



**In re PKG (Miscellaneous Application E034 of 2025)
[2025] KEHC 3521 (KLR) (Family) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3521 (KLR)

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

MISCELLANEOUS APPLICATION E034 OF 2025

H NAMISI, J

MARCH 24, 2025

**IN THE MATTER OF GUARDIANSHIP AND MANAGEMENT OF
PKG AND HIS ESTATE UNDER SECTION 26 (1), 27 AND 29 OF
THE MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA**

IN THE MATTER OF

WG PETITIONER

JUDGMENT

1. The Petition before the Court was brought by W.G, being a biological sister to the Subject, P.K.G. The Subject, aged 55 years, resides in Rimpa, Kajiado County. The Subject is unmarried and has no children.
2. The Petition which is brought under sections 26(1), 27 and 29 of the *Mental Health Act*, is supported by an Affidavit sworn by the Petitioner, as well as annextures thereto. The Petition seeks the following orders:
 - i. That K.G be and is hereby adjudged as a person suffering from a mental disorder under Section 26 of the *Mental Health Act*, Cap 248 of the Laws of Kenya;
 - ii. That W.G be and is hereby appointed a guardian in respect of K.G;
 - iii. W.G be and is hereby appointed the manager of the estate of K.G, both present and future, which includes any description of movable or immoveable property, money, debts and legacies, power to execute, sign deeds and instruments relating to or evidencing the title or right to any property or giving right to recover or hold any money or goods and proceed to take out or institute and defend any litigation, suits or claim (s) and also include not only such property as was originally in the possession or under the control of any person but also the property into



or to which the same has been converted or exchanged, and anything acquired by such converts whether immediately or after;

- iv. That the Honourable Court be pleased to issue any such orders that may be just and equitable in the circumstances;
3. In the Supporting Affidavit, the Petitioner depones that since childhood, the Subject has suffered from Schizophrenia, a mental disorder characterised by disruptions in thought processes, perceptions, emotional responsiveness and social interactions, which have rendered the Subject incapable of making any decisions about himself or any other affairs. Further, the Petitioner depones that all along, the Subject's mother took care of him. Regrettably, she is now deceased. The Petitioner has thus had to step in and be the Subject's caregiver, offering the necessary support including taking to the Subject for his medical checkups, procuring and administering medication.
4. According to the Petitioner, the Subject does not have the mental capacity to sufficiently understand, absorb, retain or comprehend any information including advice and cannot make decisions based on the advice and information given. The Petitioner depones that since attaining the age of majority, the Subject has never taken out any national identification card, because he is not comfortable in crowds and becomes very agitated when he ventures outside the house. For this reason, the Subject will not be able to hold any property that will be distributed to him from his deceased mother's estate.
5. Attached to the Affidavit is a Report dated 4 February 2025 by Dr. Ian Kanyanya, Consultant Psychiatrist. The Doctor observed that the Subject appeared anxious, unsettled and made exaggerated hand and head gestures while talking. His speech was disorganised and difficult to understand. The Doctor opined that the Subject's presentation was consistent with Schizophrenia, and that the Subject is likely to always depend on others for care and support.
6. The Petitioner presented a copy of the Subject's certificate of birth as well as consent signed by Peninah Waithera Gitonga, Lucy Wanjira Gitonga and Robert Gitonga, siblings of the Subject. P.W.N, who is the first born, appeared in Court and confirmed the family's decision to have the Petitioner appointed as legal guardian of the Subject. She observed that the Subject and the Petitioner are close, and of all the siblings, the Petitioner understands the Subject best.
7. The Court also had a chance to speak to the Subject. He appeared well kempt and enthusiastic in his responses. He was able to name all his siblings, and could even recall when his parents and one sibling passed on. He confirmed that he lives alone in Rimpa, Kajiado County. He was cognisant that he suffers from a mental disorder and receives medication. Whenever he takes the medication, he sleeps very well.
8. In view of the evidence presented and observations made, I am persuaded that this Petition is properly before the Court.
9. Section 26 of the said Act states 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 also considered all the material placed before me. It is apparent that the subject suffers from a mental disorder and that he is incapable of managing his own affairs, although he is not a danger to himself.
11. The definition in Section 2 of the Act provides that:
- “A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”
12. In the circumstances, the Court makes a finding that the Subject is a person suffering from a mental disorder within the definition of the Mental Health Act and hereby appoints the Petitioner as the Subject’s guardian. Additionally, the Court appoints the said Petitioner as general manager of the estate of the Subject. For the avoidance of doubt, such manager’s general powers will not include the power of alienation, sale or transfer of any assets held by the Subject, but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the Subject in respect of any of the assets forming part of his estate.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF MARCH 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Mr. Mola.....for the Petitioner

Libertine Achieng..... Court Assistant

