

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL MISCELLANEOUS APPLICATION NO. E004 OF 2025

MAUREEN ANYANGO ODUOR.....APPLICANT

VERSUS

MICHAEL OTIENO ODUOR.....1ST RESPONDENT

VINCENT OMONDI ODUOR.....2ND RESPONDENT

ALFRED ONYANGO ODUOR.....3RD RESPONDENT

RULING

1. These proceedings were initiated under certificate of urgency, by way of a Motion, dated 14th November 2025.
2. The applicant seeks a total of 13 prayers. The principal prayers are for injunctions to restrain the 1st respondent from intermeddling with the estate of Gilbert E. Oduor, who is the subject-matter of the proceedings, who I shall refer to, hereafter, as the subject; orders to compel the 2nd respondent to surrender the national identity card of the subject; orders to compel the 3rd respondent to surrender all the documents, in his possession, belonging to the subject; orders to authorize the applicant to collect and preserve the estate of the subject; and orders to permit the applicant to appropriate the assets of the subject, for the purpose of catering for his welfare.
3. The background given is that the subject has dementia and organic psychosis, being mental disorders, which have rendered him incapable of managing his affairs. It is on that basis that the applicant, who claims to be a daughter of the subject, seeks appointment as legal guardian of the subject and the manager of his estate. As the subject requires constant medical attention, according to the applicant, she would like access to his resources, to enable her fund his medication. The respondents are accused of wasting and mismanaging his estate.

4. A number of documents are attached. A copy of his national identity card, certificate of birth and national identity card for the applicant, a card for the subject issued by the National Council for Persons with Disabilities, a picture of the subject, a psychiatric/medical report on the subject, and a letter from the local Chief.
5. The respondents were served. They have filed responses.
6. The 1st respondent opposes the application. He dismisses the applicant as unfit to protect the interests of the subject. He argues that the subject is only physically disabled, and confined to a wheelchair, but he is otherwise, of stable mind. He only requires assistance with mobility, and he personally hires people to assist him with that. He points out that the medical report, relied upon by the applicant, says as much. He further discloses that the subject had appointed a firm of estate agents to manage his rental assets, and that he has full access to his assets and finances, including his pension. He further disclosing that he was even pursuing a longstanding dispute over ancestral land. The 1st respondent denies that he has monopoly over the assets of the subject.
7. The 2nd and 3rd respondents have also responded. They oppose the application, arguing that there was no good faith behind it. They describe the applicant as a stepdaughter, and the respondents as the biological children of the subject. They assert to have a more close and loving relationship with the subject, and to be the best placed to take care of the welfare of the subject. They argue that the medical report relied on by the applicant was dated. They further argue that that report is in fact even favourable to the subject. They state that the assets sought to be managed have not even been disclosed. They dismiss the allegations made against them as malicious.
8. The applicant has reacted to those responses. She asserts that the subject was mentally invalid, and accuses the 1st respondent of

accelerating deterioration of his condition by assaulting him. She also accuses the 2nd respondent of interfering with the estate agents, and causing them to terminate their services.

9. The application was argued orally, before me, on 4th February 2026, by Ms. Njegera for the applicant and Mr. Masika for the respondents.

10. These proceedings are premised on the provisions of the Mental Health Act, Cap 248, Laws of Kenya. The preamble to the Act states that the Act is intended *“to amend and consolidate the law relating to the care of persons who are suffering from mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals; and connected purposes.”*

11. The preamble, to the Mental Health Act, makes it clear that the law is intended to be invoked for the purpose of the welfare of persons suffering from mental disability. It is about setting up mental infrastructure for the purpose of caring for such persons. The Act sets up a board for mental health, and makes provision for establishment of mental hospitals. There is provision for dealing with patients who offer themselves voluntarily for treatment, and also for those who are unwilling or unable to voluntarily present themselves in hospital for treatment. There are also provisions for admission, discharge and transfer of patients suffering from mental disorder.

12. Part XII of the Mental Health Act covers the powers of the court with respect to persons suffering from mental disorder and the management of their affairs. Under section 26 of the Act, the court may order management of the estate of such a person and for guardianship of any such person. Inquiry is provided for under section 26(3), and management may be ordered where it is established that the person is suffering from mental disorder, to such an extent of being unable to manage his own affairs. It would also apply where the person is able to

manage himself, is not dangerous to others, or is unlikely to act in a manner offensive to public decency. In such cases, the court may, in its discretion, make orders on the management of his estate, inclusive of the maintenance of the mental patient, and members of his family who are dependent on him.

- 13.** The law is not explicit on what the inquiry may entail. The starting point could be with the court having the person produced in court, for it to have a general view of his person, in terms of grooming and presentation, and to interview him to assess his intellectual capacity, before deciding whether it would be necessary to subject him to a medical process.
- 14.** The duty and burden are on the applicant, to present material, from which the court can determine whether there would be any basis for the court to order a mental inquiry.
- 15.** Has the applicant herein done so? I do not think so. The matter is about mental health, and there ought to be documentation on the mental status of the subject, from a specialist in mental health. Specialists in mental health cases are psychiatrists, and possibly psychologists. The report, filed herein, by the applicant, is not by a psychiatrist, but by a clinical officer, described as a psychiatrist clinician. Only a qualified psychiatrist can provide an acceptable opinion on the mental health status of a patient, which the court of law can act upon. Appointment of guardians for persons and managers of their assets are about surrendering control of the property and affairs of a person to another. That cannot possibly be done willy-nilly. A proper basis must be laid, based on solid medical and mental assessment and evaluation, by suitably qualified medical and mental specialists.
- 16.** The report, filed herein, does not depict the subject as a person having mental issues. The section on his mental status reads as follows:

“Mental status assessment: Well kempt seated on a wheelchair, talkative, speech increased in tone, goal oriented, increased psychomotor activity, good orientation, no hallucinations or delusions, judgment good, memory fair and insight present.”

- 17.** That report gives the subject a clean bill of mental health. It does not depict him as someone who is needy or dependent, or who is not in control of his faculties, to require invocation of the provisions of the Mental Health Act, to facilitate his guardianship by another and the management of his estate.
- 18.** The report is not even a medico-legal report. It would appear to be a report prepared by a clinician, for consumption by another clinician, or other workers in the medical field, such as doctors and nurses. A medico-legal report is designed for a layperson, in the legal field, to be consumed by lawyers, be they practitioners or Judges, for particular purposes. A medico-legal report for the purposes of pursuing compensation, for example, would be different from one for the purpose of appointment of guardians. For purposes of guardianship, the medico-legal report should seek to demonstrate that the subject is an invalid, mentally, who is unable to take care of himself, hence needing management. The report herein does not depict the subject who is mentally out of control, to the extent of being unable to manage his own affairs. It shows him to be a person who is well-groomed, goal directed and oriented, with a good judgment, a fair memory and insight. These are not the qualities of a person who is mentally unstable, to the extent that a guardian should be assigned to take care of him, and a manager appointed to administer his property.
- 19.** The impression that one gets is that the subject is only physically disabled, but not mentally disabled. Indeed, the exhibited card, from the National Council for Persons with Disabilities, classifies his disability as physical. It makes no mention of mental disability. The Mental Health Act has nothing to do with physical disability. Its provisions cannot be

invoked on account of physical disability, and the court would have no jurisdiction, under it, with respect to physical disability, except for mental disability.

- 20.** I do not think that I have before me material that justifies grant of the orders that are sought in the application. I do not find merit in that application. The same is for dismissal, and I hereby dismiss the same. There shall be no orders on costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT MILIMANI, NAIROBI, ON THIS 10TH DAY OF APRIL 2026.

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant

Advocates

Ms. Njegera, instructed by Fred & Kimutai Advocates LLP, Advocates for the petitioners.

Ms. Nyagol, instructed by Nyagol JA & Associates, Advocates for the 1st respondent.

Mr. Masika, instructed by Mahida & Maina, Advocates for the 2nd and 3rd respondents.