



In re JWN (A Person Suffering from a Mental Disorder) (Petition E034 of 2025) [2025] KEHC 11357 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E034 OF 2025
FR OLEL, J
JULY 31, 2025**

IN THE MATTER OF JWN (A PERSON SUFFERING FROM A MENTAL DISORDER)

IN THE MATTER OF

JNN 1ST PETITIONER

PKN 2ND PETITIONER

RULING

1. For determination before this court is the Petition dated 16th April , 2025 which seeks the following orders:-
 - a. That JWN (the patient) is hereby declared to be suffering from a mental disorder under Section 26 of the [Mental Health Act](#), Cap 248 of the Laws of Kenya.
 - b. That this Honourable Court do appoint the Petitioners as Managers of the Estate of the Subject, JWN in accordance with [Mental Health Act](#) with special permission pursuant to Section 27(1)(a) of the [Mental Health Act](#) to operate bank accounts, institute suits on her behalf in regards to any moveable and immovable property of which the Estate may consist; and,
 - c. Costs of this Petition be in the cause.
2. This Petition has been brought by the children of the Subject with the consent of the other children/ siblings. They have deponed that the subject is aged 76 years old who has been in a long time business person owning several rental premises, land, among other income generating activities. It is averred that the subject is a mother of 11 children and their siblings have no objection to the application, having signed a consent on the same. According to the Applicants, their mother started exhibiting symptoms of acute forgetfulness over five (5)years ago and was diagnosed with an incapacitating, irreversible psychiatric disorder known as dementia. It is alleged that the subject is unable to recognise her immediate family and surrounding environment hence unable to carry any mortal cognitive



function or manage her affairs. It is also alleged that the subject's mental capacity has been reduced and continued to deteriorate hence is regularly checked and treated at PCEA Kikuyu Hospital for the said condition.

3. It is the Petitioners' contention that the subject's health is deteriorating very fast and thus is unable to manage the properties and other interests she has worked hard to achieve and own. The Applicants seek to be appointed as guardians so they can manage her affairs so that she can protect the estate and avoid the same from wasting due to encroachment. The Applicants have urged that they undertake to be bound by any conditions that the court shall set, hence it would be in the interest of justice that the orders be granted.

Analysis and Determination

4. Having listened to the Applicants' counsel's oral submissions on the said application, the court called for the physical availability of the subject before court. This was done on 26th June, 2025 in Chambers, whereby the court observed and interrogated the subject and noted that she was well kept, clean and properly dressed "Batem" refused to sit down and her speech was uncoordinated. She was not able to recognise and identify any of her children before court and was wondering where she was.
5. To determine the Notice of Motion application dated 16th April, 2025 alongside the Supporting evidence, the court proceeds to seek guidance on the law under Section 26 of *Mental Health Act*, Cap 248 Laws of Kenya which gives the court judicial power over persons and estates of persons who are shown to be suffering from mental disorder and/or any incapacity. Section 26 of this Act provides as follows:-

"PARA 26.

Application for administration

1. An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—
 - a. a supporter of the person with mental illness; or
 - b. the representative of the person where the person with mental illness has not appointed a supporter.
2. An application under subsection (1) shall be submitted together with an affidavit setting out—
 - a. the grounds upon which the application is made;
 - b. the full particulars as to the property and relatives of the person to whom it relates; and
 - c. a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
3. A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the—
 - a. person in respect of whom the application is made; or



- b. where an application is made by a supporter to the representative of the person with mental illness.
- 4. Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.
- 5. The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.
- 6. The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—
 - a. court to examine the person; or
 - b. person to be examined by a qualified registered mental health practitioner
- 7. Further, the court is guided by the decision in the case of *Re N M K* [2017] eKLR where the court considered and set out what should guide a court in its application of the provisions of Section 26 and 27 of Cap 248 and thus held:-

“In considering an application brought under Sections 26 and 27 of the *Mental Health Act*, the Court is guided by three main factors:

- i. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;
- ii. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;
- iii. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.”

- 6. In this instant case, the court has considered the Petition and the supporting Affidavit together with the annexures therein and notes that the medical report from PCEA Kikuyu Hospital attached to Supporting Affidavit shows that the subject had a diagnosis of dementia and is not in the right state of mind. The same is not opposed and thus the court finds it sufficient to confirm that the subject is suffering from mental disability and requires assistance.
- 7. Further, the court has noted the Consents attached by the children of the deceased dated 16th April, 2025 in respect to the Petition and the fact that they do not object to the Petitioners being appointed as guardian over the affairs of the subject. The court has also noted the letter from the Assistant Chief of Gitaru sub-location, wherein he confirms all the children of the subject. The court also called for the availability of the subject in physical court. Upon observation and interrogation of the said subject, the court formed an opinion that indeed by the subject not being able to recognise members of her immediate family and her environment, she was indeed not of the right state of mind.



8. In the ultimate, this Court is satisfied that the orders sought in the Notice of Motion application dated 16th April, 2025 are merited and proceeds to allow the same with the following orders issuing:-
- a. The Subject herein, JWN be and is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
 - b. The court hereby appoints the Petitioners as Managers of the Estate of the Subject, JWN with special permission pursuant to Section 27(1) of the *Mental Health Act*.
 - c. That the costs of this application be borne by the Estate of the said JNN.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JULY , 2025.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 31ST DAY OF JULY 2025.

FRANCIS RAYOLA OLEL

JUDGE

