



**EKR & another v DNR (Miscellaneous Civil Application E381 of 2025)  
[2026] KEHC 4109 (KLR) (Family) (30 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4109 (KLR)

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

**FAMILY**

**MISCELLANEOUS CIVIL APPLICATION E381 OF 2025**

**H NAMISI, J**

**MARCH 30, 2026**

**IN THE MATTER OF THE MENTAL HEALTH ACT,  
CAP 248 OF THE LAWS OF KENYA**

**AND IN THE MATTER OF AN APPLICATION FOR APPOINTMENT  
OF A GUARDIAN AND MANAGER IN RESPECT OF DNR**

**BETWEEN**

**EKR ..... 1<sup>ST</sup> PETITIONER**

**JAR ..... 2<sup>ND</sup> PETITIONER**

**AND**

**DNR ..... WARD**

**JUDGMENT**

1. The matter before the Court is a Petition dated 18 November 2025, brought pursuant to Sections 26, 27, 28, and 29 of the *Mental Health Act*, read conjunctively with Articles 28, 43, and 54 of *the Constitution*. The Petitioners seek the intervention of this Court to be appointed as the legal guardians of the person and the managers of the estate of D.N.R. (the Ward).
2. The jurisdiction of this Court to entertain matters concerning the deprivation, restriction, or facilitation of legal capacity for persons suffering from mental disorders is foundational, original, and inherent, deriving from Article 165 of *the Constitution* and specifically operationalized by Section 26 of the *Mental Health Act*.
3. The Petitioners approach the Court on the primary premise that the Ward, an adult female aged 39 years, suffers from severe and permanent developmental disorders—specifically, an autism spectrum



- disorder, cerebral palsy, and intellectual disability. It is averred that these conditions substantially and irreversibly impair her cognitive, physical, and adaptive functions, rendering her wholly dependent on caregivers for decision-making, self-care, communication, and daily activities, and completely incapacitating her ability to manage her personal, medical, financial, and legal affairs.
4. The necessity for judicial intervention at this specific juncture is precipitated by an ongoing succession process. The Ward is a legally recognized beneficiary of the estate of her late father, TRO, who died intestate on 24 March 2021. The Petitioners assert that the absence of duly appointed legal managers places the Ward's inheritance, financial access, and general welfare at acute risk of stagnation, delay, or potential exploitation.
  5. The Petition is supported by the joint Affidavit of the Petitioners, sworn on 18 November 2025, alongside verifying affidavits and a bundle of documentary exhibits. Additionally, written consents from the Ward's siblings, Dr. NKR and MHR, have been filed, indicating familial consensus and an absence of objection to the prayers sought, an important factor in non-contentious family proceedings.
  6. The 1<sup>st</sup> Petitioner is a retired civil servant and the biological mother of the Ward. The 2<sup>nd</sup> Petitioner is the biological brother of the Ward and an Advocate of the High Court of Kenya. The Ward was born on 4 September 1987 at Pumwani Maternity Hospital, Nairobi, as evidenced by the Certificate of Birth annexed to the pleadings.
  7. The documentary medical history indicates that the Ward experienced complications at birth, specifically hypoxia (a deprivation of adequate oxygen supply), which subsequently precipitated profound and irreversible developmental challenges. These challenges manifested early in her life as significant delays in achieving standard developmental milestones, including a pronounced delay in walking and a failure to acquire speech until the age of four. Over time, she was clinically evaluated and formally diagnosed with a trifecta of congenital conditions: cerebral palsy, an autism spectrum disorder, and intellectual disability. Consequently, she was registered as a person living with a disability with the National Council for Persons with Disabilities (NCPWD), bearing Registration Certificate No. NCPWD/P/6XXXXX.
  8. For the majority of her life, the Ward was cared for within a nuclear family structure overseen by her parents. However, the family dynamic was irrevocably altered following the demise of the family patriarch, TRO, on 24 March 2021. The late TRO was a practicing Advocate, and following his death, the Petitioners petitioned for and were issued a Grant of Letters of Administration Intestate on 7 September 2021 in Nairobi High Court Succession Cause No. E662 of 2021.
  9. The progression of the succession proceedings necessitates the lawful distribution of the Deceased's estate among his rightful beneficiaries. The Ward, as a biological daughter, holds a beneficial interest in the estate. However, due to her profound cognitive impairments, she lacks the requisite legal and financial capacity to independently open a bank account, receive funds, execute transfer documents, or make prudent decisions regarding the investment or utilization of her portion of the inheritance. It is this specific legal and administrative impasse that has catalyzed the present Petition for the appointment of guardians and managers under the [Mental Health Act](#).
  10. The Petitioners relied heavily on a comprehensive medical and psychiatric assessment report emanating from the Nairobi City County Mbagathi Hospital, Health, Wellness and Nutrition Services. The Report is dated 29 August 2024 and was finalized and stamped by the County Director of Health on 24 September 2024. The assessment was conducted by an assembled multi-disciplinary medical board comprising Dr. Kanjama (Psychiatrist), Dr. Patrick Korir, and Kennedy Osugo.



11. The clinical history detailed in the Report corroborates the Petitioners' averments. It notes that while the Ward had a normal delivery, she experienced birth asphyxia (hypoxia). The presenting clinical profile describes a patient with delayed milestones like walking and speech, reduced muscle volume in the lower limbs, slow motor functioning, and an inability to maintain concentration on specific tasks. The psychiatric mental status evaluation concluded that the Ward is unable to read or write, is highly emotional, and is not oriented to places or directions. The Medical Board established a definitive diagnosis of Intellectual Disability secondary to Cerebral Palsy.
12. The Medical Report conclusively recommended that the Ward be continually registered as a person living with a disability and affirmed that her condition, being congenital, is permanent and irreversible. It further recommended ongoing psychiatric follow-up and noted that she requires continuous supervision for household and financial responsibilities, for which her capacity was rated as "partial" and "nil," respectively.
13. At the hearing, the Ward presented with a calm demeanour. When examined by the Court, she was able to articulate her basic identity. She correctly identified her late father, TR, and acknowledged her mother's presence in the courtroom. She recalled attending [Name Withheld] school and [Name Withheld] secondary.
14. However, her testimony also revealed significant cognitive limitations, a profound lack of temporal awareness, and a detachment from practical realities. For instance, she remarked, "Last week I was small," a statement indicative of severe disorientation regarding time and personal development. She expressed a desire to look for job, for college. Computer, despite the medical evidence confirming her complete lack of vocational capacity and her inability to read or write.
15. She demonstrated a heavy reliance on a highly structured routine, stating that her daily activities involve waking up, taking a shower, brushing her teeth, taking tea, watching television and reading the Bible. She noted, "I Like Psalms 39:verse 4. I pray every day".
16. The Court's direct observation aligns flawlessly with the psychiatric reports. While the Ward possesses basic communicative abilities, a serene disposition, and a commendable spiritual routine, she lacks the executive functioning, financial literacy, and abstract reasoning required to navigate complex legal, banking, and administrative affairs independently. She possesses no insight into the nature of an estate, the concept of succession, or the mechanics of financial management.
17. The 1<sup>st</sup> Petitioner corroborated the medical history, confirming the Ward's birth at Pumwani Hospital and the subsequent developmental challenges that became apparent as the Ward grew. She testified that she enrolled the Ward in a special school to address her intellectual challenges, noting that the Ward does not understand very well and that it took her four years to learn to speak. The 1<sup>st</sup> Petitioner confirmed the Ward's complete economic dependence, stating that the Ward does not work, has no children, possesses no bank account, and does not operate a mobile money (M-Pesa) account. She requested the Court to appoint her as a co-guardian alongside the 2<sup>nd</sup> Petitioner to ensure the seamless and lawful management of the Ward's impending inheritance from her late father.
18. The 2<sup>nd</sup> Petitioner testified under affirmation in English. As an Advocate of the High Court and the Ward's brother (the third born and only son), he provided critical context regarding the family's internal arrangements. He explained that the family was raised in a close-knit, nuclear setting. He informed the Court that prior to his father's demise, there had been familial friction involving an elder sister and the Ward. Consequently, the late father expressed a clear, albeit informal, will that the 2<sup>nd</sup> Petitioner should assume primary responsibility for the Ward's care and protection. He confirmed that the Ward has been residing with him at his residence on Amboseli Road, Lavington, since 2021. He



emphasized to the Court that the primary motivation for the application is protective: to safeguard the Ward's interests in light of the finalization of the succession proceedings, ensuring she "does not suffer while we watch".

### **Analysis & Determination**

19. In the present case, the evidentiary burden has been fully discharged. The Ward suffers from cerebral palsy, an autism spectrum disorder, and an intellectual disability. These are not transient psychiatric episodes but congenital, permanent, and irreversible conditions that have severely stunted her intellectual and cognitive development since birth. The multi-disciplinary Medical Board at Mbagathi County Hospital definitively classified her disability rating as "severe," explicitly noting her total lack of capacity for financial responsibility and occupational functioning.
20. Therefore, the Court is satisfied, beyond any reasonable doubt, that the Ward is a person suffering from a mental disorder within the meaning of section 26 of the *Mental Health Act*, and that she is inherently incapable of managing her own personal and financial affairs.
21. The Petitioners pray that they are appointed as facilitators of the Ward's legal capacity. Their mandate will be to interact with third parties—banks, medical institutions, the Public Trustee, and the administrators of the late TRO's estate—strictly to operationalize the Ward's right to health, her right to housing, and her right to receive her lawful inheritance. Ideally, they will be the bridge between the Ward's inherent rights and the administrative realities of the financial system, ensuring she is not economically disenfranchised by her disability.
22. Under Section 26(1) of the *Mental Health Act*, the Court is empowered to appoint "any near relative or by any other suitable person" as a guardian or manager. The paramount and overriding consideration is the welfare and protection of the Ward.
23. The 1st Petitioner is the Ward's biological mother. The evidence demonstrates that she has been the Ward's primary caregiver since birth, navigating the profound complexities of her daughter's congenital conditions for nearly four decades. Her dedication to the Ward's daily well-being, survival, and dignity is unquestionable and stands as a testament to maternal devotion. She is perfectly positioned to act as a guardian of the person, overseeing daily living arrangements, hygiene, and immediate medical care.
24. The 2<sup>nd</sup> Petitioner is the Ward's biological brother. The oral testimony revealed a commendable family arrangement wherein the 2<sup>nd</sup> Petitioner assumed residential care of the Ward following a family disagreement and the subsequent passing of their father. Crucially, the 2<sup>nd</sup> Petitioner is an Advocate of the High Court of Kenya. As an officer of the Court, he is bound by strict codes of professional ethics, integrity, and elevated fiduciary standards. His legal expertise renders him particularly well-suited to navigate the complex administrative, banking, and legal procedures associated with managing the Ward's share of the late TRO's estate, ensuring compliance with succession laws and institutional requirements.
25. Furthermore, the application is un-opposed. The written consents executed by the other adult siblings, Dr. NKR and MHR, indicate strong family cohesion. This collective familial agreement provides the Court with comfort that the Petitioners are viewed by those closest to the Ward as the most appropriate individuals to assume these vital roles.
26. The Court finds that the Petitioners possess the requisite moral character, historical dedication, and professional competence to be appointed as joint guardians of the person and joint managers of the estate of the Ward.



27. In the premise, this Court finds that the Petition is meritorious. The Court accordingly issues the following orders:
- a. It is hereby declared that DNR (the Ward) is a person suffering from a mental disorder within the meaning of section 26 of the *Mental Health Act* by reason of a severe autism spectrum disorder, cerebral palsy, and intellectual disability, which renders her incapable of independently managing her personal, financial, and legal affairs.
  - b. The Petitioners are hereby appointed as the joint Legal Guardians of the person of the Ward for all matters relating to her personal welfare, medical and therapeutic decisions, habitation, and daily living arrangements.
  - c. The Petitioners are hereby appointed as the joint Managers of the Estate of the Ward pursuant to section 28 of the *Mental Health Act*.
  - d. The Managers are authorized and empowered to receive, administer, invest, preserve, and apply all funds, income, benefits, and property belonging to the Ward—including her rightful share of inheritance from the Estate of the Late TRO (High Court Succession Cause No. E662 of 2021)—solely and exclusively for her medical care, therapy, maintenance, accommodation, and general welfare, guided by the best interpretation of her will and preferences.
  - e. The Managers are authorized to sign and execute all documents, authorizations, applications, and processes relating to the Ward's medical treatment, health insurance, banking and financial transactions, and government disability programs.
  - f. The Managers shall not sell, transfer, lease, charge, or otherwise alienate any immovable property registered in the name of the Ward, or beneficially owned by the Ward, without the express prior sanction, scrutiny, and leave of this Court.
  - g. Pursuant to section 33 of the *Mental Health Act*, the Managers shall, within six (6) months of the date of this Judgment, deliver a comprehensive inventory of all properties, assets, and monies belonging to the Ward to this Court and to the Public Trustee. Furthermore, the Managers shall file annual accounts detailing the expenditure of the Ward's funds.
  - h. The Petitioners shall cause the publication of a notice in the Kenya Gazette within thirty (30) days of this Judgment, notifying the public and relevant financial institutions of their appointment as Managers of the Estate of the Ward.
  - i. The costs of this Petition shall be met from the Estate of the Ward.

**DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF MARCH 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Petitioners: Mr Amenity

Court Assistant: Lucy Mwangi

