



**In re WMB (Subject) (Miscellaneous Petition E001 of 2024)
[2025] KEHC 5129 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS PETITION E001 OF 2024
DKN MAGARE, J
APRIL 30, 2025
IN THE MATTER OF SECTION 26, 28 (1) & (2) OF THE
MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF WILSON MWANGI BARI, AN
ELDERLY PERSON SUFFERING FROM A MENTAL
DISORDER
AND
IN THE MATTER OF AN APPLICATION BY JWM AND EJMM
TO BE APPOINTED GUARDIANS AND ESTATE MANAGERS
OVER THE AFFAIRS AND ESTATE OF WMB AND
IN THE MATTER OF GUARDIANSHIP OF SUBJECT –
WMB**

IN THE MATTER OF

JWW 1ST PETITIONER

EJM 2ND PETITIONER

JUDGMENT

1. The petitioners seek the following orders for guardianship of Subject WMB in the petition dated 18.11.2024. The court directed that the subject be brought to court for the court to be satisfied that indeed the facts are true.



2. The main ground is that the subject has developed mental issues. The subject is 74 years old and suffers from severe dementia.
3. The Applicants state that the subject has suffered a mental disorder, among other ailments, noted in paragraph 4 of the affidavit in support. The subject was brought to court in a wheelchair. The court observed that the subject, though calm, had no sense of presence and did not understand where he was. I had the advantage of seeing and hearing the petitioner and seeing the subject. I am satisfied on the status of the subject. The area Chief, Rutune Location in Múkúrwe'inî wrote a letter confirming that the subject cannot manage his affairs.
4. Further, I have perused the medical evidence for Dr. Milcah A. Olando and concluded that the subject cannot manage his affairs.
5. Section 26 of the mental health act provides for an order for custody and management and guardianship of subjects of mental health 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.
6. on the other hand section 27 of the Act provides for the power of manager in respect of estate as follows:
 1. Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist: Provided that-
 - i. a manager so appointed shall not, without the special permission of the court:
 - a. mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
 - b. lease any such property for a term exceeding five years; or
 - c. invest in any securities other than those authorized by section 4 of the *Trustee Act* (Cap. 167);
 - ii. no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of



immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.

2. Where the person appointed to be manager of an estate or guardian of a person under this Part is unwilling to act gratuitously, the court may fix such allowance to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the court may think fit.
3. Any manager appointed under any other law in force before the commencement of this Act shall be deemed to have been appointed under this Act as from such commencement, but shall not be required to file any inventory or statement under subsection (1) of section 33 if he has already done so before such commencement.
4. For the purposes of this Act and the Penal Code (Cap. 63), a manager shall be deemed to be a trustee under any other law for the time being in force.
7. Having seen the state of affairs, it is the duty of this court to make necessary orders as may be necessary to protect the estate of the subject and properties. In respect of properties, section 28 of the Mental Health Act provides as follows:
 - (1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from a mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.
 - (2) The Minister, the Public Trustee or a manager may take out, as a matter of course, an application in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part.
8. However, there are limitations as to the extent to which properties can be applied. A court order must be obtained in respect of immovable properties. None has been requested. Therefore, the parties must hold their horses up until the court makes such an order.
9. Having seen the subject and confirmed the state of affairs, I find merit in the application and allow it.
10. Before I depart, I was constrained to comment on the holding of the Court of Appeal in respect of the cause list. The Court of Appeal, Jamila Mohammed, Mumbi Ngugi & Ochieng, JJ.A., in the case of Nairobi Civil Appeal No. 219 of 2019 John Mugambi Mugambi & Company Advocates v Dr. Kiama Wangai, held as follows:

It is evident that when the matter in dispute was called out, neither the appellants nor their counsel were present in court. These facts were undisputed by the respondent. In a nutshell, the matter was called out earlier than it would have been, if the court followed the cause list strictly. It is our considered view that the learned Judge therefore ought to have taken into consideration the fact that the appellants' appeal was called out earlier than it was listed on the cause list when exercising his discretion. This was an important issue as counsel might have acted on the presumption that since the appeal was listed way down on the cause list, he would be able to attend to the other matter before he appeared, to attend to this specific appeal. We find that the court denied counsel this opportunity by calling out the matter earlier.
11. When dealing with matters of this nature, it is virtually impossible to strictly follow the cause list, as such clients must be dealt with and given priority. The court may also need to direct in cases of stations where the courts handle three causelists at a time. There are criminal, succession, and civil matters, each with a cause list.



Determination

12. I therefore allow the application as follows:

- a. A declaration is hereby made that WMB is a patient and a person suffering from a mental disorder within the meaning of Section 2 of the *Mental Health Act*, Cap 248, Laws of Kenya.
- b. An order is hereby issued that the Petitioners, JWM and EJMM have full custody and management over the subject WMB and his estate as provided under Sections 26, 27, and 28 of the *Mental Health Act* Cap. 248 Laws of Kenya.
- c. An order is hereby issued that the JWM and EJMM while acting as Guardians and Managers over the subject herein and his estate shall exercise and are granted special powers as may become necessary to sue and/or defend a suit for and against the estate of the Subject herein.
- d. Nevertheless, whereas the Guardians and Managers have a right to collect the title deed for Lower Muhito/Kariara/1X8, they shall not sell or alienate the parcel without a Court order before any transaction is carried out. Any disposal shall be null and void.
- e. No order as to costs.
- f. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 30TH DAY OF APRIL, 2025.
JUDGMENT IS DELIVERED THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Ms. Murira for the Petitioners

Petitioners are present in court

Court Assistant – Michael

M. D. KIZITO, J.

