

High Court of Uganda Holden at Soroti

Miscellaneous Cause No. 0006 of 2022

In the matter of an Application under The Mental Health Act 2019

And

In the Matter of Thomas Ibokit (A person presumed to be with mental illness
to be declared a person with mental illness)

And

In the Matter of an Application by Beatrice Florence Abulo for appointment
as a personal representative of Thomas Ibokit

Abulo Beatrice Florence :: Applicant

Versus

Ibokit Thomas :: Respondent

Before: Hon. Justice Henry Peter Adonyo

Ruling:

Abulo Beatrice Florence, the applicant is stated to be a biological sister to Ibokit Thomas, an adult male person who allegedly is mentally ill and not in position to manage his estate.

Abulo Beatrice Florence seeks orders from this Honourable Court the authority under the Mental Health Act to be a personal representative of Ibokit Thomas so as to manage his estate.

The application is brought *ex parte* by way of Notice of Motion under **Order 52 Rule 1,2 & 3 of The Civil Procedure Rules** and **Sections 60, 62 and 63 of The Mental Health Act 2019** for a grant of an order as his personal representative. The application is supported by an affidavit sworn by the application.

Issues

Whether Ikobit Thomas is mentally ill and incapable of administering his estate

Whether the applicant is fit to manage the estate of Ikobit Thomas

Grounds of application

- a) Abulo Beatrice Florence is the biological sister of Ibokit Thomas
- b) Ikobit Thomas was employed by Uganda Hortech Ltd as an electrician
- c) In 2018, Ibokit Thomas fell sick and was hospitalized in Kawolo Hospital-Lugazi for a depression
- d) The Illness persisted and he was diognised to be having a mental illness
- e) Ikobit Thomas was discharged from his duties on medical grounds.
- f) That he has property and children which he cannot manage on his own and needs a legal representative to manage his affairs.
- g) That it is in the best interests of Ibokit Thomas that a personal representative is appointed on his behalf.

Whether Ibokit Thomas is mentally ill and incapable of administering his estate.

Section 2 of the Mental Health Act defines “Mental illness” to mean a diagnosis of a mental health condition in terms of accepted diagnostic criteria made by a mental health practitioner or medical practitioner authorized to make such diagnosis; mental health conditions include but are not are limited to depression.

bipolar, anxiety disorders, schizophrenia and addictive behavior due to alcohol/substance abuse among others.

Section 55 of the Mental Health Act provides for the process for the determination of mental health status in the following manner;

(1) A determination of the mental health status of a person shall be carried out, where it is required for proceedings before a court of law or for any other official purpose.

(2) A determination under subsection (1) shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner.

(3) The determination under this section shall be based on only factors which are exclusively relevant to the mental health status of the patient and not on any social, political, economic, cultural, religious or other factors.

(4) The determination shall only be used for the purposes for which it was required.

According to the applicant affidavit in support, in 2017, Ibokot Thomas presented signs of mental illness and was taken to Kawolo hospital at Lugazi and several tests were carried out and he was diagnosed with depression.

and recommended by a psychiatrist to retire from work.

The illness, however, persisted and he was diagnosed to be having a mental illness resulting in Abulo Beatrice Florence taking Ibokit Thomas to Soroti Regional Referral Hospital where she consulted a psychiatrist who examined him and recommended treatment.

Justice Eva K Luswata, in the matter of *Songolo Difasi Mugabo High Court Miscellaneous Cause No. 16 of 2019* underscored the importance of such inquiry or investigation.

“The requirement for a proper investigation or inquiry should not be undermined. Nobody should, be adjudged or determined to be of unsound mind when no professional expert advice is available. This would be a serious affront to the personal integrity and would also open them up to fraudulent people who may wish to take over their property.”

With this in mind, the discovery made by the phsycatrist is a structured way of observing and describing a patient's current state of mind, under the domains of appearance, attitude, behavior, mood, effect, speech, thought process, and sight of judgement.

Ikobit Thomas is therefore a person with mental illness.

Issue 2

Whether the applicant is fit to manage the estate of **Ikobit Thomas**

Section 60 of the Mental Health Act provides for capacity and competence, that a person with mental illness has the right to enjoy legal capacity on equal basis with others in all aspects of life.

- (2) A person with mental illness has the right to manage his or her affairs.
- (3) Notwithstanding subsection (2), a person with mental illness may be stopped from managing his or her affairs where-
 - (a) the Board orders, after it is established by two mental health practitioners, appointed by the Board, that the person with mental illness is not able to manage his or her affairs; or
 - (b) court, on an application by a relative or a concerned person, determines that the person is not able to manage his or her affairs.

The applicant in her affidavit in support stated that, her brother Ibokit Thomas has been burning houses and items therein on several occasions, he has burnt all

the documents pertaining to his employment, illness, identifications and other documents and items in the house.

She further stated that, he talks to himself and has illusions on how he has burnt houses, he one time even reported himself to police that he had burnt a factory.

Having this in mind, it's very clear that he cannot manage his property.

Section 62 of the Mental Health Act provides for appointment of personal representative by court. Where an order is made under section 63 that a person with mental illness is not capable of managing his or her affairs, or where a person with mental illness does not appoint a personal representative, court shall appoint a suitable relative to be his or her personal representative.

A relative is defined to mean a spouse, parent, grandparent, child, sibling, uncle or aunt, of a person with mental illness, whether by blood, marriage or a relationship established by law.

The applicant stated in her affidavit in support that, she is the sister of Ibokit Thomas and therefore qualifies to be his personal representative.

"Personal representative" is a person appointed in writing by a person with mental illness to act on his or her behalf, or a person appointed by court to act on behalf of a person with mental illness, where the person with mental illness loses capacity to execute a particular task;

A personal representative shall- manage the estate of the person with mental illness; or be the guardian of the person with mental illness and of the dependents of that Person.

Section 63 of the Act provides for responsibilities of personal representative appointed by court'

(1) Court shall grant a personal representative general or specific powers, to manage the estate of the person with mental illness'

(2) Notwithstanding subsection (1), a personal representative shall not, without the special permission of the court-

(a) mortgage, charge or transfer, by sale, gift, surrender' exchange, or by any other means, mortgage, charge or transfer any movable or immovable property of the person with mental illness;

(b) lease any property of the person with mental illness for a term exceeding five years; or

(c) invest funds of the person with mental illness in any security except a security authorized by law' A personal representative shall not sell any funds belonging to the person with mental illness in any company or undertaking in which the personal representative has an interest or purchase immovable property for the person with mental illness without the authority of court.

Section 64 of the Mental Health Act provides that Personal representative to furnish inventory and final accounts. A personal representative appointed by court, shall within six months of the appointment, file in court an inventory of the property of the person with mental illness, including the money, goods and effects the personal representative receives on account of the estate and a statement of the debts owed by, or due to the person with mental illness.

Section 98 of Civil Procedure Act provides that, nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

With the above consideration and in consideration of and his medical records from a hospital as proven by a psychiatrist as required by the law, I would find that Ibokit Thomas is mentally ill and unable to manage his affairs.

The applicant who is his elder sister, is thus appointed as a personal representative to manage the estate of Ibokit Thomas accordingly.

This application is thus allowed with the estate of Ibokit Thomas to bear the costs.



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Hon. Justice Dr Henry Peter Adonyo

Judge

16th August 2022