



REPUBLIC OF KENYA



KENYA LAW
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**In re KMM (Subject) (Petition E007 of 2025)
[2025] KEHC 7206 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E007 OF 2025**

**AN ONGERI, J
MAY 30, 2025**

JUDGMENT

1. The Petitioner herein J.T.M filed this petition seeking the following prayers:-
 - a. A declaration be issued to the effect that K M M is a patient and a person suffering from Mental Disorder within the meaning of Section 2 of the *Mental Health Act*, Cap. 248 Laws of Kenya.
 - b. An order does issue that the Petitioner is appointed the guardian, custodian and manager of the estate of the subject K M M to transact on his own behalf or until further orders of the court.
 - c. An order does issue following the petitioner access funds from Co-operative Bank of Kenya Account No. 01116094757100 for the treatment, daily upkeep and other essential needs of the subject K M M.
 - d. Costs of the petition to be borne by the estate.
 - e. Any such further or other relief as this Honourable Court may deem fit and just to grant.
2. The Petitioner avers as follows in the Petition:-
3. That the Petitioner is the wife of K M M who suffers from haemorrhage cerebrovascular accident and hypertension and whose rights are protected under the *Mental Health Act*, Cap 248 Laws of Kenya.
4. The Petitioner further avers that although K M M is of the age of the majority currently aged 61 years old, arising from the aforementioned illness he has developed memory lapses and abnormal delusional tendencies that have rendered him incapable of making conclusive decisions and judgments hence he is thus unable to manage his affairs.
5. That K M M has suffered from haemorrhagic cerebrovascular accident and hypertension since the year 2019 hence the illness has to a large extent negatively affected his decision making and it is imperative that the Petitioner is appointed as his Guardian to ensure the subject's well-being.



6. In January 2015 and more recently in 2025, K M M was examined by a medical doctor at St. Joseph Shelter of Hope Hospital in Voi and was found to have had a history of haemorrhagic cerebrovascular accident and hypertension.
7. That the said subject is currently unable to manage his affairs given that the said illness has led to mental impairment causing him to be at times incoherent owing to abnormal delusional tendencies.
8. That the subject has been living with the Petitioner who provides him with home based care and support apart from medical treatment.
9. Further, that the subject recently received his lumpsum payment of Retirement Scheme and Defined Contribution Scheme from KenGen. He is currently bedridden, under home-based care, and suffering from loss of memory, and funds are needed for his ongoing medical care, daily upkeep and other essential needs.
10. That the Bank has insisted that before granting the Petitioner access to the said funds, she must obtain formal Orders of Custody, Management and Guardianship in respect of her husband, necessitating the filing of this Petition.
11. That the Petitioner is genuinely apprehensive that in the absence of orders granting her access to the said funds, the responsibility of caring for the subject will become unduly burdensome and he stands the risk of missing out on essential supportive care and medication, thereby gravely endangering his life and well being.
12. The Petition is supported by the affidavit of the Petitioner dated 12th May 2025 which retaliates the above grounds.
13. The issues for determination in this petition are as follows;
 - i. Whether K M M is a person suffering from a mental disorder as defined under Section 2 of the [Mental Health Act](#), thereby necessitating guardianship.
 - ii. Whether the petitioner, J.T.M, is a suitable and appropriate person to be appointed as the guardian, custodian, and manager of the subject's estate.
 - iii. Whether the petitioner should be granted access to the subject's funds in Co-operative Bank Account No. 01116094757100 for his medical care, daily upkeep, and essential needs.
14. This matter arises from a petition filed by J.T.M, the wife of K M M (the subject), seeking orders to declare the subject a person suffering from a mental disorder under Section 2 of the [Mental Health Act](#), Cap 248, Laws of Kenya, and to appoint her as his guardian, custodian, and manager of his estate.
15. The petition further seeks authority to access funds held in the subject's Co-operative Bank account for his treatment, upkeep, and essential needs.
16. On the first issue, the petitioner has demonstrated through medical evidence that the subject suffers from a haemorrhagic cerebrovascular accident and hypertension, conditions that have led to memory lapses, abnormal delusional tendencies, and impaired decision-making capacity.
17. The medical report from St. Joseph Shelter of Hope Hospital confirms that the subject's condition has rendered him incapable of managing his affairs.
18. Under Section 2 of the [Mental Health Act](#), a "patient" includes any person suffering from a mental disorder that impairs their mental capacity to such an extent that they require care, treatment, or control for their own well-being or the protection of others.



19. The evidence presented satisfies this court that the subject is indeed a patient within the meaning of the Act.
20. Regarding the second issue, the petitioner, being the subject's wife, has shown unwavering dedication to his care, providing home-based support and ensuring he receives necessary medical attention.
21. She has demonstrated her capability and willingness to act in his best interests, particularly in managing his financial affairs for his welfare.
22. Section 26 of the *Mental Health Act* empowers this court to appoint a guardian for a person suffering from a mental disorder where it is deemed necessary for the proper management of their affairs.
23. Given the petitioner's close relationship with the subject and her demonstrated commitment to his well-being, this court finds her to be the most suitable person to be appointed as his guardian, custodian, and manager of his estate.
24. Concerning the third issue, the petitioner has established that the subject is in urgent need of funds for his medical treatment, daily upkeep, and essential needs.
25. The bank has rightly required a court order before releasing the funds, and in light of the subject's incapacitation, it is just and expedient that the petitioner be granted access to the funds in Co-operative Bank Account No. 01116094757100 for the stated purposes.
26. The petitioner has provided sufficient assurance that the funds will be utilized strictly for the subject's benefit, and this court will monitor the guardianship to ensure accountability.
27. In conclusion, the petition is merited, and the orders sought are granted as follows;
 - i. THAT a declaration be and is hereby issued that the subject, K M M is a patient suffering from a mental disorder within the meaning of Section 2 of the *Mental Health Act*, Cap 248, Laws of Kenya.
 - ii. THAT the petitioner, J.T.M, be and is hereby appointed as the guardian, custodian, and manager of the estate of the subject K M M, with full authority to transact on his behalf on all matters involving his affairs until further orders of this court.
 - iii. THAT the petitioner be and is hereby granted access to funds held in Co-operative Bank Account No. 0111XXXXX57100 for the treatment, daily upkeep, and other essential needs of the subject.
28. The costs of this petition shall be borne by the subject's estate.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF MAY, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

