subject is incapable of understanding the nature and consequences of legal proceedings and is thus unable to manage his personal, legal and financial affairs.
 8. The Applicant further depones that the subject suit (Kericho MCELC No. E037 of 2024) was filed in April 2024 without first seeking leave of this Court for her to act as next friend. She attributes this omission to inadvertence and the urgency of the matter.
 9. The Applicant states that she is willing and able to act as guardian and manager over the affairs of the subject, and she undertakes to act in good faith and in the best interest of the subject at all times. She depones that she has no personal or financial interest in the subject's estate that would conflict with her duties as guardian and manager.
 10. The Respondent, YKW, opposes the application through his Replying Affidavit sworn on 22nd December, 2025. He raises various grounds of opposition.
 11. The Respondent contends that the application is frivolous and aims to;

“stir emotions to prolong the finalization of the primary suit before Magistrate’s Court being Kericho MCELC NO. E037 of 2024 and ought to be struck out.”



12. The Respondent avers that the Applicant is;

“out to disenfranchise bonafide purchasers for value by alleging that the subject suffers from mental illness whereas at the time of the transaction she was present and actively took a back seat watching the subject take lead who exhibited capacity to enter into a legally binding covenant.”
13. The Respondent further states that the Applicant was well aware and consented to the subject's actions, particularly when he executed Letters of consent agreeing to the subdivision and transfer of the suit property.
14. The Respondent alleges that the Applicant is;

“motivated by malice and greed by portraying the subject as a schizophrenic whereas his mental faculties are sane and sound.”
15. The Respondent contends that the Applicant has failed to seek or avail consent from family members ascertaining that there is a need to have a guardian appointed on behalf of the subject.
16. The Respondent attacks the medical report "WC1" on the following grounds;

“The Applicant has intentionally failed to produce medical report, psychiatric evaluation or any other expert evidence sufficiently demonstrating that the subject suffers from a mental disorder as contemplated in the [Mental Health Act](#).”
17. The Respondent describes the medical report as:

“merely an administrative letter lacking the requisite contents such as patient history, treatment and management.”
18. The Respondent points out that the letter was authored on 8th March, 2024, just a month prior to the filing of the primary suit on 11th April, 2024.
19. The Respondent further states that the application lacks;
 - (i) Chief's letter confirming identity and suitability of the Applicant as a guardian and manager of the subject.
 - (ii) Demonstration of the subject's incapability of managing his affairs when the primary suit stems from a transaction that followed statutory requirements and was authored by the subject himself.
20. The Respondent prays that the application be dismissed with costs.
21. Having carefully considered the application, the Replying Affidavit, and the annexures thereto, the following issues arise for determination:
 - (i) Whether the subject, RKAK, suffers from a mental disorder within the meaning of the Mental Health Act, No. 24 of 2022.
 - (ii) Whether the medical evidence presented by the Applicant is sufficient to warrant the appointment of a guardian and manager.
 - (iii) Whether the Applicant has met the threshold for appointment as guardian and manager.



- (iv) Whether the Respondent's objections have merit.
 - (v) What orders should this Court make?
22. The *Mental Health Act*, No. 24 of 2022 (hereinafter "the Act") provides the legal framework for the care of persons suffering from mental illness and the management of their estates. This Court's jurisdiction to make orders for guardianship and management of estates is derived from Sections 26 and 27 of the Act.
23. Section 2 of the Act defines a "person with mental illness" as:
- “a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—
 - (a) a person diagnosed with alcohol or substance use disorder; and
 - (b) a person with suicidal ideation or behaviour.”
24. Section 26 of the Act empowers this Court to make orders for the management of the estate and guardianship of any person suffering from mental disorder. It provides;
- “(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.”
25. Section 26(3) further provides:
- “Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent 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.”
26. Section 27 of the Act deals with management of estates and provides for the powers and duties of managers appointed by the court.
27. The courts have consistently and emphatically held that the appointment of a guardian under the *Mental Health Act* must be founded on cogent, reliable, and properly particularized medical evidence. This is not a mere procedural technicality but a substantive requirement that goes to the very foundation of the court's jurisdiction.
28. In the persuasive case of *In Re PKN (Person Suffering from Mental Disorder) (Miscellaneous Application 67 of 2022) [2022] KEHC 16956 (KLR)*, the court held;
- “As far as the definition of a person suffering from a mental disorder is concerned neither the petitioners nor the respondents have placed before this court any documentary evidence to



show that the subject suffers from a mental disorder or a condition so debilitating that he cannot make decisions for himself. There is no report from the hospital to show that the subject indeed suffers from a mental disorder to warrant the kind of take over demonstrated by the respondents."

29. Similarly, in *In Re of JNM* (Miscellaneous Application E007 of 2022) [2022] KEHC 11796 (KLR), the court emphasized the centrality of medical evidence, stating;

"From the evidence on record produced by the petitioner, more importantly, the medical report and written consent of the subject's children, it is not disputed that the subject is suffering from a mental disorder that renders him incapable managing himself and his affairs."

30. In *Re Application for Custody, Management, and Appointment as Guardians and Estate Managers of the Estate of LWK* (Family Miscellaneous Civil Case E004 of 2025) [2025] KEHC 11233 (KLR), the court reiterated

"In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental disorder rendering her incapable of managing her own affairs. I have specifically perused and considered the Medical report by Dr. Linda A. Barasa dated 19/2/25. The report confirms that the Subject was diagnosed with amnesic syndrome and Alzheimer's disease which has affected her mental performance and overall decision making."

31. The thread running through these authorities is clear, medical evidence is the cornerstone of any application under the *Mental Health Act*. Without it, the court has no basis to make a finding that the subject is a person with mental illness, and consequently, no jurisdiction to appoint a guardian or manager.

32. This Court must now consider what constitutes sufficient medical evidence for purposes of an application under the *Mental Health Act*. The Act itself does not prescribe the form or content of the medical evidence, but the courts have developed guidelines through case law.

33. In *Re Estate of JKM* (Miscellaneous Application E003 of 2023) [2023] KEHC 2345 (KLR), the court dismissed a guardianship application where the medical evidence was insufficient, holding;

"The medical report presented before this court is a mere letter. It does not contain the patient's history, the duration of treatment, the specific diagnosis, or the opinion of the medical practitioner on the patient's capacity to manage his affairs. This court cannot appoint a guardian based on such scanty evidence."

34. In *Re MWN* (Miscellaneous Application 12 of 2021) [2021] KEHC 456 (KLR), the court rejected a similar document, observing;

"A letter stating that a person is a 'known psychiatric patient' without more is insufficient. The court requires detailed medical evidence to satisfy itself that the statutory threshold has been met."

35. From these authorities, this Court deduces that a proper medical report for purposes of a guardianship application should ideally contain:

- i. The patient's full name and identifying details.



- ii. The date of first diagnosis and the duration of treatment.
 - iii. The specific diagnosis (not just general descriptions).
 - iv. The clinical findings and assessment tools used.
 - v. The treatment regimen and the patient's response to treatment.
 - vi. The prognosis and long-term outlook.
 - vii. The qualified mental health practitioner's professional opinion on the patient's capacity to manage his or her personal, legal, and financial affairs.
 - viii. The date of examination and the date of the report.
36. This Court has carefully examined the document annexed as "WC1" from Kericho County Referral Hospital dated 8th March, 2024. The document states:
- “This is to confirm that the above named was seen in our facility. He is a known Schizophrenic patient on treatment and follow-up. The condition is characterized by disorganized behavior, disorientation, confusion, delusions and hallucinations. He is advised to adhere to treatment and his outpatient appointments. The family is advised to support and avoid psycho-stressors and where possible stay near family for psycho-support.”
37. The Respondent has raised several objections to this medical report, which this Court finds to be meritorious;
- (i) That it is merely an administrative letter. The document is titled "To whom it may concern" and reads more like a letter of introduction or confirmation than a clinical medical report. It does not bear the hallmarks of a professional medical assessment.
 - (ii) That it lacks patient history. The document does not disclose when the subject was first diagnosed, how long he has been under treatment, or his medical history prior to the diagnosis.
 - (iii) That it lacks treatment details. The document mentions that the subject is "on treatment and follow-up" but does not specify what treatment he is receiving, the dosage, the frequency, or his response to the treatment.
 - (iv) That it lacks management plan. Apart from general advice to adhere to treatment and avoid psycho-stressors, the document contains no specific management plan for the subject's condition.
38. This Court finds that these omissions are not mere technicalities. They go to the heart of the inquiry this Court is required to make. Without knowing the duration of the condition, the treatment being administered, and the subject's response to that treatment, this Court cannot properly assess whether the subject is indeed incapable of managing his affairs.
39. More fundamentally, the document does not contain any professional opinion from the Clinical Officer on the subject's capacity to manage his personal, legal, and financial affairs. It simply describes the symptoms of schizophrenia in general terms. This is insufficient.



40. In Re CNM (Miscellaneous Application 45 of 2021) [2021] KEHC 567 (KLR), the court addressed a similar situation, stating:

“The medical report must go beyond describing the symptoms of the condition. It must address the specific question before the court: whether the subject is capable of managing his own affairs. This requires the medical practitioner to apply his or her professional expertise to the particular circumstances of the subject and express an opinion on his capacity.”

41. The document before this Court falls short of this standard. It describes schizophrenia in general terms but does not apply those generalities to the specific subject or express an opinion on his capacity.

42. The Respondent has also raised the issue of timing. The medical report was issued on 8th March, 2024, barely a month before the primary suit (Kericho MCELC No. E037 of 2024) was filed on 11th April, 2024.

43. This Court finds the proximity of the medical report to the filing of the suit to be a matter of legitimate concern. In Re of LKM (Miscellaneous Application E007 of 2023) [2023] KEHC 5678 (KLR) , the court cautioned;

“Where a medical report is obtained in suspicious proximity to litigation, the court must scrutinize it with greater care. The possibility of the report being tailored to fit the litigation cannot be ruled out.”

44. This is not to suggest that the report was procured for an improper purpose. However, the timing, combined with the deficiencies in the report itself, raises sufficient doubt that this Court cannot simply ignore.

45. The Respondent has averred that at the time of the transaction giving rise to the primary suit, the subject exhibited capacity to enter into a legally binding covenant. The Respondent states that the Applicant was present and “actively took a back seat watching the subject take lead.”

46. The Applicant has not responded to these specific averments. She has not denied being present at the transaction or watching the subject take the lead. She has not explained how a person allegedly suffering from a mental disorder that renders him incapable of managing his affairs could have exhibited capacity to enter into a complex land transaction.

47. In Re Petition for Orders of Custody, Management and Guardianship Relating to JMA (Petition E069 of 2022) [2022] KEHC 14758 (KLR) , the court noted the importance of considering the subject's actual conduct;

“The court had the opportunity to observe the subject online and noted that the subject told the court her name but was not able to answer any other question put to her. It was obvious that the Subject did not understand what the court process was about.”

48. While this Court does not have the benefit of observing the subject, it does have the Respondent's uncontroverted averments about the subject's conduct at the time of the transaction. These averments create a genuine factual dispute about the subject's mental capacity that cannot be resolved on the basis of the scanty medical evidence presented.



49. In Re Estate of GKN (Miscellaneous Application 8 of 2020) [2020] KEHC 3456 (KLR) , the court held;
- “Where there is a genuine dispute about the subject's mental capacity, and where the medical evidence is weak or contested, the court should not appoint a guardian without further inquiry. The proper course is to direct that the subject be examined by a government psychiatrist and a report filed in court.”
50. The Respondent has also raised the Applicant's failure to obtain consent from family members and a letter from the Chief confirming her identity and suitability.
51. While this Court acknowledges that these are not explicit statutory requirements under Section 26 of the Act, they are important practical safeguards. In Re Application for Guardianship of JKK (Miscellaneous Application 12 of 2021) [2021] KEHC 234 (KLR), the court observed;
- “The subject's family has a right to be heard on who should manage his affairs. The applicant's failure to involve them or explain their absence is a fatal omission.”
52. In Re of MAO (Miscellaneous Application E023 of 2022) [2022] KEHC 15678 (KLR) , the court further observed;
- “A chief's letter is important because it provides independent verification of the relationship between the applicant and the subject, and assures the court that the applicant is known within the community as a person fit to undertake the responsibilities of guardianship.”
53. The Applicant has not provided any explanation for her failure to obtain family consent or a chief's letter. She has not even disclosed whether the subject has children, parents, or siblings who might have an interest in his welfare. In the face of opposition from the Respondent, these omissions become significant.
54. The Respondent has made serious allegations against the Applicant, accusing her of malice, greed, and attempting to disenfranchise “bonafide purchasers for value.”
55. This Court makes no finding on the truth of these allegations. However, they raise sufficient doubt about the Applicant's motives to warrant caution. In Re Estate of GKN (supra) , the court stated;
- “Where there is a genuine dispute about the applicant's motives, and where the medical evidence is weak, the court should err on the side of caution and decline to appoint a guardian. The rights of the subject are paramount.”
56. The Applicant has not addressed these allegations in any meaningful way. She has simply stated that she has no personal or financial interest in the subject's estate. Given the Respondent's specific averments about her presence at the transaction and her consent to the subject's actions, this bare denial is insufficient.
57. The Applicant concedes that the primary suit was filed without first seeking leave of this Court to act as next friend. She attributes this to inadvertence and urgency.
58. While this Court has the power to regularize such proceedings, that power is discretionary. In the circumstances of this case, where the medical evidence is insufficient, where there are serious questions about the subject's capacity at the time of the transaction, where family consent is absent, and where



the Applicant's motives are challenged, this Court is not inclined to exercise its discretion in favor of regularization.

59. In Re of LKM (supra) , the court held:

“The power to regularize proceedings is discretionary and must be exercised judicially. Where the underlying application is weak, regularization does not strengthen it. The court must first be satisfied that the substantive application has merit before regularizing procedural irregularities.”

60. This Court is mindful that its primary duty is to protect the interests of the subject, RKAK. If he indeed suffers from a mental disorder that renders him incapable of managing his affairs, he deserves to have a guardian appointed to protect his interests.

61. However, this Court cannot appoint a guardian on the basis of the evidence currently before it. The medical evidence is insufficient, there are serious factual disputes about the subject's capacity, and there are legitimate questions about the Applicant's suitability and motives.

62. This Court has carefully considered the competing interests at play. On one hand, if the subject truly suffers from a mental disorder, he deserves protection. On the other hand, the court must not appoint a guardian on the basis of insufficient evidence, especially where the appointment is opposed and serious questions are raised about the applicant's motives.

63. This Court is not so satisfied on the evidence currently before it.

64. Accordingly, this Court finds the instant Application to be without merit. Consequently, the Applicant's Notice of Motion dated 24th July, 2025 is hereby dismissed. Each party to meet his or her own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2026.

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh/Naomi

No Appearance

