



REPUBLIC OF KENYA



**In re Guardianship of NMM (Petition E011 of 2025)
[2025] KEHC 7398 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E011 OF 2025**

A MABEYA, J

MAY 30, 2025

**IN THE MATTER OF AN APPLICATION BY JHMM TO BE APPOINTED
GUARDIAN OVER HE AFFAIRS OF NMM AND ADMINISTRATOR OF HIS ESTATE
AND
IN THE MATTER OF GUARDIANSHIP OF SUBJECT - NMM**

IN THE MATTER OF

JHMM PETITIONER

JUDGMENT

1. NMM ('the Subject') aged 67 years is the father of JHMM ('the Petitioner'). On 4/5/2025, the Subject suffered an ischemic stroke with brain edema which weakened his left side causing incoherent speech.
2. The Subject became critically ill and was admitted at Avenue Hospital Kisumu and treated. However, although hitherto an organized and productive person, the Subject was said to be incapable of now managing his affairs. A Medical Report dated 16/5/2025 from that Hospital show that as at the time of that report, the Subject was seriously ill, non-ambulatory, unable to speak and fully dependent on others for all activities of daily living. He was to be transferred to home based supportive care with heightened management.
3. On 19/5/2025, the Petitioner took out a Petition under sections 26 and 27 of the *Mental Health Act* and sought that the Subject be declared a person suffering from mental disorder. He also sought to be appointed as the Guardian of the Subject and therefore his Manager. That he be allowed to dispose some of the Subject's properties to defray medical expenses.
4. On 27/5/2025, he appeared in Court and testified on oath. He confirmed the contents of his Petition as narrated above. He produced the aforesaid Medical Report in support of his contestations.
5. The Court has carefully considered the statements in the Petition. It has also considered the testimony of the Petitioner as corroborated by the documentary evidence that he produced.



6. Section 2 of the *Mental Health Act*, Cap 248 defines a person suffering from mental disorders as: -

“... a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”

7. Section 26 of the said Act provides for the orders that this Court can make upon being satisfied that a person is suffering from mental disorder. It provides for the management of his estate and guardianship. Sub-section 3 thereof 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 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.”

8. In the present case, I have considered the Medical Report dated 16/5/2025. I have also considered the testimony of the Petitioner. I am satisfied that the Subject suffers from a temporary mental disorder. This is so because the Medical Report itself is not definitive and conclusive to that effect. All that appears is that the Subject is seriously ill and at the moment, he is unable to do anything for himself and fully depends on others for his daily activities. That it is fair and just that his affairs be managed by a Guardian for the time being.

9. I have considered the entire record. It is not in dispute that the stroke did affect the Subject. He is unable to do anything for himself. He has incurred a huge bill of in excess of Kshs.1.6 million which needs to be settled. The Subject needs further medical support. This cannot be achieved unless some of his assets are disposed off and funds realized. The Petitioner states that the adult children of the Subject have consented to the Petition.

10. From the foregoing, the Court is not in doubt that the Subject needs urgent help. It is however not certain for how long the Subject may need to rely on 3rd parties. Since there is no definitive Mental Assessment Report produced, and for reasons of the urgency involved, the Court will grant the orders sought but restrict the same for a limited period.

11. Accordingly, I allow the Petition and grant the following orders:

- a. That NMM be and is hereby declared to be a person suffering from a mental disorder temporarily as provided under section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
- b. That JHMM be and is hereby appointed as the legal guardian to NMM.
- c. That JHMM be and is hereby appointed the manager of the estate of NMM to manage his estate including any such description of moveable and immoveable property, money, debts and legacies, with power to execute, sign all deed and/or instruments relating to the property.
- d. That notwithstanding prayer (c) above, JHMM be granted power to utilize some of the property of the patient, moveable and immoveable, by way of disposal or otherwise, sufficient to generate income that would help to defray the patient's medical expenses, upkeep and any



other related expenses pursuant to Section 29 of the *Mental Health Act*, Cap 248 Laws of Kenya.

- e. The above orders are limited to a period of 90 days only. The Petitioner is at liberty to apply for their extension permanently upon filing a Mental Assessment Report within the 90 days aforesaid.
- f. No order as to costs.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF MAY, 2025 .

A. MABEYA, FCI Arb

JUDGE

