



**In re AA (Miscellaneous Application E047 of 2024)
[2025] KEHC 1175 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E047 OF 2024
G MUTAI, J
FEBRUARY 28, 2025
IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE MENTAL
HEALTH ACT
(CAP 248 OF THE LAWS OF KENYA)
AND
IN THE MATTER OF AA (PERSON SUFFERING FROM
MENTAL ILLNESS)
AND
IN THE MATTER OF A PETITION BY KOM TO
BE APPOINTED AS THE GUARDIAN AD LITEM OVER THE AFFAIRS
AND THE MANAGER OF THE ESTATE OF AA
IN THE MATTER OF
KOM PETITIONER**

JUDGMENT

1. The petitioner herein moved this court vide Originating Summons dated 19th December 2024, seeking to be appointed as the guardian and the manager for the estate and over the affairs of AA. AA, who I shall hereafter refer to as “A” or the “Patient”, is said to suffer from serious intellectual disability, limiting his ability to manage his own daily affairs, and he is currently under her care. He is also on constant medical attention and medication, which continuously takes a toll on her financially.
2. The petition is premised on the grounds in the body of the application as well as on the affidavit of KOM, the petitioner herein, sworn on 19th December 2024.
3. The petitioner stated that she is A’s aunt. That his father and mother are deceased.



4. The petitioner further stated that A's paternal uncle has full custody of the subject and is in control of his share of the inheritance. Despite that, A's health has been deteriorating due to a lack of good care.
5. The petitioner stated that she was aware of her duties to A and ready, willing, and able to assume her role as guardian and any other responsibility arising therefrom. She urged that the appointment would assist her in taking care of the subject and preserving his share of the inheritance.
6. The petitioner urged the court to allow the application.
7. The petition was canvassed by way of viva voce evidence. I shall state the precis of the evidence below.
8. The petitioner was the first witness. She reiterated the contents of her petition and the affidavit she swore on 19th December 2024. She told the court that the subject had been unwell since childbirth and that she had been taking care of him after AO chased him away in 2017.
9. The second witness was Dr Salim Said Mohamed. Dr Mohamed is a consultant psychiatrist at Port Reitz Hospital. He testified that the subject had been his patient for a month and that he has an intellectual disability from birth, which affects his memory and speech. He produced a report dated 18th December 2024 and told the court that his opinion was that the subject suffers from moderate intellectual disability and recommended the appointment of a guardian.
10. The last witness was TOM. Mr T testified that the subject was his nephew, who is being taken care of by his sister K since their brother A wasn't taking care of him. He also stated that A had an inheritance.
11. The court observed A's conduct during the time he was in Court. In the court's view, A has low cognitive ability.
12. I have considered the petition, the documents annexed thereto, and the evidence on record, and I am now tasked with determining whether the subject requires representation by a guardian and also if a manager should be appointed over his estate.
13. I have considered the pleadings, the documentary evidence, and the oral testimonies of the witnesses. In my view, the issues I need to determine are:-
 1. Whether A suffers from mental illness? and
 2. If so, what order should be issued?
14. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the *Mental Health Act*, as amended in 2022. A manager's duty is to safeguard the property of the Patient. The appointment of a Manager must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said Act provides that:-

“a manager shall perform the manager's duty under this Act responsibly, taking into account the best interests of the estate of the person suffering from mental illness.”
15. Under the *Mental Health Act*, the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Although KOM is not a “supporter” of the patient, as she wasn't appointed in writing, it is my finding that being the Patient's aunt, she is his “representative” within the meaning of the Act and, therefore, has the locus to file the instant petition.



16. In re CWN (a person suffering from mental disorders) [2022]eKLR the Court stated that:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders the petitioners must adduce evidence sufficient to satisfy the Court, firstly that the patient is a person suffering from a mental disorder under the *Mental Health Act* and secondly that the patient is incapable of managing her own affairs.”

17. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished capacities to manage their affairs, analogous to that of children. Therefore, the court must ensure the application was filed in the patient's interest. In addition, the court's orders must aim to achieve the said goal.

18. The evidence adduced shows that AA has had intellectual disability since childhood. Dr Salim S Mohamed diagnosed him with moderate intellectual disability. Given the findings of the said doctor and his present situation, it is my view that A suffers from a mental illness.

19. The Petitioner averred that has an inheritance. This assertion was corroborated by the evidence of Mr TM. Treatment of mental illnesses is expensive. Being ill, the Patient may not appreciate the need for treatment nor be able to manage the treatment regime. The appointment of the Petitioner as A's guardian ad litem and the manager will enable her to access his funds so that he can pay for nursing care and medication.

20. The Petitioner's testimony and the medical professional's report show that the patient cannot manage his affairs. Therefore, it will be in his best interest that a manager be appointed to manage his estate. The manager/guardian ad litem will ensure that he receives the most appropriate care possible, that his estate is not wasted or lost, and that his interests are protected.

21. I am satisfied, based on the evidence adduced, that the Patient has a mental illness. There is, therefore, a case for the appointment of the Petitioner as the guardian ad litem of the Patient, AA, and the manager of his estate. In the circumstances, I order as follows:-

1. The Petitioner, KOM, be and is hereby appointed as the guardian ad litem of the Patient, AA, and also the manager of his estate;
2. KOM is hereby authorised to manage the Patient's estate but shall not have the power to sell, charge or otherwise alienate his immovable property without the leave of the Court;
3. Pursuant to section 27(4) of the *Mental Health Act*, the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette;
4. The manager/guardian ad litem shall file the inventory and statement of account of the estate of the patient within six months from the date of her appointment; and
5. I make no orders as to costs.

22. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-



Ms Juma, for the Applicant;
Arthur – Court Assistant.

