



**In re MGK (Patient) (Miscellaneous Case E147 of 2025)  
[2025] KEHC 12362 (KLR) (Family) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12362 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS CASE E147 OF 2025  
CJ KENDAGOR, J  
JULY 31, 2025  
IN THE MATTER OF MGK (PATIENT)  
AND  
IN THE MATTER OF THE MENTAL HEALTH ACT (CAP  
248) LAWS OF KENYA**

**BETWEEN**

**CNK ..... 1<sup>ST</sup> APPLICANT**

**ATK ..... 2<sup>ND</sup> APPLICANT**

**JWK ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MGK ..... PATIENT**

**JUDGMENT**

1. Before this Court is an Application dated 21<sup>st</sup> May, 2025, in which the Applicants are seeking the following orders: -
  - a. ....(spent)
  - b. That a declaration do issue adjudging MGK, the patient herein, as a person suffering from a mental health condition and in need of a guardian and caretaker pursuant to Section 26 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
  - c. That an order do issue appointing the Applicants, CNK, ATK and JWK as guardians jointly and severally over MGK as a person as well as in respect of her Estate.



- d. That upon the Applicants being appointed as the guardian of the Subject/patient, the Honourable Court be pleased to authorize the Applicants to institute a suit for recovery of Parcel known as Tigoni/Tigoni Block X (Mwana Mukia Plot No. XXX, Parcel XXX (Share Certificate No. XXX) which was illegally transferred.
  - e. That the Honourable Court be pleased to make such orders as it may deem expedient and just as relates to the safety, custody and proper management of the Estate of the patient.
  - f. That the costs of the application be in the cause.
2. The application is premised on the following grounds:
- a. That the patient has been medically certified to suffer from severe mental illness rendering her legally incapacitated.
  - b. That a report dated 22<sup>nd</sup> April, 2025 prepared by Dr. Gordon Otieno Ambayo confirms the foregoing position to the extent that for the last couple of years the patient has been suffering from a mental disorder hence cannot manage her affairs and/or make any financial or legal decisions.
  - c. That the patient's known property and asset is L.R No. Tigoni/Tigoni Block X Parcel XXX (Share Certificate No. XXX).
  - d. That the patient's physical and mental condition is not improving at all and has been worsening for the last ten (10) years with no ability to make any financial or legal decisions.
  - e. That in the absence of court-appointed guardians, the patient's Estate and health are imminent risk due to her inability to make decisions or protect her interests.
  - f. That the applicants are suitable persons and immediate family members with a genuine concern for the patient's well-being and Estate.
3. That the application is supported by the affidavit dated 19<sup>th</sup> May, 2025 jointly sworn by the Applicants. The matter was canvassed by way of viva voce evidence in the presence of the Applicants CNK, ATK and JWK, the Subject and the Subject's husband, who is also the father of the Applicants.
4. The Subject appeared physically healthy and was able to speak. She occasionally used English, but mostly spoke Kikuyu. Her speech was clear; however, it lacked logical coherence. She knows her name and responds accordingly.
5. The 1<sup>st</sup> Applicant, CNK, who testified as PW2, told the court that the Subject is her mother, who has been unwell for about 10 years, starting in 2016, and her condition has since worsened. She stated that the Subject has not been managing her assets, which include rental properties, land, and shares. She further explained to the Court that everyone at home is involved, including M, who is schizophrenic, and S, who also has mental health issues, along with their father.
6. The 3<sup>rd</sup> Applicant, JWK, testified as PW3 and told the Court that she is a nurse by profession and that the Subject is their mother and her condition has deteriorated. She stated that the dementia exhibited itself over time.
7. The 2<sup>nd</sup> Applicant, ATK, testified as PW4 and confirmed what the sisters, 1<sup>st</sup> and 3<sup>rd</sup> Applicants said, that their mum has been unwell and that they shall act in her best interests.
8. The husband of the Subject and father of the Applicants, JK, also testified and told the Court that he is aware of the proceedings and that he gave his consent.



9. The caregiver who testified as PW6 told the Court that the Subject relies on her and that she provides the Subject with food, bathes her, and takes care of her. The brother of the Applicants, S, also gave his consent.
10. The Applicants have asked the Court to declare the Subject, MGK, as a person suffering from a mental health condition and for their appointment as guardians jointly and severally over MGK, as well as to be appointed Managers in respect of her Estate. The Applicants stated that the Subject owns the asset known as L.R No. Tigoni/Tigoni Block X, Parcel XXX, and further that the said property is at imminent risk because it has been irregularly and illegally transferred; therefore, there is a need to institute a suit for its recovery.
11. The medical report dated 22<sup>nd</sup> April, 2025 by Dr. Gordon Otieno Ambayo was filed in Court. In the said report, the doctor indicated that the Subject has dementia and that she is not mentally fit to carry out legal transactions.
12. 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.
13. 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]
14. Section 28 of the same Act provides for management of the Subject's Estate.
15. I have carefully considered the Application, the Affidavit filed in Court, the medical report, 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.”
16. I am satisfied as to the merits of the Application dated 21<sup>st</sup> May, 2025, and I hereby allow the same.
  - i. The Subject, MGK, is adjudged as a person suffering from a mental health condition pursuant to Section 26 of the *Mental Health Act*, Cap 248 of the Laws of Kenya.
  - ii. The Applicants CNK, ATK and JWK are hereby appointed as guardians of the Subject MGK as well as Managers over her Estate.
  - iii. As Managers, the applicants have, among other duties outlined in Sections 27 and 28 of the *Mental Health Act*, the responsibility to manage the Subject's Estate, which includes taking



necessary legal actions to protect the Estate's interests. As such, they are hereby granted the power to institute legal proceedings, which include actions to recover property or pursue other legal remedies on behalf of the Subject.

- iv. As Managers of the Estate of MGK, the Applicants may dispose of the Subject's property only with the sanction of the court.
- v. In accordance with Section 27(4) of the *Mental Health Act*, the Applicants shall cause, within 30 days, the publication of a notice in the Gazette, informing the public of their appointment as the Managers of the Estate of MGK.
- vi. 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 31<sup>ST</sup> day of JULY, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

