



In re DMC (Petition E006 of 2026) [2026] KEHC 5268 (KLR) (24 April 2026) (Judgment)

Neutral citation: [2026] KEHC 5268 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E006 OF 2026
M THANDE, J
APRIL 24, 2026
IN THE MATTER OF THE MENTAL HEALTH ACT
AND
IN THE MATTER OF DMC, BBK

IN THE MATTER OF
EKM PETITIONER

JUDGMENT

1. By a Petition dated 19.3.26, BBK and EKM to be appointed manager and guardian of DMC (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 Petitioners are respectively the wife and son of the subject.
2. In their supporting affidavit, the Petitioners deponed that the subject was diagnosed with dementia in June 2021. His condition has progressively worsened. He has lost interest in managing his daily and business affairs and is unable to make sound decisions. This has left him vulnerable to exploitation. The cognitive decline is characterised by his inability to recognize people and to speak coherently, forgetfulness and he speaks to himself. He is weak, underweight, and is generally unable to take care of himself.
3. The Petitioners further stated that the subject holds bank account number 025XXXXX in Equity Bank, Kilifi branch, but that due to his present condition, he is unable to operate the same. The Petitioners thus seek to be appointed legal guardian of the subject and to be granted access to his bank account in his best interests.
4. The Petitioners exhibited a medical report to support their petition. Dr. D. Menza dated 1.11.25 indicated that the subject has dementia, hypertensive heart disease and diabetes. His memory problem is worsening and he has no capacity to manage his affairs.



5. The Court has considered the Petition, the supporting affidavits, the exhibited medical report, as well as counsel's submissions. The Court was also able to observe the subject and noted that he was unresponsive.
6. Section 2 of the *Mental Health Act* provides:

“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;”
7. From the medical evidence and material before the Court, it is evident that the subject's condition has rendered him incapable of managing his own affairs.
8. The Act empowers the Court to make orders relating to a person suffering from mental disorder. Section 26 of the Act provides:
 - (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 the 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 Section 29(1) of the Act the Court may also direct that the property of a person suffering from mental disorder be applied for such person's maintenance as follows:

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.
11. In the present case, the Petitioners stated that the subject's bank account has funds for sustaining him and catering for his medical expenses. My finding therefore is that it is expedient that the funds



in the subject's bank account be made available to the Petitioners, for the subject's medical care and 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.
13. FCM, MMM, GKM and DMM, the subject's children have all agreed that the Petitioners be appointed guardians of the subject and manager of his estate. Their consent dated 16.3.26 is on record. All save for DMM were present at the hearing and affirmed their consent. In light of the foregoing, I am satisfied that the Petitioners are fit and proper persons to be appointed guardians over the subject and manager of his estate.
14. In view of the foregoing, it is hereby ordered as follows:
 - i. DMC is hereby adjudged to be a person suffering from mental disorder.
 - ii. BBK and EKM are hereby appointed as the joint guardians of DMC and managers of his estate and for the purpose of making proper provision for his maintenance and medical care.
 - iii. BBK and EKM shall have access to the funds in account number 025XXXXX, held by DMC in Equity Bank, Kilifi branch for the purpose stated in ii) above.
 - iv. BBK and EKM shall file accounts within the next 90 days.
 - v. Mention for compliance on 28.7.26.
 - vi. No order as to costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 24TH DAY OF APRIL 2026

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M. THANDE

JUDGE

