



**JWW v IWM (Miscellaneous Application E229 of 2025)
[2026] KEHC 3555 (KLR) (Family) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E229 OF 2025
H NAMISI, J
MARCH 18, 2026**

BETWEEN

JWW PETITIONER

AND

IWM WARD

JUDGMENT

1. The matter before this Court is a Petition dated January 14, 2026. The Petitioner approaches this Court seeking the invocation of its protective jurisdiction over her husband, I.W.M, the Ward. The Petition is anchored on the provisions of Order 32 Rule 15 of the Civil Procedure Rules, Section 26 of the *Mental Health Act*, and the inherent powers of the High Court to safeguard the interests of vulnerable persons.
2. The Petitioner seeks foundational declaratory orders and subsequent substantive relief. Primarily, she prays for an order declaring that the Ward is unable to conduct his business by reason of unsoundness of mind or mental infirmity, specifically stemming from a diagnosis of Parkinson spectrum disorder and Lewy body dementia. Consequently, the Petitioner contends that the Ward is incapable of making independent decisions or protecting his legal and financial interests. Predicated on this declaration, the Petitioner seeks to be appointed as the Guardian ad litem and the Legal Manager of the Ward's estate, empowering her to assume control over his personal welfare and his movable and immovable properties.
3. Section 26(1) of the *Mental Health Act* vests the High Court with the explicit authority to make orders for the management of the estate of any person suffering from a mental disorder, and for the guardianship of such a person by a near relative or another suitable individual. Furthermore, Order 32 Rule 15 of the Civil Procedure Rules extends the procedural protections traditionally afforded to



minors to adult persons who, upon judicial inquiry, are found to be of unsound mind or mentally infirm to the extent of being incapable of protecting their interests.

4. The Petition is supported by a sworn Affidavit executed by the Petitioner on January 14, 2026. To substantiate her averments, the Petitioner annexed several evidentiary documents, including copies of the parties' National Identification Cards, a Certificate of Marriage (Serial No. 340768) confirming their union on April 12, 1986, under the African Christian Marriage and Divorce Act, and a Medical Report from Coptic Hospital dated May 29, 2025.
5. The Court had the opportunity to observe the Ward, who was present in the courtroom. The Court's preliminary observation was that the Ward was conscious but barely responsive, exhibiting only minimal eye and hand movements.
6. During her testimony, the Petitioner provided a detailed chronological account of the Ward's cognitive decline. She testified that the Ward retired from active employment in 2018, shortly after which she began observing uncharacteristic and concerning behavioural shifts. The Ward's judgment deteriorated, and he exhibited signs of severe disorientation, resting tremors, and unexplainable slow movements. The Petitioner narrated an incident illustrating the severity of the cognitive decline, stating that she felt unsafe when the Ward drove, prompting the family to seek specialized medical intervention. By 2020, the Ward was formally diagnosed with dementia and Parkinson's disease, and by 2024, he suffered severe damage to his optic nerves, rendering him legally blind.
7. The Petitioner further testified regarding the composition of the Ward's estate, which she seeks to manage. The estate comprises several bank accounts, including a joint account and an account held solely by the Ward. The real estate portfolio includes residential and commercial plots situated in Utawala, Kiserian, and Matuu. The Petitioner emphasized that none of the property titles are held in joint tenancy; they are registered exclusively in the Ward's name or her own name individually. The underlying urgency of the Petition, as articulated by the Petitioner, is the necessity to access the Ward's financial resources to procure essential medication, provide daily sustenance, facilitate hospital visits, and remunerate full-time caretakers.
8. To satisfy the statutory requirement for independent medical verification, the Petitioner called Dr. Andras Rozsa to the stand on February 19, 2026. Dr. Rozsa is medical professional, holding a degree in neurology, a specialist degree in psychiatry, and a Ph.D. in neurosciences. Serving as a Consultant Neurologist at Coptic Hospital, Dr. Rozsa confirmed that the Ward is under his direct clinical care.
9. Expanding upon his written Medical Report of May 29, 2025, Dr. Rozsa diagnosed the Ward with Parkinson spectrum disorder and Lewy body dementia. Dr. Rozsa testified that the Ward recently suffered a cerebrovascular accident (stroke) that targeted the specific functional area of the brain responsible for speech comprehension. As a direct consequence of this neurological damage, the Ward is entirely unable to comprehend his surroundings or process verbal communication. Dr. Rozsa characterized the Ward's condition as a state of continuous life long confusion that is constant, irreversible, and no longer amenable to therapeutic management. From a clinical perspective, Dr. Rozsa concluded that the Ward is fundamentally incompetent to engage in any form of independent decision-making.
10. The evidentiary record is further fortified by the unanimous consent of the Ward's immediate family and the endorsement of the local administrative authorities. The Court has reviewed a formal Consent Document dated January 14, 2026, executed by the Ward's three biological adult children: AMM, KWM, and TWM. The children unequivocally consent to the appointment of their mother as the Guardian and Legal Manager of their father's affairs. Additionally, a letter dated October 24, 2025, authored by Mathew Maingi Kiilu, the Assistant Chief of Githunguri Location, confirms the Ward's



incapacitation and officially recommends the Petitioner as the rightful person to transact business on the Ward's behalf to ensure his continued upkeep and medical care.

Analysis & Determination

11. The adjudication of mental capacity is a profound exercise of judicial power, as it effectively strips an adult citizen of their autonomy, their right to contract, and their right to independently dispose of their property. Under Kenyan law, there is a bedrock legal presumption that every adult individual is of sound mind and possesses the requisite legal capacity to manage their own affairs. He who asserts the contrary bears the heavy burden of rebutting this presumption with cogent, compelling, and conclusive evidence.
12. Section 2 of the [Mental Health Act](#) defines a "person suffering from mental disorder" broadly, encompassing persons diagnosed with mental illness, psychopathic conditions, and mental impairments. However, as the Supreme Court of Kenya astutely observed in Petition No. 10 (E013) of 2022, Hon. Lady Justice Mary Muthoni Gitumbi vs. The Tribunal, the [Mental Health Act](#) does not explicitly define mental incapacity itself, nor does it prescribe an automatic legal disability flowing merely from a diagnosis. The Supreme Court's pronouncement underscores that the existence of a mental illness is a medical question, whereas the determination of capacity is a functional, legal question. The Court must ascertain whether the specific cognitive deficits associated with the illness functionally prevent the individual from understanding the nature, purpose, and consequences of their actions.
13. Where the medical evidence demonstrates that the illness directly impairs cognitive function and decision-making, the courts have not hesitated to declare the Ward incapacitated. In *In re HNM* (Petition E026 of 2023) KEHC 19431 (KLR), the Court emphasized that the burden of proof to establish mental incapacity under section 26(1) of the [Mental Health Act](#) relies heavily on satisfactory medical evidence. In that matter, the petitioner successfully met the burden by presenting psychiatric evidence that the Ward, suffering from Alzheimer's Dementia, was incapable of managing his affairs, leading to the appointment of a guardian.
14. The evidence before this Court is uncontroverted. The Petitioner has successfully discharged her burden of proof. The clinical findings presented by Dr. Rozsa do not merely point to physical frailty or eccentricities of old age; they establish a profound, irreversible destruction of the Ward's cognitive architecture. Lewy body dementia inherently causes a progressive decline in thinking, reasoning, and independent function. When this is exacerbated by a stroke that obliterates speech comprehension, the Ward is functionally severed from the realities of legal and financial transactions.
15. The Ward is enveloped in a state of continuous confusion, rendering him functionally incapable of protecting his interests. Accordingly, I find and hold that the Ward is a person suffering from a mental disorder within the meaning of section 26 of the Act, and is wholly incapable of managing his own affairs.
16. In determining the specific prayers of the Petitioner, it is necessary to clarify the functional distinction between a Guardian and a Manager of the Estate. While the two roles are frequently consolidated into a single appointee for practical efficiency, they serve distinct legal purposes.
17. Under section 26(1)(b) of the Act, a Guardian is appointed primarily to oversee the personal welfare, medical decision-making, living arrangements, and general representation of the Ward. The guardian steps into the shoes of the incapacitated individual to make deeply personal choices regarding their day-to-day life and therapeutic regimen.



18. Conversely, under section 26(1)(a) and section 28 of the Act, a Manager of the Estate is appointed specifically to administer, safeguard, and legally deal with the property and financial assets of the person with mental illness. This includes managing land, executing financial instruments, operating bank accounts, collecting rents, and settling debts.
19. In the present case, the Petitioner has prayed to be appointed as the Guardian ad litem and implicitly seeks the powers of a Manager to access bank accounts and oversee properties. Given the Ward's absolute incapacity to manage either his personal health decisions or his financial portfolio, the Court finds it necessary and appropriate to address both dimensions of care.
20. The Court now turns to the suitability of the Petitioner for appointment as the Guardian and Manager of the Ward's estate.
21. Section 26(1)(b) of the Act stipulates that guardianship may be granted to "any near relative or by any other suitable person". When evaluating suitability, courts heavily prioritize spouses and immediate adult children, provided they demonstrate the requisite capacity, proximity, and unwavering commitment to the Ward's welfare.
22. The factual matrix of the instant Petition aligns perfectly with this established jurisprudence, particularly mirroring the circumstances in *In re JMN* and *In re KMM*. The Petitioner has been married to the Ward for 40 years. She has served as his primary caregiver since the onset of his cognitive decline in 2018, demonstrating a profound, long-standing commitment to his welfare. She proactively sought specialized neurological intervention at Coptic Hospital and has demonstrated a comprehensive understanding of both his complex medical needs and the structure of his estate.
23. Furthermore, the Best Interests principle—while most prominently codified in family law regarding children—serves as the overarching equitable doctrine guiding the Court in matters of vulnerable adults. The Court must act in a manner that favours advancing the welfare, dignity, and interests of the incapacitated individual.
24. In assessing the best interests of the Ward, the Court places significant weight on the absence of familial dispute. This Petition is not adversarial. The Ward's three biological adult children have sworn formal consents fully endorsing their mother's application. Additionally, the local administrative authority, the Assistant Chief, has independently vetted the family's circumstances and expressly recommended the Petitioner as the rightful transacting authority.
25. There is absolutely no evidence on record to suggest any conflict of interest, ulterior motive, or unfitness on the part of the Petitioner. She is motivated purely by the necessity of ensuring her husband receives uninterrupted medical care and dignified living conditions. Consequently, the Court finds the Petitioner to be a fit, proper, and exceptionally suitable person to be appointed as both the Legal Guardian and the Manager of the estate of the Ward.
26. While the Court is satisfied with the Petitioner's suitability and is inclined to grant her broad powers to manage the estate, the law demands that such powers be rigorously circumscribed. The appointment of an estate manager is not a transfer of ownership; it is the creation of a stringent fiduciary relationship.
27. Section 27(4) of the Act fundamentally alters the legal status of an appointed manager, declaring that for the purposes of the Act and the Penal Code, a manager is deemed to be a trustee. This legislative pronouncement imposes the highest standard of fiduciary duty upon the Petitioner. The real estate situated in Utawala, Kiserian, and Matuu, along with the contents of the bank accounts, do not become the absolute property of the Petitioner. They remain the property of the Ward, held in trust by the Petitioner strictly for his benefit, maintenance, and medical care.



28. To enforce this fiduciary architecture and prevent any potential abuse, mismanagement, or unauthorized alienation of the Ward's life accumulations, the Court must impose the standard operational safeguards mandated by the *Mental Health Act* and consistent Court practice.
29. The Court notes the Petitioner's specific prayer to access the Ward's bank accounts to withdraw funds. In light of the severe medical exigencies and the exorbitant costs associated with managing Parkinson's disease, Lewy body dementia, and stroke recovery, this prayer is entirely justified and practically necessary.
30. In the premise, this Court makes the following orders:
- i. It is hereby declared that the Ward, IWM, is a person suffering from a mental disorder within the meaning of section 2 and section 26 of the *Mental Health Act*.
 - ii. It is further declared that by reason of the aforementioned severe mental infirmity, the Ward is functionally and legally incapable of managing his own affairs, making independent decisions, or protecting his legal and financial interests.
 - iii. The Petitioner is hereby appointed as the Legal Guardian and Guardian ad litem of the Ward. In this capacity, she is vested with full authority to make all decisions regarding his personal welfare, residence, and medical care.
 - iv. The Petitioner is hereby appointed as the Legal Manager of the Estate of the Ward pursuant to section 28 of the *Mental Health Act*.
 - v. The Manager is granted the authority to manage the Ward's movable and immovable properties. Specifically, the Manager is explicitly authorized to access, operate, and make withdrawals from any and all bank accounts held solely or jointly in the name of the Ward. These funds shall be utilized exclusively for the purpose of settling the Ward's medical expenses, purchasing medication, compensating caretakers, and providing for his daily upkeep and maintenance. The Manager is further empowered to execute and sign all standard instruments necessary for the routine management of the estate and the receipt of any monies owed to the Ward.
 - vi. In her capacity as a statutory trustee, the Manager shall not sell, transfer, lease, charge, alienate, or in any way dispose of the Ward's immovable properties without a prior, formal application to, and the express written sanction of, this Court.
 - vii. The Manager is hereby directed to prepare and deliver a true, accurate, and comprehensive inventory of all properties, assets, bank accounts, and debts belonging to the Ward's estate. This inventory must be filed with this Court and submitted to the Public Trustee within 6 months from the date of this Judgement.
 - viii. In compliance with section 27(4) of the *Mental Health Act*, the Manager shall cause a formal notice of her appointment as the Manager of the Estate of the Ward to be published in the Kenya Gazette within 30 days of the date of this Judgement.
 - ix. The costs shall be borne by the estate of the Ward.

DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF MARCH 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT



Delivered on virtual platform in the presence of:

For Petitioner Mr. Thuo

Court Assistant Lucy Mwangi

