



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re LMM (A Person Suffering from Mental Illness) (Family Cause  
E013 of 2025) [2025] KEHC 5709 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY CAUSE E013 OF 2025**

**G MUTAI, J**

**APRIL 30, 2025**

**IN THE MATTER OF**

**DNF ..... APPLICANT**

***(IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS NEXT  
FRIEND, GUARDIAN-AD-LITEM AND MANAGER OF THE AFFAIRS AND THE  
ESTATE OF LOISE MUNINI MUSAU (A PERSON SUFFERING FROM MENTAL  
ILLNESS) AND IN THE MATTER OF AN APPLICATION UNDER SECTIONS 26,  
27 & 28 OF THE MENTAL HEALTH ACT (CAP 248 OF THE LAWS OF KENYA)  
AND ORDERS 32, RULES 1 TO 15 OF THE CIVIL PROCEDURE RULES, 2010  
AND IN THE MATTER OF AN APPLICATION BY DOMTILA NDILA FUJO)***

**JUDGMENT**

1. Through and Originating Notice of Motion dated 12<sup>th</sup> March 2025, the applicant sought the following orders: -
  - a. That this matter be certified as urgent and be heard on priority basis;
  - b. That LMM be declared as mentally incapacitated, or suffering from a mental disorder, as defined under the *Mental Health Act* (Cap 248 of the Laws of Kenya);
  - c. That the applicant, DNF, be appointed as the guardian-ad-litem and next friend of LMM; and
  - d. That the costs of this application be provided for.
2. The grounds upon which the application was brought are that LMM, whom I shall hereafter refer to as the “Patient”, is 81 years old and is a person of unsound mind. In the affidavit in support of the application, DNF, whom I shall hereafter refer to as the Applicant, stated that the Patient had become incapable of taking care of her medical condition as she had been diagnosed with Alzheimer's disease and dementia.



3. The Applicant stated in her affidavit sworn on 12<sup>th</sup> March 2025 that the Patient was a defendant in the Kwale Environment and Land Court case whose citation is ELC No E001 of 2023 Mweru Ndurya Mazera vs LMM & the Land Registrar Kwale in respect of the property known as Title No Kwale/Mwanguda/1XX4. For the foregoing reason, it was necessary that a guardian-ad-litem, next friend and manager be appointed so as to protect her interest.
4. The Applicant deponed that she, DMF, was the daughter of the Patient and her present caregiver. Ms DFF averred in her affidavit that she was willing to be her manager and next friend. According to her, she didn't have any interest that could be said to be adverse to the Patient. She therefore urged that the application be allowed.
5. When the application was filed, this court directed that the patient be examined by a psychiatrist at the Port Reitz Hospital, Mombasa and the report be filed within 14 days. The court also ordered the Chief of the area of the Patient's residence to file a list of the closest members of the Patient's family and to state whether or not they were opposed to the application.
6. I fixed the matter for hearing on 3<sup>rd</sup> April 2025 and stated that the hearing would be in open court.
7. The matter was heard on 3<sup>rd</sup> April 2025. The first witness was Dr Nafisa Ahmed Self. Dr Self testified that she examined the Patient on 20<sup>th</sup> March 2025 and prepared a report, which she produced as an exhibit.
8. It was Dr Seif's testimony that the Patient has dementia and psychosis. She stated that dementia has no cure and that all that could be done was to slow down its progression. She testified that the patient had no memory of her children and could not make her own decisions or manage her finances.
9. Ms DNF was the second witness. She resides at Mwembelegeza. The Patient is her mother. She is the second-born child of the Patient. The elder sister is deceased. The said sister had four children. Ms F testified that her father, the Patient's husband, is deceased.
10. The Applicant testified that the Patient lived with her. It was her evidence that the Patient had lost cognitive function since 2023. Ms F stated that she had her own business and did not depend on the Patient for her upkeep.
11. She stated that the Patient has two parcels of land, one of which is subject to a court case, and the other is not. The Patient receives a monthly pension of Kes 12,000 and has a bank account, which the Applicant, with the bank's permission, can access. She prayed for the issuance of the orders sought.
12. The last witness was Ms ANA. Ms A is a resident of Bamburi and the granddaughter of the Patient. She testified that her Mother, DNF, lives with the Patient. It was her evidence that the grandmother had lost her memory to the extent that she could no longer remember her. She gave her consent for her mother to be appointed as the Patient's guardian ad litem and manager, stating that all family members were agreeable to the proposal.
13. The court observed the patient during the hearing. She appeared to be disoriented and couldn't remember the names of her children. She was very animated as she spoke. In my view, she appeared to be very unwell.
14. I note that the chief's letter was filed. It indicates that the Applicant is the caregiver to the Patient and that her only sibling is Ms SW, who is deceased, and requests that the Applicant be granted whatever help she requires.



15. I have considered the pleadings, documentary evidence, and oral testimony of the witnesses. In my view, the issues I need to determine are:-
  1. Does the patient suffer from mental illness? and
  2. If so, what orders should be issued?
16. The appointment of a manager for 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.”
17. 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 DNF is not a “supporter” of the patient, as she wasn't appointed in writing, it is my finding that, being the Patient's daughter, she is her “representative” within the meaning of the Act and, therefore, has the locus to file the instant cause.
18. 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.”
19. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished ability 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.
20. The evidence adduced shows that LMM has dementia, which has also been described as Alzheimer's disease. She is also elderly. Dr Seif testified as to her condition and indicated that it was permanent and irreversible. The doctor also testified that the Patient's condition was a form of mental illness. Given the findings of the said doctor and the Patient's present situation, it is my view that she suffers from a mental illness.
21. The Applicant testified that the Patient owns two parcels of land, has a bank account, and receives a monthly pension. 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 Applicant as the Patient's guardian ad litem and also the manager will enable her to access her funds so that she can pay for the nursing care and medication. She will also be able to substitute the Patient as the defendant in the pending case before the Kwale ELC Court.
22. The Applicant's testimony and the medical professional's report indicate that the Patient is unable to manage her affairs. Therefore, it will be in her best interest that a manager be appointed to manage her estate. The managers/guardians ad litem will ensure that she receives the most appropriate care possible, that her estate is not wasted or lost, and that her interests are protected.



23. I am satisfied based on the evidence before me that the Patient has a mental illness. There is, therefore, a case of appointment of the Applicant as the guardian ad litem of the Patient, LMM, and the manager of her estate. I therefore order as follows:-

- a. The Applicant, DNF, be and is hereby appointed as the guardian ad litem of the Patient, LMM, and also the manager of her estate;
- b. DNF shall manage the Patient's estate but shall not have the power to sell, charge or otherwise alienate her immovable property without the leave of the Court;
- c. 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;
- d. 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
- e. I make no orders as to costs.

24. Orders accordingly.

**DATED AND SIGNED IN MOMBASA THIS 30<sup>TH</sup> DAY OF APRIL 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

