

KENYA / JUDGMENT

AM v MA [2026] KEHC 6527 (KLR)

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COURT

High Court

BEFORE

AC Bett

CASE / FILE NUMBER

Miscellaneous Application E003 of 2026

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AM v MA (Miscellaneous Application E003 of 2026) [2026] KEHC 6527 (KLR) (15 May 2026)
(Judgment)

Neutral citation:

[2026] KEHC 6527 (KLR)

Republic of Kenya

In the High Court at Kakamega

Miscellaneous Application E003 of 2026

AC Bett, J

May 15, 2026

IN THE MATTER OF M. A. (PERSON WITH MENTAL ILLNESS)

AND

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA

Between

AM

Applicant

and

MA

Respondent

Judgment

1.The Applicant who is acting in person brought an application by way of Notice of Motion dated 2nd February 2026 in which he is seeking the following orders:-a.That this Honourable Court be pleased to appoint A.M., the Applicant herein, as the Legal Guardian of M.A.b.That upon appointment, the Applicant be granted authority to access, operate, and manage the Respondent's Bank Account held at Equity Bank, Kakamega Branch, Account No. 05XXXXXXXXX384, strictly for purposes of her medical care, upkeep, and welfare.c.That the Applicant be authorized to access and utilize the Respondent's medical cover, employment benefits, and any other lawful entitlements for her treatment and maintenance.d.That the Applicant be authorized to facilitate and approve the medical referral and transfer of the Respondent to Nairobi for specialized treatment.e.That costs of this application be in the cause.

2.The application is supported by the affidavit sworn by the Applicant on the same date and in which he avers that the Subject, who is his daughter is suffering from mental illness which has rendered her incapable of managing her personal medical and financial affairs and which call for better management in order to forestall deterioration.

3.In support of the application, the Applicant attached documents including medical treatment records from the Kakamega County Referral Hospital detailing the Subject's diagnosis and management for schizophrenic disorder. He has also attached a birth certificate proving he is the Subject's biological father and a letter from Matibira Comprehensive School notifying the Subject's employer, TSC of the need to refer the Subject for medical and psychosocial support. The letter is dated 2nd September 2025.

4.Section 26 of the Mental Health Act provides that:“(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.”

- 5.The court called for a Social Inquiry report which was filed by the Probation office on 14th April 2026. The Applicant also filed a statement from the Subject's Bank showing that as at 19th March 2026, there was Ksh. 315,712.29 in her bank account which reflects monthly income from the Subject's salary.
- 6.At the hearing, the Applicant said that he is an Assistant Chief of Burundu Sub-location and the Subject, who is aged 29 years is his first-born daughter. He testified that she is an employee of the TSC and is single although she previously cohabited with a man for three (3) years before she developed a mental disorder in 2021 whereby the man went and married another woman.
- 7.According to the Applicant, the mental illness used to recur intermittently but since May 2024, it has persisted.
- 8.The Applicant said that he is the one who takes care of the Subject and has been taking her for treatment at Kakamega County General Hospital. He further said that the Subject has a three (3) year old child who is in his custody and now in Baby Class.
- 9.The Applicant said that he has been footing the Subject's medical bills as well as her baby's subsistence expenses. He prays that he be appointed her Legal Guardian and be granted orders to access and operate her bank account for purposes of her medical care, upkeep and welfare.
- 10.The Social Inquiry report confirms the Applicant's averment that the Subject's mother is deceased. The Applicant is said to be a polygamous man who takes care of his family well. The inquiry established that he has been responsible for the Subject whom he took through a self-sponsored course at the University and has expended considerable financial resources and energy in taking care of her after the misfortune of ill health befell her.
- 11.The report further indicates that the Subject was initially married to the father of her child but after she fell ill, she moved out and cohabited with a different man at Sabatia Shopping Centre who took advantage of her mental ill health and is suspected to have financially exploited her.
- 12.It is the Applicant who through police intervention who personally intervened and rescued the Subject from the abusive relationship and took her under his custody as her primary care-giver from November 2025.
- 13.According to the report, the Subject's husband was interviewed and expressed no objection to the Applicant being appointed her Legal Guardian. Perhaps it is because as the Applicant testified on oath, he moved on and married another wife after the Subject developed mental illness.
- 14.The Subject is still on TSC payroll but due to her illness, she is currently unable to manage her affairs. Apart from her salary, she has no other assets. She lost her National Identity Card and is unable to access her medical cover without the same. Her condition necessitates continuous specialized care and the Applicant requires more funds to facilitate her transfer for treatment at a better medical facility. He has spent his resources so far and needs to access the Subject's accounts to assist him with the finances for better treatment.

15.The Applicant has been recommended as fit and suitable to be the Subject's Legal Guardian. As her sole surviving parent, he has demonstrated concern and dedication for her well being by tracing her whereabouts and rescuing her from an abusive relationship and meeting her subsistence and health care expenses as well as paying her daughter's school fees. The Subject's home is a more stable environment for her to be taken care of and recover. As the saying goes, "blood is thicker than water" and the Applicant has proven that he is willing to do all that is necessary to ensure his daughter recovers.

16.In situations of ill health and misfortune, the most important people in one's life are the nuclear family. The nuclear family comprise a spouse and children and in absence of a spouse, one's parents.

17.An order under the Mental Health Act can only issue once it is proven that the Subject suffers from a mental condition that renders them unable to personally manage their personal affairs and that the person seeking guardianship orders is fit to be so appointed and will perform his duties faithfully, diligently and in the interest of the Subject. See Re NMK [2017] eKLR, In Re Estate of VFM (Patient) [2020] eKLR and In Re BKON (Subject) [2025] KEHC 3638 (KLR).

18.Upon considering the application, the documents produced in support thereof, the Applicant's evidence and the Social Inquiry report, I find that the application is merited and make the following orders:-a.The Subject MA is hereby declared a person suffering from mental disorder within the meaning of Section 26 of the Mental Health Act.b.The Applicant is appointed the Legal Guardian of the Subject.c.The Applicant is appointed the Manager of the Estate of the Subject pursuant to Section 28 of the Mental Health Act, with authority to manage her bank accounts for the benefit of the Subject and her child.d.The Applicant shall within three (3) months file in this Honourable Court, evidence of the Subject's continued medical treatment and a comprehensive Psychiatrist Report concerning her progress.e.The Applicant shall within three (3) months render a full account of the Subject's Estate by way of an Affidavit to be filed in Court.f.The matter shall be mentioned on 24/9/2026 for compliance.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 15TH DAY OF MAY 2026.A. C. BETTJUDGEIn the presence of:Applicant in personCourt Assistant: PolycapHC. Misc. Guardianship Appl. No. E003/2026 – Judgement Page 3 of 3

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Prepared on 28 October 2026 · Esheria