



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re AWM (Miscellaneous Case E014 of 2025)  
[2025] KEHC 4855 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4855 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CASE E014 OF 2025  
MA ODERO, J  
APRIL 25, 2025  
IN THE MATTER OF AWN  
AND  
IN THE MATTER OF MENTAL HEALTH ACT (CAP 248)  
AND  
IN THE MATTER OF AN APPLICATION FOR ACCESS  
OF ABSA BANK ACCOUNT NO. 030-8XXXX552  
IN THE MATTER OF  
NGK ..... APPLICANT**

**JUDGMENT**

1. The Applicant NGK filed the Amended Notice of Motion dated 4<sup>th</sup> April 2025 seeking the following orders:-
  - “1. Spent
  2. That the Court be pleased to appoint the applicant NGK as the legal guardian for AWM.
  3. That subsequently to 2 above, the applicant be granted access to ABSA Bank Account No. 030-8XXXX552 of Agnes Gathoni Kamuru to enable her pay her sisters medical expenses and other personal needs limited to Kshs. 50,000/= per month.
  4. That the Manager Absa Bank be ordered to effect 3 above.”



2. The Application was premised upon Section 26(i) of the *Mental Health Act* Cap 248 Laws of Kenya and Order 32 Rules 1 and 15 of the Civil Procedure Rules, and was supported by the Affidavit of even date sworn by the Applicant.
3. The Applicant who is the only sister of the subject AWM, told the court that the subject a retired teacher is an elderly citizen who is now aged 73 years old. That the subjects husband SMW passed away on 3<sup>rd</sup> April 2009.
4. The Applicant stated that the subject was diagnosed with ‘Dementia’ in the year 2022. That as a result the subject suffers failing health is bed-ridden and requires round the clock care as she is unable to do anything for herself.
5. The Applicant stated that she now lives with the subject and provides for her needs. She prays to be appointed as legal guardian to enable her access the subject’s pension payments in order to cater for the subject’s medical needs.

### **Analysis and Determination**

6. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of patient (subject) as follows:-

“Order for custody, management and guardianship.

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. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent 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. [own emphasis]
7. In order to warrant the appointment of a legal guardian it must be demonstrated that the subject suffers from a mental disorder rendering her incapable of managing her own affairs.
  8. The Applicant told the court that the subject is a total invalid who requires round the clock care as she is unable to take care of any of her basic needs.
  9. PW2 JM a nephew to both the Applicant and the subject confirm that the subject fell ill in the year 2022 and that since then the subject has been unable to do anything for herself.



10. I have perused the chief's letter dated 17<sup>th</sup> February 2025 authored by the chief of Iriani Location Karatina Sub-county, which confirms that the subject is bed-ridden and is being cared for by the Applicant.
11. I have also perused the medical report dated 4<sup>th</sup> September 2024 prepared by Dr. Francis Mukui Kamunguna, the Psychiatrist in charge at Karatina Hospital. The report confirms that the subject was diagnosed with Alzheimers Disease. That the subject has 'progressive Memory loss', and suffers 'deterioration in cognitive function"
12. I was able to see the subject online. She was an elderly lady who was on the sofa covered in a blanket and did not respond when spoken to. It is quite obvious that the subject suffers from mental incapacity.

In the case of RE N. M. K (2017) eKLR, the court in considering what should be borne in mind when making an order for Guardianship stated as follows;-

“In considering an application brought under section 26 and 27 of the *Mental Health Act* the court guided by three main factors.

- a. There must be medical evidence warranting the determination by the court that the subject suffers a mental disorder.
- b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed.
- c. The court must be satisfied that the proposed manager will utilize her powers for the benefit and welfare of the subject.

The overriding principles in applying all these factors is that the welfare and best interest of the subject must be overall guiding principle. [own emphasis]

13. The subject is an elderly widow whose husband passed away on 3<sup>rd</sup> April 2009. A copy of the Death Certificate Serial No. 33XXXX90 is annexed to the application.
14. The subject has no children. Her only living relative is the Applicant who is her sister. The subject is currently under the care of the Applicant who provides for all her needs. PW2 who is a nephew to the subject indicated that he was aware of this application and had no objection to the same.
15. Finally I find merit in this application for legal Guardianship. The same is allowed and the court makes the following orders;-
  1. The subject AWM is declared to be a person suffering from a mental disorder within the terms of the *Mental Health Act*, Cap 248, Laws of Kenya.
  2. The Applicant NGK is hereby appointed as legal Guardian for the subject AWM and Manager of her estate.
  3. The Applicant NGK to be granted access to the Bank Account No. 030-8XXXX552 held at ABSA Bank, to enable her withdraw an amount of Kshs. 50,000 monthly to cater for the needs of the subject.
  4. No orders on costs.

**DATED IN NYERI THIS 25<sup>TH</sup> DAY OF APRIL 2025.**

**MAUREEN A. ODERO**



**JUDGE**

