



**In re SSW (Family Miscellaneous Application E013 of 2025)  
[2025] KEHC 11711 (KLR) (5 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11711 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY MISCELLANEOUS APPLICATION E013 OF 2025**

**FN MUCHEMI, J**

**AUGUST 5, 2025**

**IN THE MATTER OF MENTAL HEALTH ACT CAP 248 LAWS OF KENYA AND  
IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE RULES,  
2010 AND IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF SSW**

**IN THE MATTER OF**

**GMWW ..... APPLICANT**

**JUDGMENT**

**Brief Facts**

1. The petition for determination dated 18<sup>th</sup> June 2025 seeks for orders of adjudging SSW, the subject herein to be suffering from a mental disorder pursuant to Section 26 of the *Mental Health Act* and seeks for orders to appoint the applicant as the subject's legal guardian and manager of his estate particularly to sell LR No. Thika Municipality Block 22/311 and execute all the documents, necessary for transfer as well as to receive and apply proceeds from the sale towards the subject's medical care and meet his personal needs welfare.
2. The petitioner states that she is the wife of the subject who was diagnosed with psychosis in dementia, systemic hypertension and pure motor demyelination and axonopathy of all limbs which have been confirmed by the medical reports by Dr. Irungu Shango, Dr. Mativo, a neurologist and Dr. Muvonde a psychiatrist from the Karen Hospital.
3. It is further averred that the subject's general medical and mental condition has drastically deteriorated and he does not have the capacity to make decisions affecting his personal needs. The petitioner further states that she has shouldered the financial responsibility of providing for the subject with essential medical treatment, medication and upkeep.
4. The petitioner states that the subject is the registered owner of LR No. Thika Municipality Block 22/311 and she and her son Michael Wamae Weru, the only child, have agreed unanimously to sell the said parcel of land to raise funds required for the subject's ongoing medical care and maintenance. The



petitioner further states that the suit land was valued by qualified valuers and a report indicating the market value has been attached.

5. The petitioner seeks for orders to be appointed as the legal guardian to manage the subject's affairs as well as to undertake all necessary steps related to the sale of the said property, including executing the sale agreement, obtaining the requisite consents to transfer and effecting the transfer of land to an interested purchaser. The petitioner avers that she has already identified a willing purchaser one John Njeru Nyagah. The parties have already entered into a sale agreement for sale and purchase at a consideration of Kenya Shillings Twelve Million [Kshs. 12,000,000/-].
6. The petitioner testified that the subject has been sick for the last 5 years and has been attending Karen Hospital for treatment. The petitioner stated that the hospital bills have become unmanageable and they seek to dispose of LR No. Thika Municipality Block 2/311 to raise money to meet the subject's medical expenses.
7. The petitioner further testified that the family has agreed on disposal of the said asset in order to meet the medical expenses as well as other needs of the subject. She further stated that she has a ready buyer of the said property but when she and the subject attended the land board for consent, the board declined to give consent to sell the land on the grounds that the subject was unable to express himself.
8. PW2, Michael Weru testified that he is the only child of the subject and petitioner. He further testified that he supports the petition by his mother and that they intend to sell the suit property to raise money to meet the medical expenses of the subject. The witness confirmed that the petitioner is the subject's primary caregiver.

#### **Issues for determination**

9. The main issues for determination are as follows:-
  - a. Whether the subject ought to be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.
  - b. Whether the petitioner should be appointed as guardian to the subject as well as manager of the Estate of the subject.

#### **The Law**

##### **Whether the subject should be declared as suffering from mental disorder pursuant to the *Mental Health Act*, Cap 248.**

10. 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.
11. Section 2 of the Act defines "person suffering from mental disorder" as follows:-

"person suffering from mental disorder" means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse."
12. Section 26 provides for custody, management and guardianship
  - 1) The Court may 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 by any other suitable person.
- 2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate of the guardian of any such person.
  - 3) Where upon 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 person, 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.
13. According to the medical report by Dr. Irungu Shango, a physician, dated 17<sup>th</sup> March 2023, the patient is said to be suffering from psychosis in dementia, systemic hypertension and pure motor demyelination and axonopathy of all limbs.
  14. The court had the opportunity to observe the subject in open court. He was examined and it was noted that he was not able to give rational answers to questions put to him by the court. The subject was unable to give the name of the petitioner, his wife of many years. He had serious impairment speech. The court concluded that the averments that the subject suffered from dementia affecting his capacity of communication and managing his affairs was correct in that it was supported by sufficient evidence.
  15. I therefore find that the petitioner has established that the subject is suffering from a mental disorder as described in Section 2 of the Mental Act and a further medical condition contemplated under Section 26 of the Act and is thus incapable of managing his own affairs.

**Whether the petitioner should be appointed as guardian to the subject as well as manager of the Estate of the subject**

16. As noted above, Section 26 of the Act gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.
17. The petitioner told the court that she is the wife of the subject. PW2, the only child of the subject with the petitioner testified that he supports the petitioner being appointed the legal guardian and manager of the subject's estate.
18. Thus, there is no objection from any family member of the subject and the course of the application being well supported as required by the law, it is my considered view that the application is merited and it is hereby allowed in the following terms: -
  - a. That the petitioner Grace Mary Warue Weru is hereby appointed guardian and property manager in respect of L.R. No. Thika Municipal Block 22/311.
  - b. That the petitioner is hereby authorized to sell, execute the transfer of the said L.R. Thika Municipality Block 22/311 and utilize the proceeds in the medical expenses and personal needs of the subject for the needs of the family of the subjects.
19. It is hereby so ordered.



**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF  
AUGUST 2025.**

**F. MUCHEMI**

**JUDGE**

