



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re WKIS (Miscellaneous Case E090 of 2025)  
[2025] KEHC 5355 (KLR) (Family) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5355 (KLR)

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

**MISCELLANEOUS CASE E090 OF 2025**

**CJ KENDAGOR, J**

**APRIL 30, 2025**

**IN THE MATTER OF SECTIONS 26,27,28 AND 38 OF  
THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**PETITION FOR APPOINTMENT OF MANAGER AND  
GUARDIAN UNDER SECTION 26 OF THE MENTAL**

**HEALTH ACT CAP 248 LAWS OF KENYA**

**IN THE MATTER OF WKIS**

**IN THE MATTER OF**

**JKW ..... PETITIONER**

**JUDGMENT**

1. Before this Court is a Petition dated 28<sup>th</sup> March, 2025, which seeks the following orders: -
  - a. That the Ward be adjudged to be a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#), Cap 248 of the Laws of Kenya;
  - b. That the Petitioner be appointed as the legal guardian of the Ward;
  - c. That the Petitioner be appointed Manager of the Wards estate under Section 28 of the [Mental Health Act](#) to manage his estate including any such description of moveable or immovable property, Bank Accounts, Money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods;
  - d. That the Petitioner shall represent the ward in court proceedings;



2. The matter was canvassed by way of viva voce evidence on the online platform in the presence of the subject WKIS who was also present on the call. The Petitioner, together with the ward's next of kin and other family members who testified as PW1, PW2, PW3, PW4 and PW5, told the Court that they are brothers and mother, respectively, of the Subject WKIS, who fell critically ill in January, was treated and discharged for homecare nursing. They are seeking to access the subject's accounts to pay for his healthcare, medication and rent. They further told the Court that they understand the proceedings and that they have all agreed on the Petition and consent to the Petitioner JKW being appointed as the legal guardian of the ward and manager of the ward's estate.
3. A medical report dated 27<sup>th</sup> February, 2025 by Primecare Cardiology Associates was filed in Court. In the said report, the doctors stated that the patient suffered from septic shock, pneumonia, pulmonary TB, meningoencephalitis with transverse myelitis, stage 2 primary systemic hypertension, elevated cholesterol, immunosuppression, bilateral subdural collection, probable emphysema, cervical spondylosis with multiple disc prolapse and status post PEG insertion and tracheostomy- 18/02/2025. The patient was discharged for home nursing care.
4. The Petitioner has sought to be appointed as the legal guardian of the ward and manager of the ward's estate under Section 28 of the [Mental Health Act](#) to manage his estate including any such description of moveable or immovable property, bank accounts, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.
5. In his evidence, the Petitioner stated that he is the brother of the subject and that the subject is under the care of his next of kin being his biological mother, NBK who together with the Petitioner have provided and catered for the subject's medical, financial and personal needs since he was taken ill and incapacitated and that due to the prolonged illness and medical expenses, they are financially constrained to continue catering for all the ward's monthly expenses. He further stated that the subject has no family besides his siblings.
6. The [Mental Health Act](#) provides for the care of persons who are suffering from a mental disorder, custody of their persons and the management of the estate of such persons. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
7. Under Section 26 (3) of the Act it provides,

“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 persons, including proper provision for his maintenance...”
8. Section 28 of the same Act provides for management of the subject's estate.
9. I have carefully considered the Petition, the medical report, as well as the evidence adduced in the matter. Section 26 of the [Mental Health Act](#), Cap 248, Laws of Kenya empowers the Court to 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 any other suitable person.”
10. The Medical Report from Primecare heart clinic demonstrate that the subject needs assistance and a guardian(s) to manage his affairs.
11. From the evidence produced by the Petitioner and the Medical Report on record, and confirmed by his mother and siblings, I am satisfied of the merit of this Petition and I hereby allow prayers a, b and c of the Petition dated 28<sup>th</sup> March, 2025. This is to say that;
- a. The ward, WKIS is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
- b. The Petitioner JKW is hereby appointed as the legal guardian of the ward;
- c. The Petitioner is hereby appointed Manager of the Wards estate under Section 28 of the *Mental Health Act* to manage his estate including any such description of moveable or immovable property, Bank Accounts, Money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods;
12. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Cc Beryl

Ms. Atukunda, Advocate for the Petitioner

