



**In re ENG (Miscellaneous Civil Application E026 of 2026)
[2026] KEHC 4042 (KLR) (Family) (30 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4042 (KLR)

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

MISCELLANEOUS CIVIL APPLICATION E026 OF 2026

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 A PETITION FOR GUARDIANSHIP
OF ENG AND THE MANAGEMENT OF HIS ESTATE UNDER
SECTIONS 26, 27 AND 28 OF THE MENTAL HEALTH ACT**

BETWEEN

NG PETITIONER

AND

EBG WARD

JUDGMENT

1. The Petition dated 15 December 2025, brought under the provisions of Sections 26, 27, 28, and 29 of the *Mental Health Act*, Chapter 248 of the Laws of Kenya. The Petitioner seeks specific and profound judicial interventions regarding her father, ENG (the Ward).
2. The primary reliefs sought by the Petitioner are tripartite in nature. Firstly, she seeks a formal judicial declaration that the Ward is suffering from a mental disorder within the meaning of Section 26 of the *Mental Health Act*, rendering him incapable of managing his personal affairs, his estate, or making decisions regarding his treatment and welfare. Secondly, she prays that this Court be pleased to appoint her as the legal Guardian of the Ward pursuant to section 27 of the Act. Thirdly, she seeks an order appointing her as the Manager of the Estate of the Ward under section 28 of the Act, granting her the legal authority to manage his entire estate, withdraw funds from his bank accounts to meet his treatment and upkeep costs, and generally administer his diverse property portfolio.



3. The Petition is supported by the comprehensive Affidavit of the Petitioner, sworn on 16 December 2025, and is accompanied by specialized medical reports. Furthermore, it is noteworthy that the application before this Court is entirely unopposed. The Court has been furnished with duly executed, notarized, and commissioned Consent forms from the immediate family members, representing the entirety of the Ward's nuclear family. These include FMG, the Ward's wife of 86 years; WG, his daughter residing in Nairobi; and NG, his son, who resides in Tomball, Texas, in the United States of America, whose consent was duly authenticated by a Notary Public in the State of Texas.
4. At the hearing, the Ward appeared, allowing the Court the invaluable opportunity to observe the him directly. Given the advanced age and medical condition of the Ward, the Court dispensed with his physical attendance, though his virtual presence was critical for the Court's independent assessment.
5. The Ward, born on 12 September 1934, is a retired Human Resources Manager. The evidentiary record laid before this Court demonstrates a tragic, gradual, and irreversible decline in his cognitive abilities spanning well over a decade.
6. Testimonies from the Petitioner and the Ward's wife, FMG, indicate that the earliest manifestations of cognitive decline were observed around the year 2011. What began as minor memory lapses evolved into a progressive deterioration. By 2019, the family noted severe episodes of disorientation; the Ward, who was an avid walker, would frequently wander along Ngong Road and lose his way, unable to navigate back to his residence. He concurrently began failing to recall the names of close relatives and recent events, signifying a profound decay in short-term memory.
7. The Petitioner testified that she has been the primary individual managing the administrative and financial affairs of her parents since 2007, when they temporarily relocated to the United States of America. Upon their return to Kenya in 2012, she continued in this role, with the full blessing and relief of her mother, who found the administrative burdens too overwhelming to manage.
8. In 2007, recognizing the need for administrative assistance, the Ward executed a Power of Attorney in favor of the Petitioner and her sister, WG, to facilitate the management of his various real estate properties. For many years, this instrument sufficed. However, the legal limits and functional deficiencies of this Power of Attorney became acutely apparent recently when the Petitioner attempted to regularize the family's land titles at the Ministry of Lands. Specifically, the Government of Kenya required landowners to transition from the old Land Reference (LR) numbers to the new Block numbers. While the Petitioner was able to execute this transition for two properties, she encountered an insurmountable legal hurdle regarding a third property—the family home in Lavington (LR No. xxx/8336/185)—because the original title deed had been held by Absa Bank since the 1990s as collateral for a historical loan.
9. The land registry and the banking institution declined to recognize the 2007 Power of Attorney for these complex regularization processes. This administrative impasse brought into sharp focus the legal reality that the Ward, due to his advanced dementia, could no longer execute a new, updated Power of Attorney, nor could he personally interface with the Ministry of Lands or his banking institutions. Recognizing the escalating complexity of administering the estate, the absolute cognitive incapacity of the Ward, and the risk of the estate falling into administrative paralysis, the family collectively agreed to abandon informal management arrangements and formalize the Petitioner's role through this statutory Petition under the *Mental Health Act*.
10. During the hearing, FMG informed the Court that she will be turning 87 years old in June 2026. She was clear and unequivocal in her testimony: she is fully aware of the Petition, she agrees with it entirely, and she admits that she cannot manage the estate as there is too much. She stated that she and her



husband had long agreed that the Petitioner should continue doing what she has been doing for the family.

11. The estate is substantial, diverse, and complex, comprising prime real estate within Nairobi and Kwale Counties, a motor vehicle, pension funds, and a wide array of shareholdings in publicly listed corporate entities. The diverse and sophisticated nature of this estate underscores the absolute necessity for a legally empowered and judicially supervised Manager. The administration of leased real estate in prime areas like Lavington, the regularization of encumbered titles, the management of a pension, and the tracking, consolidation, and reinvestment of dividends from multiple blue-chip companies require legal authority that an informal caregiver simply does not possess. Without formal management orders, there is a severe risk of the estate suffering wastage, unpaid utilities, uncollected rents, and frozen dividends, which would directly jeopardize the financial resources necessary to provide the intensive medical care and daily upkeep the Ward currently requires.
12. The evidentiary record contains two primary medical evaluations, providing both a historical baseline and a contemporary assessment of the Ward's decline. The first report is a longitudinal assessment conducted by Dr. Dilraj Singh Sokhi, a Consultant Neurologist at the Aga Khan University Hospital in Nairobi. Dr. Sokhi's records indicate that he first evaluated the Ward on 4 October 2016. At that juncture, the Ward presented with a four-year history of progressively worsening short-term memory. A comprehensive neurological examination was conducted, during which the Ward scored a mere 10 out of 30 on the Montreal Cognitive Assessment (MoCA). In clinical neurology, a MoCA score above 25 is considered normal; a score of 10 is indicative of severe, profound cognitive impairment. Furthermore, an objective Magnetic Resonance Imaging (MRI) scan of the Ward's brain revealed global atrophy (shrinkage of the brain tissue) accompanied by leukoaraiosis (white matter disease), conditions that are consistent with severe neurological degeneration. Dr. Sokhi noted that these conditions were likely exacerbated by the Ward's underlying vascular risk factors, including hypertension, diabetes mellitus, and a stroke suffered in 1980. Based on this extensive clinical and radiological evidence, Dr. Sokhi concluded a diagnosis of Mixed Alzheimer's Disease and Vascular Dementia.
13. The second evaluation was conducted pursuant to this Court's directive during the hearing. The Petitioner filed a medical report authored by Dr. George K. Karanja (Registration No. A3498) of Prime Medical Services, dated 16 February 2026. Dr. Karanja's report paints a stark, distressing picture of advanced, end-stage cognitive and physical decline. The report details that since the year 2022, the Ward's condition deteriorated precipitously. Currently, the Ward is entirely confined to a wheelchair, suffers from moderate muscle wasting. He receives home physiotherapy twice a week and requires a full-time caretaker.
14. From a cognitive and psychiatric perspective, Dr. Karanja's findings are conclusive. He notes that the Ward is well kempt but has no insight and is not able to engage in any interactive conversation. The Ward suffers from profound amnesia, unable to recall his location or the current day. Furthermore, he exhibits erratic, unprompted behaviours, including laughing on his own and muttering incoherent words. Dr. Karanja unequivocally concludes that the Ward is an elderly sick man with advanced dementia and body weakness, who is absolutely not able to make any independent decisions and urgently requires a legal guardian and full-time caretaker.
15. To augment the documentary medical evidence, the Court conducted its own visual observation of the Ward during the virtual hearing on 12 February 2026. The Court noted that the Ward was seated in a dining room. While he was physically conscious and managed a brief smile when his children greeted him, he was otherwise entirely non-responsive to the judicial proceedings and completely unaware of the legal gravity of the environment around him.



16. The convergence of historical clinical diagnoses, objective radiological evidence (the MRI showing global atrophy), longitudinal functional decline over fifteen years, the recent conclusive assessment by Dr. Karanja, and the direct judicial observation by this Court provides overwhelming, irrefutable proof that the Ward's cognitive faculties have been fundamentally and irreversibly destroyed by neurocognitive disorders.

Analysis & Determination

17. While the *Mental Health Act* outlines the procedures for guardianship, the statute itself does not explicitly formulate the legal test for mental incapacity. The precise threshold for determining when a medical diagnosis legally translates into civil incapacity has been meticulously developed through Kenyan case law, most authoritatively by the Supreme Court.
18. In the landmark decision of Hon. Lady Justice Mary Muthoni Gitumbi vs. The Tribunal KESC 16 (Petition No. 10 (E013) of 2022), the Supreme Court established a definitive, rigorous two-stage test for assessing mental incapacity. Although the Gitumbi case specifically dealt with the constitutional threshold for the removal of a sitting judicial officer under Article 168 of *the Constitution* due to mental incapacity, the functional, fused clinical-legal test articulated by the apex court has become the universal standard applicable to all determinations of legal capacity under the *Mental Health Act*.
19. The Supreme Court held that assessing incapacity requires a fused test. First, there must be empirical medical proof that a person has an illness or injury that affects the manner in which the brain or mind works. Second, the Court must determine that the illness or injury affects the person to such a severe extent that they are functionally unable to perform their duties, manage their affairs, or make decisions to the requisite standard.
20. Applying the binding Gitumbi two-stage test to the facts of the present Petition: Under Stage One, the medical reports authored by Dr. Sokhi and Dr. Karanja unequivocally confirm that the Ward suffers from Mixed Alzheimer's Disease and Vascular Dementia, accompanied by objective physical brain atrophy visible on an MRI. This undeniably satisfies the requirement of an illness structurally and chemically affecting the functioning of the brain.
21. Under Stage Two, the evidence demonstrates that the Ward's cognitive impairment is so profound that he is totally disoriented to time, place, and person. He scores a severely impaired 10/30 on the MoCA, lacks any clinical insight into his condition, and cannot execute basic hygienic tasks or engage in interactive conversation. He is entirely incapable of managing his complex real estate portfolio, making medical treatment decisions, or instructing legal counsel.
22. Consequently, both prongs of the Gitumbi test are fully and irrefutably satisfied. The Ward is legally incapacitated. I find and hold that the Ward herein suffers from a mental illness within the meaning of Section 26 of the Act.
23. Having established the Ward's incapacity, the Court must determine the suitability of the Petitioner to serve as Guardian and Manager. Section 26(1)(b) of the Act permits the appointment of any near relative or by any other suitable person.
24. The overarching, golden thread that guides the Court in such appointments is the "Best Interests" of the Ward. Any decision made, or authority granted, on behalf of a person lacking capacity must be the least restrictive of their rights and freedoms, and must prioritize their welfare, dignity, health, and physical care.



25. The Petitioner is the eldest daughter of the Ward. She shares a residence with the Ward and his wife in Kilimani, Nairobi, and has functioned as his primary, dedicated caregiver. She attends all medical appointments, manages his daily needs, and has overseen his affairs informally for nearly two decades. Her mother, FMG, aged 86, explicitly testified before me that the physical, emotional, and administrative burden of the estate is simply too vast for her, and she fully endorsed her daughter's application. Her siblings, W and N, executed sworn, notarized consents supporting her appointment, proving that there is absolute familial consensus.
26. This familial harmony is a critical factor. The Court is highly cognizant of the historical misapplication of mental health laws to unlawfully expropriate property. The entire nuclear family is united in prioritizing the Ward's care. The Petitioner has already been managing the affairs, indicating a continuity of dedicated care rather than a hostile takeover.
27. Furthermore, I find a profound alignment between the Petitioner's actions and the constitutional duties imposed upon families. Article 57 of *the Constitution* mandates the State and the family to ensure that older members of society fully participate in the affairs of society, live in dignity and respect, and receive reasonable care and assistance.
28. The Petitioner has demonstrably, and laudably, fulfilled this constitutional and moral duty. She is, without question, the most eminently suitable person to be formally appointed as Guardian and Manager of the Estate.
29. The appointment of an Estate Manager under section 28 of the *Mental Health Act* is not a blanket transfer of ownership or a mechanism for premature inheritance. It is the creation of a stringent, judicially supervised fiduciary relationship. The Manager steps into the shoes of the Ward merely to administer the estate for the Ward's exclusive benefit, maintenance, and medical care.
30. This Court is satisfied that the Petitioner has discharged the burden of proof required to warrant the profound intervention of the Court under Part XII of the *Mental Health Act*. Accordingly, the Court issues the following Orders:
 - a. It is hereby declared that the Ward, ENG, is a person suffering from a mental illness/disorder within the meaning of section 2 and section 26 of the *Mental Health Act* and is entirely incapable of managing his personal affairs and his estate.
 - b. The Petitioner is hereby appointed under section 27 of the *Mental Health Act* as the Legal Guardian of the Ward with full and exclusive authority to make all decisions regarding his personal welfare, residence, and medical treatment.
 - c. The Petitioner is hereby appointed under section 28 of the *Mental Health Act* as the Manager of the Estate of the Ward, to manage his entire estate including all movable and immovable property, money, debts, and legacies.
 - d. As Manager of the Estate, the Petitioner is granted specific authority to access, operate, and manage all bank accounts, pensions, and shareholdings belonging to the Ward. The funds accessed shall be utilized strictly for the Ward's medical treatment, 24-hour caregiving costs, physiotherapy, and general upkeep.
 - e. The Petitioner is strictly prohibited from selling, transferring, leasing (beyond standard short-term residential tenancies), mortgaging, or otherwise disposing of any immovable property belonging to the Ward without the prior, specific leave and sanction of this Court.



- f. Pursuant to section 33(1) of the *Mental Health Act*, the Petitioner shall, within 6 months of the date of this Judgment, deliver to the Court and to the Public Trustee a full, accurate, and itemized inventory of the property, sums of money, goods, and effects belonging to the Ward. Furthermore, the Petitioner shall file annual accounts regarding the management of the estate of the Ward to the approval of the Public Trustee and the payment of the prescribed statutory fees.
- g. In compliance with section 27(4) of the *Mental Health Act*, a formal notice of the appointment of the Petitioner as the Manager of the Estate of the Ward shall be published in the Kenya Gazette within thirty (30) days from the date of this Judgment.
- h. The costs of and incidental to this Petition, and the legal fees associated therewith, shall be met out of 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 Petitioner: Mr. Kibet h/b Ms Mideva

Court Assistant: Lucy Mwangi

