



**In re AKP ('A') (Miscellaneous Case E161 of 2025)
[2025] KEHC 12330 (KLR) (Family) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12330 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CASE E161 OF 2025
CJ KENDAGOR, J
JULY 31, 2025
IN THE MATTER OF AKP ("A")**

IN THE MATTER OF

**RNH 1ST PETITIONER
SNH 2ND PETITIONER
SNH 3RD PETITIONER**

RULING

1. Before this Court is a Petition dated 27th May, 2025, in which the Petitioners are seeking the following orders: -
 - a. That the Honourable Court do find that the subject’s disability falls within the scope and definition of mental disorder under the *Mental Health Act*, Cap 248 of the Laws of Kenya.
 - b. That all three Petitioners herein be appointed jointly and severally as legal guardians and managers of the estate of “A” and that the consent and/or approval of any one of the Petitioners shall be sufficient and adequate for purposes of managing “A”’s estate.
2. The application is premised on the following grounds:
 - a. The First Petitioner is the sister, and the Second and Third Petitioners are the niece and nephew, respectively, of AKP (hereinafter called “A”).
 - b. “A” is an adult suffering from intellectual disability which falls within the meaning of a person suffering from mental disorder under the *Mental Health Act*, Chapter 248 of the Laws of Kenya.



- c. A has no capacity to make any financial, medical, or lifestyle decisions owing to the said disability.
 - d. "A" is currently under the care of the Petitioners who wish to be appointed as the legal guardians of "A" 's estate however given the complexities of life all three petitioners may not always be present and available at the same time and place, therefore, and subject to the discretion of this Honourable Court, they request that the consent and/or approval of any one of the Petitioners shall be sufficient and adequate for purposes of managing "A" 's estate.
3. The Petition is supported by an Affidavit dated 27th May, 2025 sworn by the Applicants. The Applicants stated that they are the family and kin of the subject AKP (hereinafter referred to as "A") with the first Petitioner being A's sister and the second and third Petitioners being the nephew and niece of A. They state that the subject A has intellectual disability from childhood, is under their care and is fully dependent on them for her day to day needs and support as well as financial, medical and lifestyle decisions and it is in this regard that they have been providing the subject with the necessary support and care and she will need continued support and assistance throughout her life which they are willing and able to provide.
 4. The matter was canvassed by way of viva voce evidence in the presence of the subject A who was presented on the court session platform. She appeared physically well, could speak and knew her name. She was able to point out the 1st Applicant as her sister and the other two as her relatives too. She appeared restless and started crying when the Court asked her if she was aware of the proceedings, she stated that the Applicants take good care of her and settled when it was explained to her that the Applicants wish to continue taking care of her as guardians. The Applicants who testified as PW2, PW3 and PW4 told the Court that the subject is dependent on them for support and that they understood their responsibilities and undertake to act in the subject's best interest.
 5. The Applicants pray that the Honourable Court do find the subject's disability to fall within the scope and definition of mental disorder under the *Mental Health Act*, Cap 248 of the Laws of Kenya and that all three Petitioners herein be appointed jointly and severally as legal guardians and managers of the estate of "A" and that the consent and/or approval of any one of the Petitioners shall be sufficient and adequate for purposes of managing "A" 's estate.
 6. In her evidence, the 1st Applicant told the Court that she is the biological sister to the subject and that the subject lives with her. She further stated that the subject is dependent on them for support and that she has had the disability since childhood. The 2nd Applicant told the Court that the subject is her aunt. All the Applicants told the Court that they understand their responsibilities as guardians and managers of the estate of the subject.
 7. The Court observed the subject on the online platform and engaged her. She appeared physically healthy, was able to speak, knew her name, and recognized the Applicants as her sister and relatives. However, she seemed agitated and began crying when asked about her awareness of the proceedings, stating that the applicants took good care of her.
 8. The medical report dated 18th June, 1984 by Dr. Osman M. Miyanji, a Consultant Paediatrician at Aga Khan Hospital, private clinics, was filed in Court. In the said report the doctor stated that there was no clinical evidence of a progressive Central Nervous System disorder and that she will need periodic assessment of her progress.
 9. Another medical report dated 20th January, 2025 by Dr. Shilpa R Mulki (physician) at the Lions Sightfirst Eye Hospital was also filed in Court. In the said report, the Doctor stated that the subject



has been diagnosed with intellectual disability (likely due to perinatal cerebral hypoxia) with emotional liability diagnosed in her first decade of life, type 2 diabetes mellitus diagnosed in 2018 and in 2024 retinopathy, diabetes foot ulcer and neuropathy were diagnosed. The doctor further stated that the subject's condition makes it necessary to have a legal guardian for her safety and well-being since she is intellectually unable to make essential choices herself.

10. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. Section 26 1 (a) and (b) of the Act grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons. 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.
11. Under Section 26 (3) of the Act it 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 persons, 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]
12. Section 28 of the same Act provides for management of the subject's estate.
13. I have carefully considered the Petition, the Affidavit filed in Court, the medical reports, as well as the evidence adduced in the matter. Section 26 of the *Mental Health Act*, Cap 248, Laws of Kenya empowers the Court to 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 any other suitable person.”
14. The comprehensive medical report prepared by the attending physician illustrates that the subject's condition - marked by significant cognitive impairments - renders her incapable of making informed decisions regarding her personal care and daily living activities. As a result, it is imperative to establish a legal guardian or guardians who can oversee her affairs and safeguard her well-being. This is crucial to ensure her protection and to provide the necessary support for her safety and quality of life, given her inability to navigate essential choices independently.
15. From the evidence produced by the Applicants and the Medical Reports on record, I am satisfied of the merit of the Petition dated 27th May, 2025 and I hereby make the following orders;
 - a. The Applicants RNH, SNH and SNH are hereby appointed jointly and severally as legal guardians and managers of the estate of the subject AKP (A).
 - b. The managers shall not, without the sanction of the court;
 - a. mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;



- b. lease any such property for a term exceeding five years; or invest in any securities other than those authorized under the *Trustee Act*.

16. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM DATED AND DELIVERED ONLINE IN NAIROBI THIS 31ST DAY OF JULY, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Munyao, Advocate holding brief for Ms. Sehmi, Advocate for the Petitioners

