



**In re CWB (Subject) (Petition E001 of 2025)
[2025] KEHC 3536 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E001 OF 2025
M THANDE, J
FEBRUARY 28, 2025
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF CWB**

IN THE MATTER OF

WMM 1ST PETITIONER

DWWK 2ND PETITIONER

JUDGMENT

1. By a Petition dated 18.2.25 the Petitioner, Dr. WMM and DWWK seek to be appointed as managers and guardians of CWB (the subject) for her benefit and welfare and to take over the management of her estate and to apply the proceeds thereof to her care and maintenance as well as manage her affairs.
2. In their supporting affidavit the Petitioners deposed that they have been friends of the subject for over 30 years and that she had full confidence in them as demonstrated in her having entrusted them as executors of her will. They further state that the subject a divorcee with no children has estranged from her extended family and lives alone in Lamu.
3. The Petitioners further stated that the subject has experienced progressively cognitive decline forgetfulness, personality changes and paranoia. In June 2024, she was knocked down by a speeding donkey in Lamu and sustained a head injury which resulted in confusion and amnesia. Due to her fragile state, the subject has developed increasing disinterest in managing her daily and business and is unable to make sound decisions. This has left her vulnerable to exploitation.
4. A medical report by Dr. Stella Njuguni Ngaba following her admission at the Aga Khan Hospital on 14.11.24 indicated that the subject has vascular dementia with Alzheimer’s disease. Further that



the condition is progressive with no disease modifying or reversing therapy available. The report also indicated that the subject requires 24 hour care for her safety.

5. The Petitioners stated that the subject holds the bank accounts and has various assets. However, due to her present condition, she is unable to operate and manage the same. The accounts include:

Account No. 159026XXXXXXXX Equity Bank

Account No. 010000XXXXXXXX Stanbic Bank

Account No. 0150XXXXXXXX Gulf Africa Bank

Account No. 010000XXXXXXXX Stanbic Bank

6. 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 Petitioners the subject's condition. The Court has further considered the affidavit of Stephen Muendo Nzuli, who manages the operational affairs of the subject's businesses and heard his account of her condition.

7. From the material before the Court, it is evident that the subject's condition has rendered her incapable of managing her own affairs and requires a guardian and manager thereof.

8. 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 of substance abuse;

9. 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.

10. The Court has made inquiry and makes a finding that subject is a person suffering from mental disorder and incapable of managing her own affairs. It is therefore necessary to make orders for the guardianship of the subject and for the management of her estate.



11. 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. The Petitioners stated that the subject is unable to operate her listed bank accounts. Further that Stephen Muendo Nzuki has had to take up the responsibility of a caregiver. He is however is extremely overwhelmed and is unable to sustain the extensive responsibilities of administering her care and estate without external intervention.

12. 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.

13. Having considered the foregoing, my finding is that it is expedient that the funds in the subject's bank accounts and assets be made available to the Petitioners for the subject's medical care and maintenance. I am also satisfied that the Petitioners are fit and proper persons to be appointed guardians over the subject and managers of her 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 her guardianship and for the management of her estate. Accordingly, it is hereby ordered as follows:

- i. Dr. WMM and DWWK are hereby appointed as guardians of CWB and managers of her affairs and estate for the purpose of making proper provision for her medical needs, maintenance and managing her affairs.
- ii. Dr. WMM and DWWK are hereby granted authority to operate the following bank accounts:
Account No. 159026XXXXXXX Equity Bank
Account No. 010000XXXXXXX Stanbic Bank
Account No. 0150XXXXXXX Gulf Africa Bank
Account No. 010000XXXXXXX Stanbic Bank
- iii. Dr. WMM and DWWK are hereby granted authority to manage all other properties belonging to CWB for the purpose stated in i) above.
- iv. Dr. WMM and DWWK shall file accounts within the next 90 days and in default, the appointment made herein shall lapse.
- v. Mention for compliance on 7.7.25.
- vi. There shall be no order as to costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 28TH DAY OF FEBRUARY 2025

M. THANDE

JUDGE

