

KENYA / JUDGMENT

In re MWW [2026] KEHC 7804 (KLR)

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COURT

High Court

BEFORE

FN Muchemi

CASE / FILE NUMBER

Family Miscellaneous Application E002 of 2026

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In re MWW (Family Miscellaneous Application E002 of 2026) [2026] KEHC 7804 (KLR) (28 May 2026) (Ruling) Neutral citation:

[2026] KEHC 7804 (KLR) Republic of Kenya In the High Court at Thika Family Miscellaneous Application E002 of 2026 FN Muchemi, J May 28, 2026 IN THE MATTER OF SECTION 26, 27 & 28 OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA AND IN THE MATTER OF MWW(A PERSON SUFFERING FROM A MENTAL DISORDER) AND IN THE MATTER OF AN APPLICATION FOR GUARDIAN AD LITEM OF MWW In the matter of LWT Applicant

Ruling

Brief Facts 1.The application for determination dated 22nd January 2026 seeks for orders of adjudging MWW (the subject) to be suffering from a mental disorder pursuant to Section 26 of the Mental Health Act. It also seeks for orders that the applicant be appointed the guardian ad litem and manager with powers to run the subject's affairs including executing legal documents on her behalf. 2.The applicant is the only daughter of the subject who is aged 110 years and is the plaintiff in Thika ELC Case No. E012 of 2021. The applicant states that the subject has been attending mental health clinics since 2024 at Gilgil Sub County Hospital after suffering mental instability. Further the subject was taken for mental assessment at Gilgil Sub County Hospital to ascertain if she could proceed with the case. The hospital made a report dated 6/11/2025 and stated that the subject does not possess mental capacity to understand, retain or process information necessary for decision making. Issues for determination 3.The main issues for determination are as follows:-a.Whether the subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.b.Whether the applicant 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. 4.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. 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.” 5. Section 26 provides for custody, management and guardianship¹. 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. 6. According to the medical report from Gilgil sub county Hospital dated 6th February 2025 and medical report by Dr. Faith Muhindi from Gilgil sub county Hospital dated 6th November 2025, the patient was diagnosed with pseudodementia and hypertension. The reports further indicated that the subject was not of sound mind and not fit to stand trial. 7. The court had the opportunity to observe the subject and noted that the subject was unable to communicate at all. The court observed that the subject was only murmuring to herself and therefore it was difficult to examine her. 8. It is apparent from the medical report that the subject is suffering from a mental disorder as described in Section 2 of the Mental Act and further a medical condition contemplated under Section 26 of the Act and is thus incapable of managing her own affairs. Whether the applicant should be appointed as guardian to the subject as well as manager of the Estate of the subject. 9. Section 26 of the Act gives 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. 10. The applicant stated that she is the only daughter of the subject. I have noted that the medical report shows that the applicant had three other siblings but two of them passed away. At the moment the siblings are two including the applicant. 11. There being no objection from any family members of the subject and the course of the application being well supported as required by law, it is my considered view that the prayer for appointment of guardian ad litem and manager of the subject’s estate is well grounded and merited. 12. The application dated 22nd January 2026 is allowed in the following terms:—^a. That the applicant LWT is hereby appointed the legal guardian and manager of the subject MWW to take care of the subject and to manage her properties. ^b. That this being an ex parte application, there shall be no orders as to costs. 13. It is hereby so ordered. **RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 28TH DAY OF MAY 2026. F. MUCHEMI JUDGE**

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