

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS CAUSE NO. 16 OF 2019**

**IN THE MATTER OF THE ADMINISTRATION OF ESTATES OF
PERSONS OF UNSOUND MIND ACT, CAP.155**

AND

**IN THE MATTER OF MR. SONGOLO DIFASI MUGABO, A PERSON OF
UNSOUND MIND**

AND

**IN THE MATTER OF AN APPLICATION UNDER SECTION 2 OF THE
ADMINISTRATION OF ESTATE OF PERSONS OF UNSOUND MIND
ACT FOR THE APPOINTMENT OF A MANAGER BY KYOZIRA MIRIA
LYNN OF MAINSTREET WEST, CENTRAL JINJA WEST, JINJA
CENTRAL, JINJA MUNICIPALITY, JINJA DISTRICT**

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

Background and brief facts

- 1] The applicant one Kyoziira Miria Lynn of Main street West, Central Jinja, Jinja Municipality, in Jinja District, presented this application by chambers summons through Muziransa Associated Advocates, seeking to be appointed a manager in charge of helping Mr. Songolo Difasi Mugabo to manage his estate, that, is his bank account. I will refer to Mr. Songolo Difasi Mugabo as “the patient”.
- 2] The application was presented under the Administration of Estates of Persons of Unsound Mind Act and the Rules there under.

- 3] Briefly, the grounds of the application are that;
- a) The patient is currently suffering from schizophrenia, a chronic disorder which causes lapse of memory and or/ insanity and therefore, he is a person of unsound mind and unable to manage his estate; specifically his bank account.
 - b) The applicant is the patient's daughter and therefore a fit and proper person to manage his estate.
 - c) It is in the interest of justice that this application be granted.
- 4] The applicant filed an affidavit in support attaching several documents. There is an additional affidavit by Doctor Senyonjo Godfrey, a medical doctor attached to the Jinja Referral Hospital.

At the hearing in court on 3rd July 2019, the applicant, medical officer as well the patient were in court.

The Law

- 5] According to Section 2 of the Administration of Estates of Persons of Unsound Mind, Act the court may appoint a manager of the estate of a person of unsound mind, on an application of among others, a person in charge of a mental hospital or a relative of any such person of unsound mind.

Under section 3, the Court is required to make inquiries into the state of mind of the patient, and if it's satisfied that that person is of unsound mind and that the applicant is a suitable person to act, then the appointment can be made.

- 6] The Act did not define who a person of unsound mind is, but instead referred to another legislation by stating under section 1 that, a person of unsound mind means any person a judged to be of unsound mind under section 4 of the Mental Treatment Act, Cap 279 or any person detained under section 113 or 117 of the Magistrate's Court Act.
- 7] Under the Mental Treatment Act, a person of unsound mind is defined under section 1, as being an idiot or a person who is suffering from mental derangement. Under that Act, a set procedure was provided for whereby a Magistrate makes an inquiry to confirm the status of the patient and where so satisfied after the inquiry, to appoint medical practitioners to examine the patient and then issue certificates explaining the soundness of mind of that person. The Magistrate may then ajudge the person to be of unsound mind, and a proper person to be placed under care and treatment.
- 8] The procedure to be followed in this case would be found in the Administration of Estates of Persons of Unsound Mind Procedure Rules, Statutory Instruments 155/1. In r.3 (2), it directs the documents that need to be filed with the application, which include, an affidavit of the applicant, certificate by the superintendent of the mental hospital where the person of unsound is a patient, and where that person is not a patient in a mental hospital, an affidavit by a medical practitioner stating that he or she has personally examined that person and finds that they are of unsound mind. I believe that in this case, suitable affidavits were filed by both the applicant and the medical officer, and in addition, other supporting documents. I also had an opportunity to interview those deponents for further and better particulars.

- 9] There is also a requirement that the Act, that the subject of the application should be notified of the application, by service upon them to enable their presence in court. In this case, although no proof of service upon the patient was furnished, he was clearly aware of the proceedings because he was present in court on 3/3/19.

This is my decision

- 10] There being no set procedure in the Act, I adopted to the best extent possible, the procedure laid down in the Mental Treatment Act. My investigations were conducted in the form of an inquiry by perusal of pleadings and evidence, and by interviewing relevant witnesses. I also observed the patient in court.
- 11] According to Kyoziira, the patient now aged 89 years is her father. He is currently undergoing treatment of schizophrenia, which is a chronic disease and causes him lapse of memory and insanity. That he is not in a mental hospital, but at present resident at Namaziba Village, Mwiri Ward, Kakira Town Council in Jinja, which is his home, and under her care.
- 12] That among his property, he holds a savings account with Stanbic Bank Jinja branch, account No. 0121034488 in the name of Songolo Difasi Mugabo.
- 13] That the patient has previously ever entrusted Kyoziira the duty of managing the bank account, and she believes that being his daughter, she is the most appropriate person to handle his property. She attached a Power of Attorney dated 8/2/2019, in which the patient empowered her to operate the account, including the act of depositing and withdrawing monies and all other incidentals to the operation of the account. I confirm that such an account exists, for on 3/7/2019, the Stanbic Bank, Jinja branch issued confirmation

in writing that the account exists under the names of Songolo Difasi Mugabo.

- 14] In addition to her affidavit, Ms. Kyozira in an interview with the Judge, stated that the patient has been ill for ten years, and deteriorated three years ago. He is unable to do even mundane chores and he is like a baby. He cannot talk, his eyes are closed all the time and he cannot communicate and his family is unable to tell what he is thinking. That, it is for her and her sisters who devise his daily routine and feed him, bath him and carry out all other aspects for his wellbeing. That a doctor visits him at least once a week.
- 15] She stated that she requires to operate the account in order to draw money for his upkeep and medication. She is now 42 years old, and has been looking after the patient for a long time and feels capable of continuing to do so.
- 16] In further support of the application, Doctor Ssenyonjo Godfrey filed an affidavit in which he stated that Mr. Songolo is his patient. He confirmed that he suffers from schizophrenia, dementia, stroke and hypertension which causes lapse of memory and/or insanity and hence a person of an unsound mind. He confirmed that the patient was recently discharged and now lives in his home, from where he visits him at least once a week. That, it is his professional opinion and belief that the patient's current health condition and state of mind, means that he is not capable of conducting or managing his own affairs appropriately.
- 17] During the interview in court, the doctor confirmed his qualifications as one who holds a Bachelor of Medicine and Surgery and a Masters in Public Health. He further explained that the patient got a stroke, which lead to his dementia and total loss of memory. He explained further that the disease of

schizophrenia actually falls under the gene of lunatics. That it is caused by epileptic siezzers, loss of consciousness and usually the patient will lose contact with reality. That this particular patient cannot communicate or do anything for himself. He has no mortal ability and is in fact partly paralyzed and physiotherapy is no longer helpful. He confirmed that Schizophrenia a chronic ailment and the patient is only receiving supportive treatment. The supportive treatment is to insure that he is comfortable and for treatment of recurrent ailments like bed sores. He also related that he cannot communicate at all.

- 18] I have stated that the procedure in the Mental Treatment Act was not followed to the letter, but this should not take away my discretion to ajudge one as being of unsound mind, especially where an appropriate inquiry is made, involving a medical practitioner of the level that can professionally and conclusively determine the mental health of the patient under investigation.
- 19] I believe this was done in this case. The medical practitioner who gave his evidence on oath is one who is in charge of this patient. The applicant has lived with this patient for long and cares for him. I would have no reason to doubt them.
- 20] The requirement for a proper investigation should not be undermined. Nobody should, be ajudged or determined to be of unsound mind when no professional expert advise is available. This would be a serious affront to their personal integrity and would also open up them to fraudulent people, who may wish to take over their property. I have in my evaluation also keenly followed the decision of Justice Stephen Mubiru in **Aseru Joyce Ajju and Anjoyo Agnes (a patient) M/A No. 1 of 2016**. He fully explained

the procedure to be followed in varying circumstances, and also relying on Indian authorities, gave reasons why an inquiry is important. The Indian authorities are persuasive on this Court.

- 21] Justice Mubiru quoted the Indian Case of **Moohammad Yaqub Vs. Nazil Ahmad & Others (1920) 58** Indian cases 617, where it was stated that “*when a person is alleged to be insane....., there ought to be a careful a though preliminary inquiry and the Judge ought to satisfy himself, that there is a real ground for an inquisition*”. He went on to quote the case of **Ranjit Kumar Ghose Vs. Secretary, Indian Psychoanalytical Society AIR 1963 Calcutta 261**. Where the court decided inter alia that;

“.....it would be very desirable that the Judge should seek some personal interview with the alleged insane, not with a view of forming a final opinion, as to her real condition, but to satisfy himself in the ordinary way, in which a lay man can do, that there is a real ground for supposing that there is something abnormal in her mental condition, which might bring her within the lunacy act”.

- 22] Phillimore J in the case of **Whysall Vs. Whysall (1960) 52** also quoted in **Eseru Joyce Ajju (Supra)** defined a person of unsound mind (for purposes of these such proceedings) to be

“.....one who is afflicted by a total or partial defect of reason or the perturbation thereof, to such a degree that he or she is incapable of managing himself or herself or his or her affairs. If a practical test of the degree is required, I think it is to be found in the phrase “incapable of managing himself and his affairs”, and that the test of ability to manage affairs is that to be required of the reasonable man.

- 23] As I have said in this case, I conducted the inquiry both from the affidavits provided and by interviewing the two deponents. The patient was also in court. I observed that he was clearly and completely distanced from reality. He was brought in a wheel chair, meaning that he has no ability to move. His body appeared crippled, his eyes were firmly closed and he was not communicating. At some point he had to be wheeled in and out of the court, because he was showing serious signs of discomfort. There was no reason for me to communicate with him, because he was clearly a person who could not communicate. It was not possible to question him or have any rational conversation with him, and therefore I would conclude that his representations were being made through the applicant, who is now in charge of his welfare.
- 24] In this case, having seen the patient, having read the affidavits in support of the application and interviewed the applicant and the medical officer in charge of the patient, I am convinced that he is a man incapable of managing his affairs. His treatment must be expensive, but he should receive treatment at least to a level that ensures his comfort. It is therefore reasonable that the applicant is able to access patient's bank in order to draw the required money to care for him.
- 25] I will therefore allow the application.
- 26] I order that Ms. Kyoziira Miria Lynn is appointed a manager in charge of Mr. Songolo Difasi Mugabo affairs. She is in particular, fully authorized to operate his **Bank Account No. 0121034488** at the Stanbic bank Jinja. Such powers include the power to withdraw and deposit monies on the account and any other thing incidental to its operation.
- 27] I also order that the applicant shall meet the costs of this application.

I so order

Signed

Eva K. Luswata
Judge
10/7/2019