



**In re GWN (Subject) (Miscellaneous Case E142 of 2025)
[2025] KEHC 12383 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12383 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E142 OF 2025**

CJ KENDAGOR, J

JULY 31, 2025

**IN THE MATTER OF SECTIONS 26, 27, 28 AND 29 OF THE
MENTAL HEALTH ACT CHAPTER 248 LAWS OF KENYA**

AND

IN THE MATTER OF GWN

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT
AS GUARDIANS AND MANAGERS OF THE AFFAIRS OF GWN**

IN THE MATTER OF

**DR. FWK 1ST APPLICANT
NJN 2ND APPLICANT
EGN 3RD APPLICANT**

JUDGMENT

1. Before this Court is an Originating Summons dated 7th April, 2025, in which the Applicants are seeking the following orders: -
 - a. That GWN be declared a patient with a mental disorder under Section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
 - b. That Dr. FWK, NJN and EGN be appointed as legal guardians and managers of the estate and affairs of GWN;
 - c. That the Applicants be allowed to make decisions regarding the welfare and upkeep of GWN.



- d. That the Honourable Court be pleased to grant an order allowing the Applicants to access funds held in Mwalimu National Sacco Ltd Fixed Account No. 307.....004 and in Savings Account No. 301.....002 for purposes of providing for the upkeep of GWN.
 - e. That Dr. FWK, NJN and EGN be authorized to be managers in totality of the estate of GWN for purposes of providing for her general maintenance and medical expenses.
 - f. That the Court make any other orders as may be necessary for the interest and welfare of GWN.
2. The application is premised on the following grounds:
- a. That the Applicants are siblings.
 - b. That the subject GWN has never been married and has no children of her own. She has one brother and three sisters.
 - c. That GWN has been undergoing treatment for multiple infarcts, a form of onset dementia.
 - d. That as a result of the diagnosis, GWN is unable to engage in complex conversations or perform technical tasks, such as making financial or business decisions and is therefore incapable of managing her own affairs.
 - e. That GWN maintains a house and Sacco accounts that will go to waste if left unmanaged and therefore the application is in the best interests of GWN.
 - f. That the Applicants require the court's authorization to enable them access GWN's property to offer care and access her estate solely and safeguard her welfare and finances.
 - g. That the application is made in the interests of GWN and in the interests of justice to facilitate her upkeep, medical care and general welfare.
3. The application is supported by Affidavits dated 31st March, 2025 sworn by the Applicants. The Applicants stated that they are siblings to the subject GWN who is a retired civil servant who was diagnosed with multiple infarcts, a form of onset dementia and is living in Othaya with their mother JN. They further stated that, due to her dementia, the subject has experienced difficulties in holding conversations and even in performing technical tasks such as business and financial decisions, and has been unable to manage her own affairs.
4. The matter was dispensed with through viva voce evidence in the presence of the subject GWN, who was presented on the court session platform. She appeared healthy but was unable to respond to speech or confirm to the court if she was aware of the proceedings.
5. The applicants who testified as PW2, PW3, and PW4 told the Court that the subject GWN is their sister, has no family of her own, has been unwell since 2020, and needs assistance as she cannot speak coherently or make sound decisions. They also informed the Court that there is a nurse who assists the subject along with them. They further stated that they understand their role as managers and guardians to ensure that the subject's properties are used for her best benefit.
6. The caregiver to the subject, who testified as PW5, informed the Court that she has been providing care since May 2025. She stated that the subject can hear but does not respond, and she assists in feeding, administering medication, and bathing her. She also noted that the subject appears healthy and responds positively.
7. The Applicants have sought to be appointed managers and guardians of the affairs of the subject GWN in accordance with the [Mental Health Act](#) and in particular be allowed to make decisions regarding the



welfare and upkeep of the subject, access funds held at Mwalimu National Sacco Ltd Fixed Account No. 307.....004 and in Savings Account No. 301.....002 for purposes of providing for the upkeep of GWN and be authorized to be managers in totality of the estate of GWN for purposes of providing for her general maintenance and medical expenses. To merit the above orders, the Petitioners must present sufficient evidence to convince the Court that, firstly, 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.

8. In their evidence, the Applicants stated that they are the sister and brother respectively of the subject. The 3rd Applicant stated that she has lived with the subject for three years and that the challenge is that the subject cannot speak coherently and cannot make sound decisions. The 2nd Applicant stated that he is the one who drives the subject to various places, including taking her to see the doctor and to collect her medication. All the Applicants told the Court that they understand their roles as guardians and managers of the subject's affairs.
9. The medical report dated 2nd April, 2024 by Dr. Thomas O. Kwasa, a Consultant Neurophysician, was filed in court. In the said report, the doctor stated that examination confirmed a dementing process and investigations through MRI showed features of multiple infarcts and reduced serum vitamin D levels. The doctor further indicated that though the subject is generally better and more independent, she has difficulties carrying on complex conversations or performing technical activities such as making financial or business decisions, which necessitate assistance from her next of kin.
10. A Chief's letter from the Assistant Chief, Kairuthi Sub-location Iria-ini North Location Othaya Central division Nyeri South sub-county was also filed in Court. In the said letter, the Assistant Chief stated that the subject GWN is not married and has no children but indicated that her close relations are JNN (mother), FWK (sister), NJN (brother), EGN (sister) and MR (sister). He further indicated that the family has agreed that NJN, FWK and EGN be the guardians and managers of GWN.
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 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 mental disorder by any near relative or any other suitable person.”
15. The Medical Report by the doctor demonstrate that the subject needs assistance and a guardian(s) to manage her affairs.
16. From the evidence produced by the Applicants, the Medical Report on record and the Chief’s letter, I am satisfied of the merit of this Application and I hereby allow prayers 1, 2,3,4 and 5 of the Originating Summons dated 7th April, 2025:
- i. GWK is declared a patient suffering from menta disorder;
 - ii. The Applicants Dr. FWK, NJN and EGN are hereby appointed as guardians of the subject GWN and are allowed to make decisions regarding the welfare and upkeep of the Subject’
 - iii. The Applicants are further appointed managers over the estate of the subject;
 - iv. The Applicants are granted access to the Subject’s Account held with Mwalimu National Sacco Ltd for purposes of providing for the Subject’s upkeep;
 - v. As managers, the applicants are authorized to deal in totality with the subject’s estate’s moveable and immovable properties outlined in Prayer 5, save that they shall not without the approval of the Court mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
 - vi. In accordance with Section 27(4) of the *Mental Health Act*, the Applicants shall cause within 30 days the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate of GWN.
 - vii. In accordance with the provisions of Section 33 of the *Mental Health Act*, the Applicants shall furnish an inventory and annual statement to this court effective 31st July, 2026.
 - viii. Costs to be met out of the Estate of the Subject
17. It is so ordered.

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

.....

C. KENDAGOR
JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Onsongo, Advocate holding brief for Ms. Kiguatha Advocate for the Applicants

