



REPUBLIC OF KENYA



**In re PWG (Subject) (Miscellaneous Application E134 of 2025)
[2025] KEHC 12382 (KLR) (Family) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12382 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E134 OF 2025

CJ KENDAGOR, J

JULY 31, 2025

(FORMERLY CIVIL DIVISION MISC. NO. E566 OF 2025)

IN THE MATTER OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF PWG

AND

**IN THE MATTER OF AN APPLICATION BY DSN TO BE APPOINTED
AS GUARDIAN OVER THE AFFAIRS AND MANAGER OF PWG**

IN THE MATTER OF

DSN APPLICANT

JUDGMENT

1. Before this Court is an application dated 30th April, 2025, filed under certificate of urgency which seeks the following orders: -
 - a. Spent
 - b. That the Honourable Court be pleased to appoint one DSN as guardian of PWG;
 - c. That the Honourable Court be pleased to appoint one DSN as manager over the Eco Bank Account number 658....434 and Equity Bank Account number 0710.....858 of PWG and shall be allowed to operate them;
 - d. That the costs of the application be in the cause.
2. The application is premised on the following grounds:



- a. That the Applicant herein is the daughter of PWG.
 - b. That PWG has been suffering from dementia which has rendered her incapable of running her own affairs due to loss of memory associated with the said condition.
 - c. That PWG is the owner of various properties and accounts hence the need for the said properties and accounts of PWG be managed since the subject herein is unable to manage the same.
 - d. That the two banks where the subject holds an account have issued a warning and suspended her from operating them due to her condition, yet she needs constant medical care.
 - e. That both banks in which she holds accounts have advised her to look for a guardian as they will not allow her personally to access the accounts.
3. The application is supported by the Affidavit dated 30th April, 2025 sworn by the Applicant DSN. The matter was canvassed by way of viva voce evidence in the presence of the Applicant DSN and the subject herself.
 4. The subject appeared physically fit and was able to engage in conversation, but she reported experiencing memory loss. She informed the Court that the Applicant is her only daughter and mentioned that she owns some property, advising the applicant to take care of it. Additionally, she stated that she has visited both Mathare and Kenyatta hospitals and is scheduled to return for another visit at Kenyatta on 27th July, 2025.
 5. The Applicant informed the Court that she is the daughter of the subject and is seeking to become the custodian of her mother, particularly regarding her bank accounts. She explained that her mother has been diagnosed with Parkinson's disease and dementia, resulting in memory loss. The subject cannot remember how she spends her money after visiting the bank, and the Applicant feels responsible for her care.
 6. The Applicant expressed her desire for her mother to receive specialized treatment and adequate home care tailored to her condition. Although the subject lives in Githurai, the Applicant resides nearby - just a minute away -and visits her mother daily. Additionally, the subject has a nanny for assistance.
 7. The Applicant stated that she does not have any siblings and committed to acting in her mother's best interest if granted the custodial appointment.
 8. The *Mental Health Act* provides for the care of persons who are suffering from a 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.
 9. 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]

10. Section 28 of the same Act provides for the management of the subject’s estate.
11. 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.”
12. The duties of the managers are as stipulated in Section 27 of the Act as:
 - “27. The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including;
 - (a) an order making provision for the maintenance of the person;
 - (b) an order making provision for the maintenance of members of the person’s immediate family who are dependent upon the person; and
 - (c) an order making provision for the payment of the person’s debts.
 - (2) The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.
 - (3) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2)
13. Based on the material presented to this Court, I find merit in the application dated 30th April, 2025 and make the following orders;
 - i. The Court hereby appoints the Applicant, DSN, as the Guardian of PWG (subject).
 - ii. The Applicant is also appointed as the manager of the subject’s estate. As a manager, the applicant shall perform the manager’s interests of the estate of the subject.
 - iii. Cash withdrawals or transfers from the Bank Accounts shall only be made in the presence of the Subject and upon verification by the Bank that the accessed Accounts duly belong to the subject herein.
 - iv. Additionally, the manager shall not sell any property belonging to the subject without an order from the Court.

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

Ms. Thuo, Advocate holding brief for Kimani Advocate for the Applicant

