



REPUBLIC OF KENYA



KENYA LAW

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In re DMK (Miscellaneous Case E020 of 2024) [2026] KEHC 3650 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3650 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

MISCELLANEOUS CASE E020 OF 2024

SN RIECHI & SN RIECHI, JJ

MARCH 5, 2026

IN THE MATTER OF DMK - SUBJECT

IN THE MATTER OF

PKM 1ST PETITIONER

SNK 2ND PETITIONER

RULING

1. PKM first Petitioner was married to the subject DM on 1st November 2003 Under the [Marriage Act](#) and issued with Certificate of Marriage number 97691 attached to the Petition. SN is a step sister of the subject. The Petitioners filed this Petition under the [Mental Health Act](#) seeking the following prayers:
 - a. That the subject DMK be declared to be a person suffering from mental disorder under the [Mental Health Act](#), Cap 248 Laws of Kenya.
 - b. That the honourable court be pleased to appoint the petitioners as the guardian in respect of DMK and to grant them custody care and management of the subject.
 - c. That this honourable court be pleased to appoint the petitioners as the manager of all the affairs of the subject herein and does allow them to prosecute any suit in place of the subject, operate any of his Bank accounts, sell, dispose, lease, transfer, assign, mortgage.
2. The subject DMK upon being served with the Petition filed a response in a replying affidavit sworn on 11th April 2025. In his response he denies that he is of unsound mind and that the Petitioners' motive in this petition is to acquire his property and that this petition is a ploy to delay the suits he has filed in court against the first petitioner. This Court directed that the petition be canvassed by way of viva voce evidence.
3. Pw1 PKM testified that she was married to the subject DMK in 2003. They did not have any biological children with D but she had a son before she got married. She testified that the subject suffers from a mental illness as he talks to himself and says people want to kill him. She took him to Doctor Ndetei



- who diagnosed him with a mental illness. He gave him drugs, which when he takes them he is fine. In 2022 he filed for a divorce and in 2023 he moved out of the matrimonial house. The divorce was heard and their marriage was dissolved and divorce granted. She has preferred an appeal to the High Court.
4. On being Cross-examined by Wambua for Respondent, she stated that they have been living apart since 2023. She had noticed the illness first in 2006 when he was still working in the Office of the President. She confirmed that before the divorce the respondent had obtained protection orders. She maintains that although he obtained protection orders under the Prevention of Domestic Violence Act against her and they have not lived together for two years she is the right person to take care of him.
 5. Pw2 SNK testified that the respondent D is her step-brother. She testified that the Respondent had a problem since childhood as he would speak and laugh by himself. The subject who is now 76 years old has had this problem since childhood. She stated she last saw the respondent in 2022 while attending a case in Court.
 6. Pw3 BWK testified that the Respondent is his neighbor at Kiuturi and he last saw him in 2019 where he saw his mental state was good. He stated the Respondent stays in Nairobi after he retired and they don't meet often.
 7. The Respondent/subject DMK gave evidence. He stated he was born in 1952 to ZMK, a Police Officer working in Nairobi. He attended Nursery in Nairobi Katitu Intermediate School City High School and was employed in 1969 in the Office of the President. He went for further studies in Britain and the United States. He married Priscilla, the first petitioner, in 2009 but did not have children. He retired and lives alone in Buruburu. He became diabetic in 1992 and is on medication which he injects himself two times a day. He takes care of himself and cooks for himself.
 8. Pw1 David Ndeti, a Professor of Psychology since 1980 gave evidence. He testified that D has been his patient since 31st May 2005. On examination he found he was suspicious of people's intentions and did not know or appreciate that he is sick. He diagnosed him to be suffering from Paranoid Schizophrenia. He put him on medication. He last saw him 6 years ago and prepared a report dated 18th May 2023 and 15th May 2023. On Cross examination he stated that the condition is treatable with medication.
 9. Rw 2 Dr Kingi Kemunto a Medical doctor and Psychiatrist saw the subject on 13th March 2024. On examination she found he had good memory and judgment. She formed the opinion that if he had Schizophrenia previously, then the same was in remission. She prepared her report and produced it as an exhibit.
 10. Upon consideration of the evidence the Court directed parties to file Submissions. Both parties complied.
 11. Mr Kirimi for the Petitioner submitted that it is not disputed that D suffers from Paranoid Schizophrenia diagnosed by Professor Ndeti in 2005 which progresses when untreated. Due to this conditions he lacks insight and judgment and therefore is incapable of managing his affairs. He should therefore be declared a person suffering from mental disorder. He refers the Court to the decision in RMMN a person suffering from Mental disorder 12315 KLR.
 12. Wambua Counsel for Respondent/ Subject D submitted that there is no evidence that D is suffering from mental illness. The Medical report by Kingi Mochache indicated that he is oriented in time, space, place and had a good memory and Judgment. The Respondent/Subject also testified in Court and was able to explain issues with clarity.
 13. In a petition brought under *Mental Health Act* the Court is required to determine the following issues:



1. Determine whether the Subject is a person with a mental disorder or suffering from a mental illness.
 2. If (1) is positive, declare him to be a person with a mental disorder in accordance with section 2 of the *Mental Health Act*.
 3. Upon such declaration a suitable person be guardian of the subject and manager of his assets.
14. On Whether D is a person suffering from a mental disorder section 2 of the *Mental Health Act* provides:
- person with mental illness" means 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 behavior.
15. In determining whether a person is suffering from a mental illness court will receive evidence of the subject from (1) person interacting or living with the Subject on his behavior, (2) evidence of alcohol or use of substances or evidence of suicidal idealization of behavior, (3) evidence of the subject if he is capable of communicating or observing by the Court of the subject, (4) Medical - evidence of a qualified Mental Health Practitioner.
16. The evidence of the first petitioner is that D was diagnosed with Paranoid Schizophrenia in 2005 by Dr Ndetei and put on treatment. Dr Ndetei confirmed that he indeed diagnosed D with that condition and put him on treatment. He last saw him 6 years ago and cannot state his present condition but stated that in that condition a person who takes the medication can live a normal life. He could not testify on the present condition of the Subject. Doctor Kingi examined the Subject on the 13th March 2024. Upon examination she found the Subject as follows:
17. From the examination she found the Subject to be oriented in time, place and person, had a good recall, longtime and short term memory and good judgment.
18. The subject gave evidence in court on 18th June 2024. He stated:

I am 71 years and some months. I was born on 28th July 1952. I went to school in Nairobi. My father was ZMK. He was a Police Officer. I went to nursery at mathare primary school from 1959 to 1960. In 1969 my elder brother MKK took me to intermediate School in Muranga. I took my KPE in 1964. I went to city high school until 1968. In 1969 I was employed at the Office of the President under Mzee Kenyatta. I was trained in Maseno KIA as a Senior Assistant Director DPM. I went for further studies in DPM Britain. I also went to Connecticut USA from certificate level. In 2006 Ongonda was PS Gaylord Avedi Munene were PS. Information. I retired in 2007 and given several extensions and left in 2007. Marriage in first November 2003 to PM. We do not have children. When I retired I wrote articles on work specifications on payment. I don't live with my wife currently. I live alone in Buruburu Phase 1. I am on pension and I do consultancy I became diabetic in 1992. It was brought by excessive beer. I inject myself 2 times a day. I stay alone. I cook for myself. I heard my last consultation in March, April coming Monday 17th I will be getting some jobs. I have employed myself since 2023 when I left the Matrimonial home in Pioneer Estate. I went to Buruburu Phase 1. I miss the house because there was tension because of quarrels.



I am much better. I left when I was 64 kg and now I am 68. I want to reduce it to 65. I used to work for Mutangili, M/s Gitonga, Mr Kanja in Judiciary.

19. This witness gave evidence extensively. He was examined by Mr Kariuki for Petitioner. His evidence was detailed with a good recall of past events, where he went to school, work, recent events, divorce and present life - where and how he lives. The evidence of the subject D in this court was clear, logical and consistent. In Court he displayed clarity of thought process, coherent processing of information and clarity of mind. He is aware of place, time and space. I therefore find and declare that D Kitele is a normal person and has no mental disorder. The petition dated is hereby dismissed with costs.

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

S. N. RIECHI

JUDGE

