

KENYA / JUDGMENT

In re DOA - Subject [2026] KEHC 3952 (KLR)

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COURT

High Court

BEFORE

A Mabeya

CASE / FILE NUMBER

Miscellaneous Application E018 of 2025

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In re DOA - Subject (Miscellaneous Application E018 of 2025) [2026] KEHC 3952 (KLR) (25 March 2026) (Ruling) Neutral citation:

[2026] KEHC 3952 (KLR) Republic of Kenya In the High Court at Kisumu Miscellaneous Application E018 of 2025 A Mabeya, J March 25, 2026 IN THE MATTER OF SECTION 26 OF THE MENTAL HEALTH ACT AND IN THE MATTER OF DOA - SUBJECT AND IN THE MATTER OF AN APPLICATION BY JAO In the matter of JAO Applicant

Ruling

1. By a Motion dated 11/8/2025, the applicant invoked sections 26 of the Mental Health Act , Cap 248 Laws of Kenya and sought a declaration that DOA is a person suffering from mental disorder, that leave be granted to the applicant to take charge of his personal welfare and/or oversee the subject's financial affairs and that the applicant be made the subject's legal guardian. 2. The Motion was anchored on the grounds set out in its body as well as the supporting affidavit and further affidavit of JAO sworn on the 11/8/2025 and 9/2/2026, respectively. 3. The matter proceeded by way of viva voce evidence in which the applicant testified as Pw1. She adopted her aforesaid supporting affidavit and further affidavit of 11/8/2025 and 9/2/2026, respectively as her evidence in chief. It was her testimony that, the subject was her husband for the past 43 years having been married since 1982. That their union was blessed with 6 children. 4. That the subject was 67 years and had since been diagnosed with dementia and schizophrenia and declared unfit to manage his personal affairs by both a psychiatrist and psychologist thus unable to make informed decisions regarding his health, housing or general welfare. 5. That she needed to access his bank account, ABSA Bank Kenya, Kisumu Branch, to be able to access his pension and pay for his medication and general welfare. 6. The main issues for determination are Whether the subject should be declared as suffering from mental disorder pursuant to the Mental Health Act , Cap 248 and Whether the applicant should be appointed as guardian to the subject. 7.

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. 8. 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.” 9. 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.” 10. According to the medical report by Professor C. Othieno, a psychiatrist practicing at Jaramogi Oginga Odinga Teaching & Referral Hospital, dated 3/2/2026, the patient is suffering from a severe mental health problem likely caused by schizophrenia or dementia. The medical report indicated that the subject had been unwell since 2018 and had to be retired from his job. That the subject had since deteriorated and now destroys property whilst arming himself with machete and home-made weapons to protect himself. 11. It is apparent from that report that the subject is suffering from a mental disorder in terms of section 2 of the Mental Act and further a medical condition contemplated under section 26 of the Act and is thus incapable of managing his own affairs. 12. Section 26 of the Mental Health Act gives the Court the power to make orders 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. 13. The applicant stated that she is the wife of the subject for the past 43 years. That she desires to be appointed his guardian so that she can be able to manage his general affairs including being able to buy him medicine. 14. There being no objection to the application and the course of the application being well supported as required under the law, it is my considered view that the prayer for appointment of guardian is well grounded and merited. 15. Consequently, the Motion dated 11/8/2025 is allowed in the following terms: - a. That the subject DOA is hereby declared mentally incapacitated under Section 26 of the Mental Health Act . b. That the applicant JAO is hereby appointed the guardian of the subject to manage his affairs. It is hereby so ordered. DATED AND DELIVERED AT KISUMU THIS 25 TH DAY OF MARCH, 2026 . A. MABEYA, FCI Arb JUDGE

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