

KENYA / JUDGMENT

In re JKN (The Ward)

[2026] KEHC 4073 (KLR)

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COURT

High Court

BEFORE

H Namisi

CASE / FILE NUMBER

Miscellaneous Application E391 of 2025

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In re JKN (The Ward) (Miscellaneous Application E391 of 2025) [2026] KEHC 4073 (KLR) (Family)
(30 March 2026) (Judgment) Neutral citation:

[2026] KEHC 4073 (KLR) Republic of Kenya In the High Court at Nairobi (Milimani Law Courts)
Family Miscellaneous Application E391 of 2025 H Namisi, J March 30, 2026 IN THE
MATTER OF THE MENTAL HEALTH ACT AND IN THE MATTER OF PETITION FOR
ORDERS OF GUARDIANSHIP AND MANAGEMENT OF JKN (THE WARD) Between SNN
Petitioner and JKN Ward

Judgment

1. Before the Court is Petition dated 21 November 2025, brought under the provisions of Articles 27(1), (4), (5), 28, 43, and 54(1)(a) of The Constitution as read together with sections 26, 27, and 28 of the Mental Health Act and Order 32 Rule 15 of the Civil Procedure Rules. 2. The Petitioner approaches this Court seeking to invoke its protective and supervisory jurisdiction over the Ward. 3. The Petition is supported by the Affidavit dated 21 November 2025, and is further corroborated by a comprehensive repository of documentary, medical, and administrative evidence. 4. The Ward is a 62-year-old retired civil servant who formerly served as a teacher under the Teachers Service Commission. The evidence establishes that the Ward was previously married to one LM, with whom he had two children. However, the marital union broke down irrevocably, and the couple has been separated for the past 26 years. Following the separation, the Ward engaged in relationships with two other women, both of which ended many years ago without sustained contact or the formalization of any enduring union. 5. The Ward's familial support system has significantly deteriorated. According to a corroborating letter from the Area Chief of Rironi Location, Mr. CNN, dated 21 November 2025, the Ward's estranged wife was summoned to the local administrative office. During this meeting, she expressly stated that she has no interest in her husband's wealth, properties, or welfare. Similarly, the Ward's adult children from his first marriage,

both of whom are educated and employed, have completely severed ties with him and do not participate in his care, despite the Petitioner's repeated efforts to contact them. 6. For the last 4 years, the Ward has been living under the direct care, physical custody, and financial support of his elder sister, the Petitioner herein, at her home in Rironi, Limuru. The Petitioner is a 79-year-old retired teacher and farmer. She avers that the Ward is completely incapable of independently managing his day-to-day affairs, maintaining basic personal hygiene without prompting, or handling his finances. She testified that the Ward frequently attempts to wander out of the compound at night, necessitating the employment of a dedicated night caregiver to ensure his physical safety. 7. The financial estate of the Ward, while modest, is crucial for his survival. It consists of a small piece of land with a house situated approximately 500 meters from the Petitioner's residence in Rironi, Limuru, and a monthly pension of approximately Ksh. 17,000/- remitted to his Kenya Commercial Bank (KCB) account, Limuru Branch. The immediate catalyst for this Petition is the Ward's inability to access his pension or gratuity because he could no longer remember his signature or comprehend banking procedures, leading to a complete freeze of his financial lifelines. Furthermore, the Ward lacks medical insurance coverage, and the Petitioner has been depleting her personal retirement finances to cater to his recurrent psychiatric, medical, and dental treatments. 8. The Petitioner has furnished this Court with an extensive medical history spanning several years, establishing a progressive, irreversible cognitive decline linked to long-term polysubstance abuse and age-related neurodegeneration. 9. The psychiatric report authored by Dr. David E. Bukusi dated 3 March 2026 is particularly instructive and highly probative. It reveals that the Ward experiences active, ongoing delusions. He falsely believes he is currently employed, actively receiving a salary, and needs to return to class to guide waiting students—despite the incontrovertible fact that he retired in 2022. Dr. Bukusi conclusively opined that the extent of the Ward's hallucinations, profound disorientation, and severe deterioration in intellect completely distorts any decision-making capabilities. The medical recommendation strongly advises that it is legally and clinically necessary for a close family member to execute decisions on his behalf. 10. Pursuant to section 26(1) and (3) of the Mental Health Act, the Court is mandated to conduct an inquiry into the condition of the person alleged to be suffering from a mental disorder before rendering any orders that strip an individual of their autonomy and legal capacity. Accordingly, this Court examined the Ward on 18 February 2026. 11. During the proceedings, the Ward's presentation and responses vividly confirmed the clinical diagnoses documented in the medical reports. He addressed the Court in Kiswahili, appearing superficially calm but profoundly disconnected from reality. He confidently stated to the Court that he still goes to Kamadora Primary School every morning to teach social studies and interact with children. When questioned regarding basic temporal and factual realities, he demonstrated severe anterograde amnesia and confabulation. He testified that the current President of Kenya is "Kenyatta" and that the country gained independence in 1968 under "Jomo Kenyatta, Daniel Toroitich". 12. When asked to identify his family members and the people around him, his grasp of reality further disintegrated. While he recognized the Petitioner as his sister, his understanding of his current marital status, his age, and his employment

status was entirely detached from the truth. He claimed his daughter was 52 years old (while he himself is 62), and asserted he was born in 1967. 13. The Court's direct observation of the Ward's profound disorientation leaves no doubt whatsoever as to the veracity of the medical reports. The Ward is completely devoid of the cognitive insight, temporal awareness, and rational judgment required to manage his personal welfare, let alone navigate the complexities of financial administration, property management, or the provision of informed medical consent. Analysis & Determination 14. The jurisdiction of this Court to grant the orders sought is firmly anchored in section 26(1) of the Mental Health Act . This section empowers the High Court to make orders for the management of the estate of any person suffering from a mental disorder, and for the guardianship of such a person by any near relative or suitable person, upon being satisfied that the person is incapable of managing their affairs. 15. In determining whether to grant guardianship and management orders, the Court has consistently applied a stringent three-pronged test. As enunciated by the Court in *In re N.M.K* eKLR and subsequently reaffirmed in recent jurisprudence such as *In re Estate of GMN* (Family Miscellaneous Application E013 of 2023) [2024]KEHC 5419 (KLR), the Court must be satisfied that: a) There is conclusive medical evidence warranting the determination that the Ward suffers from a mental disorder; b) The person to be appointed as a Guardian or Manager is fit and proper to be so appointed; and c) The Court is satisfied that the proposed manager will utilize their powers strictly for the benefit, welfare, and best interests of the Ward. 16. Regarding the first limb of this test, the medical evidence before me is unassailable. The Ward suffers from end-stage substance-induced dementia, Korsakoff's syndrome, anterograde amnesia, and active psychosis. The Supreme Court, in *Mary Muthoni Gitumbi v. The Tribunal Appointed to investigate the conduct of Hon. Lady Justice Mary Muthoni Gitumbi* (Petition No. 10 of 2022), comprehensively analyzed the concept of mental capacity. The Apex Court observed that mental incapacity constitutes the inability of a person to look after their own health, safety, or welfare, or to manage their own affairs due to damage, illness, disorder, or deterioration of the brain or mind. 17. The Ward's condition falls squarely within this jurisprudential parameter. His inability to comprehend basic realities, access his pension, or recognize his own reflection confirms a total loss of functional capacity. Therefore, I find and hold as a matter of fact and law that the Ward is a person suffering from a mental disorder within the contemplation of section 26 of the Act, rendering him completely incapable of managing his affairs. Supported vs. Substituted Decision-Making 18. This Petition brings to the fore a critical and evolving intersection of law, medical ethics, and human rights. Article 54(1) of The Constitution guarantees persons with disabilities the right to be treated with dignity and respect, and to not be referred to in a demeaning manner. Furthermore, Kenya is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Article 12 of the CRPD mandates the recognition of equal legal capacity for persons with disabilities and strongly advocates for a systemic shift from substituted decision-making (traditional guardianship, where another person makes decisions for the Ward) to supported decision-making (where the Ward retains legal capacity but is assisted in making their own decisions). 19. The Mental Health Act boldly attempted to domesticate these CRPD principles into Kenyan law. The amended

Act introduces the concept of a supporter and a supportive decision-making agreement. Under this framework, a person with mental illness retains their legal autonomy but appoints a trusted individual to assist them in expressing their will and preferences regarding treatment, finances, and daily affairs. The Act requires such an agreement to be in writing and attested by witnesses, including a medical doctor, ensuring that the Ward's agency is preserved. 20. However, a strict application of the supported decision-making paradigm presumes a foundational level of cognitive ability—specifically, that the Ward is *compos mentis* enough to execute a valid legal agreement, understand the nature of their choices, and communicate a coherent preference. The drafters of the amended Act recognized that this is not always clinically possible. Consequently, section 3B(2) of the Act anticipates situations where a patient lacks the absolute capacity to make an informed decision, necessitating formal representation and substituted consent. 21. In the present case, the Ward's cognitive deterioration has progressed to a point where he cannot recognize his own reflection, believes he is living in a different decade, and does not recognize his financial or familial reality. It is functionally and legally impossible for him to enter into a supportive decision-making agreement because he lacks the requisite capacity to appreciate the nature, purpose, or consequences of such a contract. To force a supported decision-making framework upon an individual with end-stage dementia would be a gross misapplication of the law and a dereliction of judicial duty. 22. Where supported decision-making is rendered clinically impossible, the State must step in to protect its vulnerable citizens from exploitation, destitution, and neglect. This is the very essence of the *parens patriae* jurisdiction of the High Court. The doctrine of *parens patriae* grants the Court the inherent, paternalistic duty to act as the ultimate guardian for persons who are entirely incapable of making decisions for themselves, such as minors and persons with profound mental disabilities. 23. The protective notion of the State assumes that when an individual cannot comprehend the consequences of their actions, the Court must intervene to shield them. Failure to appoint a substituted decision-maker in this instance would leave the Ward's pension frozen indefinitely, his medical and severe dental emergencies untreated, and his physical safety at risk due to his wandering. The appointment of a Guardian and Manager under these specific circumstances is not a deprivation of his constitutional rights under Article 54, but rather the precise mechanism through which his Article 43 right to the highest attainable standard of healthcare and dignity is operationalized and protected. 24. Having established the necessity of guardianship, the Court must now determine whether the Petitioner is the appropriate person for the role. Section 27 of the Act provides that the Court may appoint any "near relative" or any other "suitable person" as a guardian. 25. In the ordinary hierarchy of familial appointments, a spouse or adult children are typically granted priority. For instance, in *In re MM* [2023] KEHC 23148, the Court prioritized the spouse's role over the children in guardianship. However, familial hierarchy is not absolute; it is subservient to the best interests of the Ward. The evidence before me reveals that the Ward has been estranged from his wife, LM, for 26 years. More damningly, she has expressly disclaimed any interest in his welfare or estate before the local administration, demonstrating an abdication of spousal responsibility. Furthermore, the Ward's adult

children from his first marriage have reportedly severed ties with him and remain uninvolved in his care. 26. Conversely, the Petitioner is the Ward's elder sister. Despite her advanced age of 79 years, she has demonstrated profound, unwavering dedication to her brother's welfare. For the past four years, she has accommodated him in her home, fed him, managed his hygiene, and sought comprehensive psychiatric and physical medical care for him at various facilities, including Kiambu County Referral Hospital, Lifetime Wellness Centre, and Coral Dental Care. She has expended her personal retirement resources to hire a night caregiver to ensure he does not wander and harm himself. 27. I have observed the Petitioner's demeanor in Court and scrutinized the documentary evidence. Her motivation for seeking these orders is patently clear, transparent, and noble. She seeks to legally access her brother's frozen TSC pension (Ksh. 17,000/- monthly) strictly to procure medical insurance, fund his urgent dental surgery, and sustain his daily upkeep and caregiver costs. There is absolutely no evidence of ulterior motives or an intention to unlawfully alienate his piece of land in Rironi. Her actions over the last four years speak louder than any Affidavit; she has been his sole shield against complete destitution. 28. Despite her age, she has proven highly capable of coordinating his care. I, therefore, find that the Petitioner flawlessly passes the fitness test and is a proper and suitable person to be appointed as the Legal Guardian and Manager of the estate of the Ward. 29. While the Court is entirely satisfied with the Petitioner's fitness and noble intentions, the law demands that the management of an incapacitated person's estate be Ward to rigorous judicial oversight. This is to protect the estate from dissipation and to ensure that the appointment remains aligned with the Ward's best interests over time. 30. A manager appointed under the Mental Health Act is deemed in law to be a trustee. This creates a fiduciary relationship where the property is held solely for the benefit of the patient. To operationalize this trust, the Court must impose specific statutory safeguards. 31. First, pursuant to section 27(4) of the Act, it is a mandatory statutory requirement that the appointment of an estate manager be published in the Kenya Gazette within thirty (30) days of the court order. This publication serves as constructive notice to the public, financial institutions, the Lands Registry, and any other interested parties, ensuring transparency in the transfer of administrative power. 32. Second, regarding the powers of the Manager, section 28 of the Act delineates the scope of authority. The Manager is granted the power to handle day-to-day financial transactions, access bank accounts, and pay debts necessary for the maintenance of the Ward (such as medical bills and caregiver wages). However, there is a fundamental restriction regarding real estate. The Manager must never dispose of, sell, charge, or alienate any immovable property belonging to the Ward without the express, prior sanction of the Court. This restriction will be explicitly applied to the Ward's land and house in Rironi, Limuru. 33. Finally, ongoing accountability must be maintained. The Manager is legally required to furnish an inventory of the Ward's assets and periodic statements of account to the Court or the Public Trustee. This ensures that the pension funds accessed from the Kenya Commercial Bank and the Teachers Service Commission are utilized exclusively for the Ward's welfare, medical care, and maintenance, as envisioned by the Act. 34. Accordingly, this Court hereby issues the following orders: i. It is hereby declared that the Ward, JKN (ID

No. 52XXXX5), is a person suffering from a mental disorder within the meaning of section 26 of the Mental Health Act , rendering him completely incapable of managing himself and his affairs. ii. The Petitioner is hereby appointed as the Legal Guardian of the Ward under section 27 of the Mental Health Act , with full authority to make all medical, psychiatric, and personal welfare decisions on his behalf. iii. The Petitioner is hereby appointed as the Manager of the Estate of the Ward under section 28 of the Mental Health Act . iv. As the Manager of the Estate, the Petitioner is authorized to: a) Access, manage, and administer all funds held in the Ward's bank accounts, specifically including but not limited to the Kenya Commercial Bank (KCB) Limuru Branch Account No. 129XXXX48. b) Receive, process, and administer the Ward's monthly pension and gratuity from the Teachers Service Commission/ Director of Pensions for the exclusive maintenance, medical care, and upkeep of the Ward. v. The Manager shall not sell, transfer, lease, charge, or in any way alienate any immovable property belonging to the Ward without the express, prior written sanction of this Court. vi. The Petitioner shall cause a notice of her appointment as the Guardian and Manager of the Estate of the Ward to be published in the Kenya Gazette within thirty (30) days from the date of this Judgment. vii. The Petitioner shall deliver to this Court, and to the Public Trustee, a true and accurate inventory of all the property belonging to the Ward, along with a statement of account detailing the utilization of the pension funds, within six (6) months of this Judgment. viii. The costs of and incidental to this Petition shall be met out of the Estate of the Ward. DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF MARCH 2026 HELENE R. NAMISI JUDGE OF THE HIGH COURT Delivered on virtual platform in the presence of: For Petitioner: Mr Kimani h/b Githinji Court Assistant Lucy Mwangi

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