



**In re MWK aka MWS (Subject) (Miscellaneous Case E173 of 2025)
[2025] KEHC 12384 (KLR) (Family) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12384 (KLR)

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

FAMILY

MISCELLANEOUS CASE E173 OF 2025

CJ KENDAGOR, J

JULY 31, 2025

**IN THE MATTER OF SECTIONS 26 AND 28 OF THE
MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

AND

IN THE MATTER OF MWK ALSO KNOWN AS MWS

IN THE MATTER OF

MNS PETITIONER

JUDGMENT

1. Before this Court is a Petition dated 30th May, 2025, in which the Petitioner is seeking the following orders: -
 - a. That MWK, also known as MWS be declared a patient and a person suffering from mental disorder within the meaning of Section 2 of the *Mental Health Act* Cap 248 of the Laws of Kenya.
 - b. That MNS be appointed as guardian in respect of MWK also known as MWS;
 - c. That MNS be appointed as manager with general powers for the management of the estate of MWK also known as MWS including a piece of land known as LR No. 209/11243/148 together with a bank account known as ABSA Bank Account No. 094....907 and any bank accounts held at ABSA Bank or any other bank together with other moveable or immoveable property, money, debts and legacies.
 - d. That MNS shall have general powers to deposit and withdraw from ABSA Bank Account No. 094....907 such sums as necessary for the treatment and maintenance of MWK also known as MWS which sums shall be applied for that purpose only.



- e. That MNS shall have general powers to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods and other dealings and affairs of a similar kind in Kenya and elsewhere in respect of.
 - f. That costs be provided for.
2. The petition is premised on the following grounds:
 - a. That the subject MWK also known as MWS (hereinafter referred to as “MWK”) is a widow and mother to the Petitioner.
 - b. That prior to her illness, MWK granted a general power of attorney to MNS allowing him to do anything and everything that the donor could do, for and in the name of MWK.
 - c. That the Petitioner is proper to be appointed to act as guardian and manager in respect of MWK affairs.
 - d. That MWK is completely unable to manage herself.
 - e. That MWK does not have the mental capacity to sufficiently understand, absorb and retain information including advice and cannot make decisions based on advice and information given.
 - f. That MWK is not capable of managing and administering her property, business matters, legal transactions and other dealings and affairs of a similar kind, and as set out under the [Mental Health Act](#).
3. The Petition is supported by Affidavit dated 30th May, 2025 sworn by the Petitioner. The Petitioner stated that the MWK has suffered from mental incapacity and she has not been able to manage her affairs. He also stated that MWK has a short memory and she confuses her affairs. He further stated that MWK is not able to manage and administer her bank account, property, business matters, legal transactions and other dealings and affairs of a similar kind and that she is currently under the care and attention of the Petitioner.
4. The matter was examined through viva voce evidence in the presence of the subject MWK, who was presented via the Microsoft Teams platform during the Court session. She seemed unwell, lying in a bed.
5. The Petitioner, who testified as PW1, told the Court that the subject MWK is his mother and that he and his sister have been staying with her in the United Kingdom to care for her. He also informed the court that her health was deteriorating; she has blood pressure, diabetes, and arthritis affecting her hip. He further stated that she suffers from a combination of mental and physical health issues and is attended to by nurses alongside him. He explained that he has to look after her and manage her affairs in Kenya, where she owns properties, and her bank account which had been frozen due to inactivity. He mentioned that he has a sister who also plays a role in her medication and care because it needs careful monitoring.
6. The Petitioner’s sister, SM, who testified as PW2, told the Court that the subject is their mother and that she is aware that MNS has the power of attorney. She stated that she has no objection to MNS being appointed guardian and manager. When she testified, she was in the room where the subject lay awake in bed and was able to identify the Petitioner and referred to him by a nickname.



Analysis and determination

7. The Petitioner has sought to be appointed guardian in respect of MWK, also known as MWS, and manager with general powers for the management of the estate of the subject MWK and with authority to manage her affairs, given her current health.
8. To merit the above orders, the Petitioner must present evidence sufficient to convince the Court that, first, the Patient is a person suffering from a mental disorder under the *Mental Health Act*, and second, that the Patient is incapable of managing her affairs.
9. In his testimony, the Petitioner stated that he is the son of the subject. The subject granted a power of attorney in favour of the Petitioner in March, 2021. The witnesses noted that they have been caring for her due to her declining health, and that she moved to the UK in 2015. The Court was able to observe the subject on an online platform; she appeared to be unwell and bedridden.
10. The medical reports dated 28th May, 2024 and 17th March, 2025 by NHS West London Trust prepared by Dr. Sujay Mukherjee, a Consultant Psychiatrist were filed in Court. In the said reports the doctor stated that there is a decline in the subject's global cognitive ability and functioning and that there is a possibility that the subject is suffering from an unspecified dementia (F03).
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 the management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.
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 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. I have reviewed the Petition, the Affidavit submitted to the Court, the medical reports, and the evidence presented in this case. Based on the evidence provided by the Petitioner and his sister, along with the medical reports on file, I am convinced of the merits of this Petition. Therefore, I grant the requests a, b, c, d, and e from the Petition dated 30th May, 2025.
15. Disposition;
 - i. The subject MWK, also known as MWS is hereby declared a patient and a person suffering from mental disorder within the meaning of Section 2 of the *Mental Health Act* Cap 248 of the Laws of Kenya.



- ii. The Petitioner MNS is hereby appointed as manager and guardian of the subject MWS also known as MWS.
- iii. In his duties the Petitioner must comply with Section 28 and 29 of the Act.
- iv. As a manager, the Petitioner shall perform the manager's duty under the Act responsibly taking into account the best interests of the estate of the subject.
- v. In accordance with Section 27(4) of the *Mental Health Act*, the Applicant shall cause, within 30 days, the publication of notice in the Gazette, informing the public of his appointment as the manager of the estate of MWK alias MWS.
- vi. In accordance with the provisions of Section 33 of the *Mental Health Act*, the Petitioner will furnish an inventory and annual statement to this court.

16. 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

