



**In re CMM (Petition E095 of 2026) [2026] KEHC 5223 (KLR)  
(Family) (26 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 5223 (KLR)

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

**PETITION E095 OF 2026**

**PM NYAUNDI, J**

**MARCH 26, 2026**

**IN THE MATTER OF SECTIONS 2, 26, & 28 OF THE  
MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE RULES, 2010**

**AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

**AND**

**IN THE MATTER OF CATHERINE MUTINDA MBITHI  
(A PERSON SUFFERING FROM MENTAL DISORDER)**

**AND**

**IN THE MATTER OF A PETITION BY**

**BETWEEN**

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

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

**AND**

**CMM ..... SUBJECT**



## JUDGMENT

1. Application dated 9<sup>th</sup> March, 2026 was filed under certificate of urgency by the Petitioners seeking that:
  - a. CMM (subject) be declared to be suffering from a mental disorder as defined in the *Mental Health Act*, Cap 248 Laws of Kenya.
  - b. The Petitioners be appointed as Guardians of CMM.
  - c. The Petitioners be appointed as the Managers of the Estate and all the affairs of the said CMM.
  - d. The Petitioners be granted access to funds at The Co-operative Bank of Kenya Limited, Mombasa Road Branch, Account Number: 0XXXXXXXXXX900 and Jumbo Junior Account Number: 0XXXXXXXXXX00; Standard Chartered Bank Kenya Limited, Harambee Avenue Branch, Diva Account Number: 0XXXXXXXXXX9; and NCBA Bank Kenya PLC, Mombasa Road Branch, USD Account Number 8XXXXXXXX12, KES Account Number 8XXXXXXXX28 and Sao KES Account Number: 8XXXXXXXX33 belonging to CMM to help offset the high costs incurred in the continued treatment and management of her estate and for the upkeep of the Subject's minor son one Saone Mwendwa Kwena.
  - e. In the interim the Petitioners be granted access to the funds in NCBA Bank, Parkside Towers, Mombasa Road Branch, Account Number 8XXXXXXXX28 belonging to CMM to pay for her specialized medical care and also pay for master Saone Mwendwa Kwena's upkeep.
  - f. This Honourable Court issues an Order allowing the Petitioners to execute the Transfer of Lease for Town House Number E 32 erected on L.R. No. 12XXX; Share Transfer Form for one share held in the Management Company, Katani Two Management Public Limited Company and generally undertake all actions necessary to complete the sale of Town House Number E 32 erected on L.R No. 12XXX to Buruburu Dental Centre Limited.
  - g. This Honourable Court issues an Order allowing the Petitioners to execute the Discharge of Charge for Town House Number E 32 erected on L.R No. 12XXX currently charged to NCBA Bank Kenya PLC.
  - h. This Honourable Court issues an Order allowing the Petitioners to execute the sale agreement and Lease/Transfer of Lease for purchase of Apartment Number C1XXX, Floor No. 14 erected on Title Number Mavoko Municipality Block XXX/6 and undertake all manner of dealings on behalf of CMM, the intended Purchaser in the said transaction.
  - i. The cost of this petition be borne by the estate of the said CMM.
2. The Petition was canvassed by way of viva voce evidence on 19<sup>th</sup> March, 2026. SKN and JNM (Petitioners herein) are the sister of the subject.
3. The subject is 50 years old and is blessed with one minor child Saone Mwendwa Kwena who attends school at International Schools of Kenya. The Subject is divorced. The Subject's other relatives are;
  1. PM father
  2. FM sister
  3. JM sister (Co-Petitioner)



4. AM sister
5. AM
4. The father to the subject and her siblings have all consented that the Petitioners be appointed as Guardians to the Subject and Managers of her estate. The circumstances necessitating the application are that on or about January 2024, the Subject was diagnosed with inter alia; autoimmune cerebellar ataxia with a cognitive – motor syndrome; functional neurological syndrome with functional movement disorder; Addison’s disease and lung complications. The Petitioners stated that the subject has been debilitated and has required constant care and careful observation including assistance in moving around and has been reliant on a wheelchair.
5. That on 3rd January 2026 the subject was found unresponsive at her residence, she was rushed to the hospital, placed in the High Dependency Unit while in coma, upon readmission to the hospital, the subject has remained in a coma and her doctors are unable to predict when she will wake up from the coma. In that condition, the Subject cannot manage her personal affairs, and conclude the transactions she had initiated.
6. Prior to her illness the subject had initiated some transactions that are yet to be finalized, these transactions need to be finalized so she is not penalized. The Subject’s son is dependent on her and it is necessary to access her accounts so as to meet her obligations towards him and the medical attention and support she requires.
7. The Petitioners aver that unless Guardians/Managers are urgently appointed by this Honourable Court, the Subject is exposed to serious risk of neglect, suits for breach of contract, mismanagement of her estate, and prejudice in the handling of her personal and financial affairs.
8. Dr. Juzar Hooker Consulting Neurologist from Aga Khan University Hospital confirmed that the subject is mentally challenged by report dated 26<sup>th</sup> February, 2026. The report stated that the subject was diagnosed with secondary epilepsy, persistent vegetative state, severe anoxic brain injury, Neuroglycopenia, Autoimmune cerebellar ataxia/cognitive-motor syndrome, functional neurological syndrome/movement disorder, depressive and anxiety disorder, Addison’s disease, Hypothyroidism, Migraine without aura and Allergies thus recommending for Legal Guardianship. Another report dated 20th January 2026, from Dr. Nadeem Sheikh a Consultant Cardiologist/Physician from Aga Khan University Hospital confirmed that the Subject is incapacitated and unable to manage her daily affairs as a result of her current medical condition, the Subject lacks the capacity to independently make informed decisions or to effectively manage her personal, financial and related matters thus recommending for the Guardianship.

### **Determination**

9. The provisions of the [Mental Health Act](#) ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The [Mental Health Act](#), at Section 26 provides that:
  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.
10. I have considered the evidence adduced in Court, I am persuaded that the Petitioners are best placed to provide adequate care to the subject and ensure her wellbeing.
11. It is in the subject's best interest that the Petitioners are appointed as her personal representative to ensure that funds are available for her upkeep and further medical attention in the future as well as preserve her estate.
12. In the circumstances, these are the orders of the Court that; -
  - a. CMM is hereby declared as suffering from a mental disorder under Section 26 of the [Mental Health Act](#) (Cap 248).
  - b. SKN AND JNM are hereby appointed under Section 27 of the [Mental Health Act](#) as the Guardians of CMM.
  - c. SKN AND JNM are hereby appointed managers of the estate of CMM under Section 28 of [Mental Health Act](#) to manage her estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
  - d. Pursuant to this appointment SKN AND JNM shall deliver to Court and the Public Trustee, within 6 months, an inventory of the properties belonging to CMM.
  - e. In accordance with Section 27(4) of the [Mental Health Act](#), 2022 the Petitioners shall cause within 30 days the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate of CMM.
  - f. As Managers of the Estate of the CMM, the Petitioners may dispose of the property only with the sanction of the Court.
  - g. The matter will be mentioned before court on 28<sup>th</sup> April 2026 to confirm compliance.
  - h. Costs to be met out of the Estate of the Subject.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF MARCH, 2026.**

**P. M. NYAUNDI**

**JUDGE**

In the presence of:

Ngalamoi Court Assistant

