



In re HSM (Petition E005 of 2026) [2026] KEHC 4759 (KLR) (10 April 2026) (Judgment)

Neutral citation: [2026] KEHC 4759 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

PETITION E005 OF 2026

M THANDE, J

APRIL 10, 2026

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

AND

IN THE MATTER OF HSM

IN THE MATTER OF

EPR PETITIONER

JUDGMENT

1. By a Petition dated 28.11.24 the Petitioner, EPR seeks to be appointed manager and guardian of HSM (the subject) to take over the entire management of his estate and in particular, the subject’s bank account so as to apply the proceeds thereof to his care, medication and assistance for his daily activities. The Petitioner is the wife of the subject.
2. In her supporting affidavit, the Petitioner deponed that the subject, suffered a stroke in 2025, which has seriously affected his mental and physical health. His condition has deteriorated to the extent that by January 2026, he became wheelchair bound and is completely dependant for all his daily activities. He is also unable to manage his bank account. As a result, the funds in the bank account are inaccessible yet they are required for the subject’s medical care, physiotherapy, medication, food and general upkeep.
3. The Petitioner further stated that the subject holds bank account number 1XXXXXXXX43, in KCB Bank, but that due to his present condition, he is unable to operate the same. The Petitioner thus seeks to be appointed legal guardian of the subject and to be granted access to his bank account in his best interests and that of his children.
4. In a medical report dated 13.3.26, Beatrice Njeru, a Psychiatric Specialist at Malindi Subcounty Hospital indicated that the subject was bed-ridden, withdrawn, minimally responsive to verbal commands and emotionally, depressed with severe impairment, likely vascular dementia. She



concluded that the subject was on high risk for depression anxiety and delirium. His limited communication leads to unmet needs and independence.

5. The Court has considered the Petition, the supporting affidavit, the exhibited medical report, as well as counsel's submissions. At the hearing, the Court heard the account of the Petitioner, his adult children HHS and RHS, on the subject's condition. The Court was also able to observe the subject and noted that he was in a wheelchair and seemed unaware of his surroundings. He was also non-verbal.
6. From the material before the Court and the Court's own observation, it is evident that the subject's condition has rendered him incapable of managing his own affairs.
7. The *Mental Health Act* empowers the Court to make orders relating to a person suffering from mental disorder. Section 2 of the *Mental Health Act* defines a person suffering from mental disorder as follows:

person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;

8. Section 26 of the Act requires the Court to make inquiry prior to making orders relating to a person suffering from mental disorder as follows:
 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.
 2. Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
 3. Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as 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.
9. The Court has made inquiry and makes a finding that subject is a person suffering from mental disorder and incapable of managing his own affairs. It is therefore necessary to make orders for the guardianship of the subject and for the management of his estate.
10. Under the Act, the Court may also direct that the property of a person suffering from mental disorder be applied for such person's maintenance or his family. The Petitioner stated that the subject is unable to operate his bank account. Further that she seeks to access funds in the said account to cater for the subject's food, shelter and health care as well as the needs of the children.
11. Section 29(1) of the Act provides:

Where it appears to the court that, having regard to the circumstances of a person who is suffering from mental disorder and of his family and any other relative circumstance, it is expedient that his property should be made available for his or their maintenance it may,



instead of appointing a manager or, notwithstanding such appointment, order that the property or the proceeds thereof when realized be paid to such person as the court may think fit, to be applied for such maintenance.

12. Having considered the foregoing, my finding is that it is expedient that the funds in the subject's bank account be made available to the Petitioner for the subject's medical care, maintenance and upkeep as well as his children's maintenance.
13. HHS and RHS, the subject's daughters, have both agreed that the Petitioner be appointed guardian of the subject and manager of his estate. Their consent dated 10.4.26 is on record. Both were present at the hearing and affirmed their consent. In light of the foregoing, I am satisfied that the Petitioner is a fit and proper person to be appointed guardian over the subject and manager of his estate.
14. In view of the Court's finding that the subject is a person suffering from mental disorder, it is necessary to make orders for his guardianship and for the management of his estate. Accordingly, it is hereby ordered as follows:
 - i. EPR is hereby appointed as guardian of HSM and manager of his estate for the purpose of making proper provision for his medical needs and maintenance.
 - ii. EPR is hereby granted authority to operate the subject's bank account number 1XXXXXXXX43, in KCB Bank for the purpose stated in i) above.
 - iii. EPR shall file accounts within the next 90 days and in default, the appointment made herein shall lapse.
 - iv. Mention for compliance on 20.7.26.
 - v. There shall be no order as to costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 10TH DAY OF APRIL 2026

M. THANDE

JUDGE

