



In re Estate of the Late Mohamed Jaffer Hassanali Jagani (Deceased) (Succession Cause 72 of 1969) [2025] KEHC 10607 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 10607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 72 OF 1969**

G MUTAI, J

MAY 30, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE
MOHAMED JAFFER HASSANALI JAGANI (DECEASED)**

AND

**IN THE MATTER OF AN APPLICATION BY RUBAB MOHAMED JAFFER JAGANI AKA
RUBABBAI JAFFER JAGANI TO BE APPOINTED AS THE GUARDIAN AD LITEM OF, AND
THE MANAGER OF THE ESTATE OF SHAHNAZ MOHAMED JAFFER HASSANALI JAGA**

IN THE MATTER OF

**RUBAB MOHAMED JAFFER JAGANI AKA RUBABBAI JAFFER
JAGANI APPLICANT**

RULING

1. Before the Court is a Notice of Motion application dated 26th February 2025, vide which the applicant seeks the following orders: -
 1. Spent;
 2. That this honourable Court be pleased to appoint Rubab Mohamed Jaffer Jagani as the guardian of Shahnaz Mohamed Jaffer Hassanali Jaga;
 3. That this honourable Court be pleased to grant Rubab Mohamed Jaffer Jagani management orders and authority to undertake all legal functions with regard to the financial affairs and welfare of the subject;
 4. That this honourable Court be pleased to grant Rubab Mohamed Jaffer Jagani authority to sell, transfer all that property known as Title No Nairobi/Block 10/108 (LR No 15696/6) to cater for medical bills for the subject; and



5. That the honourable Court be pleased to make any further orders as may be deemed just and fit to grant.
2. The application is premised on the affidavit of Rubab Mohamed Jaffer Jagani sworn on 26th February 2025 and the grounds in the body of the application. The applicant deposed that she was the trustee of the estate of her late husband, Mohamed Jagani Hassanali Jagani, for which she had obtained a certificate of confirmation of grant. The deceased was survived by the applicant, Shahnaz Mohamed Jaffer Hassanali Jaga (the subject) and the late Sikander Mohamed Jaffer Jagani. The latter passed away on the 14th day of June 1974, and his estate had been distributed as per the order dated 15th March 2021 issued in Mombasa Kadhi Succession Cause No 139 of 2020.
3. Ms Rubab Mohamed Jaffer Jagani, identified in her national identification card as Rubabbai Jaffer Jagani, further deposed that as a trustee, she had the responsibility of taking care of Shahnaz Mohamed Jaffer Hassanali Jaga, who suffers from permanent physical incapacity and muscular dystrophy. The said condition had affected her mental state and cost a colossal sum of money to treat, which she was bearing despite the fact that she is 92 years old and has no source of income.
4. Rebab contended that her late husband left behind a property known as Title No/Nairobi/Block 10/168 (LR No 15696/6), measuring 1.50 acres. She stated that she had been unable to fully distribute the estate due to Shahnaz's poor health. She wishes to have the said property registered in her name and thereafter sold so that she can have funds "for medical bills and also take care of herself".
5. She thus prayed that the application be allowed.
6. Rubab attached to her application the certificate of confirmation of grant issued on 27th September 2019, the death certificate of Sikander Jagani, an order issued in Kadhi Court Succession Cause No 139 of 2020 in respect of the estate of Sikander Mohamed Jaffer Hassanali Jagani (deceased), the title document for the suit property, as well as other documents.
7. The applicant attached the medical report of Ms Jilna Varsani, a clinical psychologist, who stated that Shahnaz had physical and mental health challenges which affect her cognitive ability.
8. The matter was heard virtually on 12th May 2025. The Court heard the testimonies of two witnesses, Dr Violet Caroline Akoth Okech and Ms Fehmida Riyaz Hussein Kanji. During the hearing, the applicant and the subject were present virtually as they are based in Nairobi. Given the applicant's age and the condition of the subject, this Court deemed it imprudent to require the two to attend court in person. The Court was, however, able to observe the conduct of Rubab and Shahnaz.
9. Dr Okech stated that she assessed Shahnaz upon being instructed by the family. Dr Okech is a consultant Psychiatrist. She testified that she got her Bachelor degree in medicine and surgery in 1995. Dr Okech testified that she examined the subject in the presence of her mother, Rubabbai Jagani, the subject's cousin, Ms Latifa George and Mrs Fehmida Kanji on 8th May 2025. Her findings were that Shahnaz, who is 68 years old, has severe mental retardation. She requires support to dress up, eat and walk. She wasn't well-presented in time and space, and couldn't hold a conversation. She opined that Shahnaz has a moderate to severe intellectual disability. She testified that Shahnaz requires full-time care.
10. The second witness was Fehmida Riyaz Hussein Kanji. Rubabbai Jagani, the applicant, is her husband's aunt. Ms Kanji testified that they were the nearest relatives of Ms Rubabbai and supported the application as it was in the best interest of the patient.



11. The Court observed Rubab, who is 92 years old and Shahnaz, the subject of these proceedings. I noticed that Shahnaz was unwell and couldn't comprehend what was going on.
12. I have considered the pleadings, the documentary evidence, and the oral testimonies 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 order should be issued?
13. Appointment of a manager of 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 patient's property. 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.”
14. 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 Rubab Mohamed Jaffer Jagani is not a “supporter” of the patient, as she wasn't appointed in writing, it is my finding that, being the Patient's mother, she is her “representative” within the meaning of the Act and, therefore, has the locus to file the instant petition.
15. 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.”
16. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished capacities to manage their affairs, analogous to those of children. Therefore, the court must ensure the application was filed in the patient's interest. Additionally, the court's orders must be designed to achieve this goal.
17. The evidence adduced shows that Shahnaz Mohamed Jaffer Hassanali Jaga has a mental illness and that she isn't well oriented in time and space. Although she is 68 years old, she is wholly dependent on her 92-year-old mother. She also has physical disabilities. Dr Okech diagnosed her condition as a mental illness. Given the findings of the said doctor and her present situation, it is my view that the Patient suffers from a mental illness.
18. The applicant averred that the patient has an interest in the property known as Title No Nairobi/Block/168, IR No 15696/6. This is quite a substantial property holding worth millions of Kenyan shillings. The patient's treatment is expensive. It is clear to me that the subject can't manage her property, nor is she able to manage the treatment regime. The appointment of the applicant as the subject's guardian ad litem and manager of her estate will enable the applicant to manage her property, allowing her to obtain funds to pay for nursing care and medication, and to distribute the deceased person's estate fully.



19. The witnesses' testimony and the medical professional's report show that the patient cannot manage her affairs. Therefore, it will be in her best interest to appoint a manager to manage her estate. The manager/guardian 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.
20. I note that the applicant is 92 years old. She has no income. Title No Nairobi/Block/168, IR No 15696/6 is the only asset that she and the subject have. Treatment is urgently required and cannot wait; this can only be achieved if the said asset is sold. Under the circumstances, I permit the applicant to sell and transfer all that property known as Title No. Nairobi/Block/168, IR No. 15696/6, to cover the medical bills of the subject.
21. I am satisfied, based on the evidence adduced, that the subject has a mental illness. There is, therefore, a case for the appointment of the Petitioner as the guardian ad litem of the Patient, Shahnaz Mohamed Jaffer Hassanali Jaga, and the manager of her estate. In the circumstances, I order as follows: -
 1. The Petitioner, Rubab Mohamed Jaffer Jagani aka Rubabbai Jaffer Jagani, is hereby appointed as the guardian ad litem of the Patient, Shahnaz Mohamed Jaffer Hassanali Jaga, and also the manager of her estate;
 2. I authorize Rubab Mohamed Jaffer Jagani, aka Rubabbai Jaffer Jagani, to manage the estate of Shahnaz Mohamed Jaffer Hassanali Jaga;
 3. I further authorize Rubab Mohamed Jaffer Jagani, aka Rubabbai Jaffer Jagani, to sell and transfer all that property known as Title No. Nairobi/Block/168, IR No. 15696/6, to cover the medical bills of the subject;
 4. 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;
 5. 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 his appointment; and
 6. I make no orders as to costs.
22. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 30TH DAY OF MAY 2025. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms Varvani, for the Applicant; and

Arthur – Court Assistant.

