



REPUBLIC OF KENYA



KENYA LAW
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**In re HAO (Miscellaneous Application E032 of 2026)
[2026] KEHC 5964 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5964 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E032 OF 2026**

A MABEYA, J

MAY 6, 2026

IN THE MATTER OF SECTION 26 OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF HAO - SUBJECT

AND

IN THE MATTER OF AN APPLICATION BY FOO

RULING

1. By Summons dated 9/3/2026, the applicant invoked sections 26 of the *Mental Health Act*, Cap 248 Laws of Kenya and sought a declaration that HAO is a person suffering from mental disorder, that he be made her legal guardian and that he be appointed to manage all her affairs.
2. The Summons was anchored on the grounds set out in its body as well as the supporting affidavit of FOO sworn on the 9/3/2026.
3. The matter proceeded by way of viva voce evidence in which the applicant told the Court that he was the biological son of the subject. That the subject was diagnosed 13 years ago with dementia which interfered with her mental health. That she also suffers from arthritis which has interfered with her movement.
4. That his siblings, COO, DOO and FAO granted him the authority to make the application.
5. That the subject usually receives her pension as a retired teacher with the same being deposited in her bank account. However, due to the progression of her mental condition, she is unable to access the same as she is unable to remember her pin or even append her signature to necessary documents.
6. That there is need to access the said funds for purposes of catering to the subject's needs including paying her caregiver and other medical related expenses.



7. The main issues for determination are Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248 and Whether the applicant should be appointed as guardian to the subject.
8. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.
9. Section 2 of the Act defines “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 psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”
10. Section 26 provides for custody, management and guardianship
 - “ 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 of the guardian of any such person.
 3. Where upon 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.”
11. According to the medical report by David K. Matheri, a clinical officer at Muhoroni County Hospital, the subject was a known psychiatric patient on antipsychotic drugs and that she had been having regular attacks and lack of comprehension aggravated by her age.
12. It is apparent from that report that the subject is suffering from a mental disorder in terms of section 2 of the Mental Act and further a medical condition contemplated under section 26 of the Act and is thus incapable of managing his own affairs.
13. Section 26 of the *Mental Health Act* gives the Court the power to make orders regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
14. The applicant stated that being the subject’s son, and as consented by his siblings, he desired to be appointed the subject’s guardian so that he can be able to manage her general affairs such as catering to her needs including paying her caregiver and other medical related expenses.



15. There being no objection to the application and the course of the application being well supported as required under the law, it is my considered view that the prayer for appointment of guardian is well grounded and merited.
16. Consequently, the Summons dated 9/3/2026 is allowed in the following terms: -
- a. That the subject HAO is hereby declared mentally incapacitated under Section 26 of the *Mental Health Act*.
 - b. That the applicant, FOO is hereby appointed the guardian of the subject to manage her affairs.
- It is hereby so ordered.

DATED AND DELIVERED AT KISUMU THIS 6TH DAY OF MAY, 2026.

A. MABEYA, FCI Arb

JUDGE

