



REPUBLIC OF KENYA



KENYA LAW
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**In re Guardianship of BWM (Miscellaneous Case E300 of 2024)
[2025] KEHC 12361 (KLR) (Family) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS CASE E300 OF 2024

CJ KENDAGOR, J

JULY 31, 2025

IN THE MATTER OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF GUARDIANSHIP OF BWM

IN THE MATTER OF

EWK APPLICANT

JUDGMENT

1. Before this Court is an application dated 20th November, 2024, in which the Applicant is seeking the following orders: -
 - a. That the Applicant, EWK, be appointed legal guardian of BWM for succession purposes.
 - b. That the Court do grant further orders as it may deem just and fit.
 - c. That the costs of the application be in the cause.
2. The application is premised on the following grounds:
 - a. That BWM is a person with disability (Intellectual Development Disorder with Attention Deficit Hyperactivity) and in need of maintenance.
 - b. That EWK is the biological mother to BWM and has been taking care of her.
 - c. That EWK consents to be appointed as the legal guardian of BWM who has disability.
3. The Application is supported by an Affidavit dated 20th November 2024, sworn by the Applicant. The Applicant stated in the Affidavit that the subject, BWM, was born on 24th September, 1996 and is a person living with a disability, and that she has been caring for her as she is unable to live independently.



- She stated that the father of the subject is deceased and that the subject cannot participate in her late father's succession process because of the disability she suffers from, and thus she is seeking to be appointed as the legal guardian of BWM.
4. The matter was canvassed by way of viva voce evidence in the presence of the subject BWM, who was present at the Court session. The individual under discussion appeared to be physically fit and could communicate, although her speech was somewhat irregular and characterized by pauses. She exhibited behavioural traits associated with intellectual disabilities.
 5. The Applicant is currently following up on the dues owed to her husband's estate, and the Subject is among the beneficiaries. In addition to her daughter, she mentioned having an older son who was present on the online platform during the proceedings.
 6. He confirmed his relationship to the subject, stating that she is indeed his sister and expressed his understanding of the ongoing legal matters, affirming that the information presented by their mother was accurate.
 7. The subject currently attends a special school designed to support her educational and developmental needs, reflecting the family's commitment to her well-being and future.
 8. The medical assessment report dated 11th March, 2021, from the Kenya Institute of Special Education was filed in Court. In the said report, it stated that the subject was diagnosed with intellectual development disorder with attention deficit hyperactivity disorder.
 9. A letter from the Chief's Office at Kikuyu location was also filed in Court. In that letter, the Chief stated that the deceased (Applicant's husband) was a resident within his area of jurisdiction and that he is survived by EWK, the applicant herein, BWM, his son, and BWM, the subject herein. He also confirmed that the subject, BWM, suffers from mental health issues and that she is in the constant care of her mother, the Applicant herein.
 10. A letter from the Department of the Administrator General, Public Trustee, was also filed in Court. In the said letter, the State Counsel stated that one of the beneficiaries of the estate, BWM, the subject herein, has Mental Celebral Palsy and hence lacks legal capacity to make decisions involving administration of the estate despite the fact that she is an adult. They recommended that, to ensure the best interests of BWM are catered for, a guardianship order was necessary.
 11. 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.
 12. 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]

13. Section 28 of the same Act provides for management of the subject’s estate.
14. I have carefully considered the Application, the Affidavit filed in Court, the medical assessment report, the Chief’s letter, 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 a mental disorder by any near relative or any other suitable person.”
15. The Medical assessment report by the Kenya Institute of Special Education demonstrates that the subject’s condition makes it necessary to have a legal guardian for her safety and well-being, as she is intellectually unable to make essential choices for herself. The letter from the Department of the Administrator General, Public Trustee recommends a guardianship order.
16. Based on the evidence provided by the Applicant, I am satisfied with the merit of the Application dated 20th November 2024, and I hereby appoint EWK as the legal guardian and manager of the subject BWM and her estate.
17. It is so ordered.

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

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

