

## 5

**MISCELLANEOUS CAUSE NO. 226 OF 2022**

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15

**BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

## 20

## Introduction

25

5 was last employed with REED International in Somalia as a security guard.  
That prior to that employment, Mr. Ayella worked for Alarm Protection  
Services in Uganda, from 2004 to 2007, and AVSI, as a security guard.  
The Applicant concluded that Mr. Ayella wishes to recover his savings with  
the National Social Security Fund (NSSF), for the time he worked in  
10 Uganda from 2004 to 2010, before he left for Somalia, hence the  
application.

### **Representation**

The Applicant was not represented by counsel but she, Mr. Ayella, and  
15 Nancy Ajok who is the spouse of Mr. Ayella, appeared in court during the  
hearing.

### **Issues**

Three issues arise from the application, namely,

1. Whether Ayella Godfrey is a person with mental illness?
- 20 2. Whether the applicant is a suitable person to be appointed as  
Manager of savings due to Ayella Godfrey from the NSSF, and if so  
whether she ought to be appointed by court?
3. Whether any reliefs are available in the circumstances?

### **25 Court inquiry**

During the hearing of 14 September, 2022, I interacted with the Applicant,  
and Mr. Ayella and his spouse, at length. I made the inquiry, because the  
affidavit sworn in support of the application was deficient, in as far as it



5 did not bear the latest medical report, showing that the subject of the  
application (Mr. Ayella) has mental illness. The last dated medical report  
issued in respect of the 'patient' and adduced by the applicant (a non-  
medical person) is dated 27<sup>th</sup> December, 2021, by UNSOS Medical Facility,  
Mogadishu, Somalia. There is also an undated letter issued by Medicals, a  
10 travel clinic, situate at plot 12 Acacia Avenue, Kololo, Kampala, Uganda,  
which, as I have reviewed herein, is not conclusive on the mental illness of  
the 'patient'. I will refer to the facts elicited during the inquiry, in my  
resolution of the issues.

15 The power to make an inquiry into the mental health status of a person  
whose estate is sought to be managed, is vested in the High Court. There  
must be some basis for the inquiry. Section 98 of the Civil Procedure Act,  
as well as judicial decisions of this court, and other persuasive decisions  
from the common wealth, support this inquiry. See Aseru Joyce Ajuu Vs.  
20 Anjeru Agnes, Misc. Civil Application No. 001 of 2016 (Stephen Mubiru,  
J.); In the matter of Yambuka Emmanuel (patient), Misc. Cause No. 40 of  
2018 ( Olive Kazarwe Mukwaya, J.); In the matter of an Application by  
Kirule Michael, Misc. Application No. 49 of 2021 ( Florence Nakachwa, J.);  
and in the matter of Segonga Peter , a person of unsound mind, Misc.  
25 Cause No. 24 of 2018 (Eva K. Luswata, J (as she then was); Mohammed  
Yaqub Vs. Nazir Ahamad & others Ind. Case 617; Ranjit Kumar Ghose Vs.  
Secretary, Indian Psychoanalytical Society AIR 1963 Calcutta 261;

5 Balakrishnan Vs. Balachandran, (1956) 1 Mad LJ 459. The latter Indian decisions were graciously cited and followed in Aseru Joyce Ajuu case (*supra*).

I hasten to add that although the learned Judge, in the Aseru case (*supra*)  
10 adverted to the provisions of the Mental Treatment Act, Cap. 279 (since repealed), to conduct an inquiry, as a Magistrate would do for the purposes of issuing a reception order under Cap 279, nevertheless my brother Judge was also guided by the common law decisions in that regard. Thus, it is my view that the repeal of the Mental Treatment Act by  
15 the Mental Health Act, 2018, and the absence of a similar provision in the latter Act, do not deprive this Court of its wide powers to conduct an inquiry as to the mental illness of the subject of the application and his/her circumstances, and that of the applicant, as circumstances may warrant. The power is inherent under the reserve of powers in section 98  
20 of the Civil Procedure Act, Cap. 71.

The rationale for conducting an inquiry into the mental health status of a person, has been variously stated by courts, but the common thread in the authorities, when applied to proceedings under the Mental Health Act,  
25 2018, seems to me, to be the following;

5 The inquiry is to enable court, not to form a final opinion, as to the real  
condition of the person alleged to be mentally ill, but to satisfy itself 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 the mental condition of the  
person, which might bring him/ her within the Provision of the Mental  
10 Health Act.

The inquiry enables court to know the relationship that existed between  
the applicant and the 'patient'; the illness and the length thereof; the  
actual causes, and the symptoms of the illness; as well as what informed  
15 the application. This is so because, an order passed in respect of a person  
said to be mentally ill, without the court first making the judicial inquiry,  
may be declared invalid and a nullity.

The court inquiry guides court in coming up with a finding of whether the  
20 subject of the application is incapable, due to mental illness, of protecting  
himself and his affairs and interests. The inquiry also ensures that no  
person is pronounced to be mentally ill, without a proper inquiry. This is  
more so in light of the presumption of sanity, a concept recognized in our  
laws. See section 10 of the Penal Code Act, Cap 120.

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It is thus the humble view of this court that, a court should not declare  
anyone as being mentally ill, when there is doubt in the mind of court, as



5 a declaration of mental illness is a matter of sufficient gravity. A person  
who is declared mentally ill, may well be deprived of his/her rights and  
privileges, and may suffer prejudice. Such rights include, decision making,  
the right to manage one's affairs in the ordinary contingencies of life, the  
right to legal capacity, full and effective participation in societal affairs, the  
10 right to self-determination, among others. The law may also relive a  
mentally ill person of certain obligations.

For the foregoing reasons, a court should therefore not rely on a mere claim  
by a person that he/she suffers from mental sickness, or by a person  
15 making an application to manage his/her estate, to rush into making of a  
declaration of mental illness, in the absence of cogent proof. A medical  
report by a mental health practitioner, as understood under the Mental  
Health Act, is mandatory before such a declaration can properly be made.  
Thus, a psychologist or a senior mental health practitioner, must have  
20 examined the person, and given a medical report. See section 55 of the  
Mental Health Act.

This court is of the view that declaring a person as being mentally ill, in a  
proceeding of this nature, when there is some doubt in the mind of court,  
25 poses further risk. Such a person could escape criminal legal  
responsibility, if any, otherwise imposed on him/her. Under the well-  
known defense of insanity in criminal law, a person is not criminally

5 responsible for an act or omission, if at the time of doing an act or making  
the omission, he or she was, through any disease affecting his or her mind,  
incapable of understanding what he or she was doing. This legal defense  
is embedded in section 11 of the Penal Code Act, Cap 120, and is more  
aptly explained by the 1843 M' Naghten's case. There, it was stated that,  
10 in order for insanity to be a legal defense to the commission of a crime,  
there must be such a perverted and deranged condition of the moral  
faculties that the defendant (an accused person), at the time of the  
commission of the crime, was deprived of his memory and understanding,  
and was unable to comprehend the nature of his action, and to distinguish  
15 between moral good and evil, or to distinguish between right and wrong,  
in reference to the particular act in question.

Although this court is cognizant of the fact that a person facing serious  
criminal charges would have been subjected to mental examination prior  
20 to any criminal trial, it is not far-fetched to see the possibility of risk to the  
criminal justice system, especially where a civil court has, in error, already  
pronounced an accused person as suffering from mental illness, during  
civil proceedings. This court is in no way suggesting that, this very risk is  
manifest in the present case. I now turn to the resolution of the issues.

25

### **Determination**

**Issue 1: whether Ayella Godfrey is a person with mental illness.**



5 The Mental Health Act, 2018 which repealed the Mental Treatment Act,  
Cap 279 is more comprehensive on matters of mental illness, compared to  
the repealed law. It is noted that, whereas under the old law (which  
commenced in August 1938) the nomenclature used to describe a mentally  
sick person was "*a person of unsound mind*", meaning an idiot or a person  
10 who is suffering from mental derangement, yet under the current legal  
regime the legislature chose the nomenclature "*a person with mental  
illness*". Therefore, whereas all the decisions of the High Court cited herein  
before, save one, that is, the Application by Kirule Michael, Misc. Cause  
No. 49 of 2021, were rendered under the now repealed laws, those  
15 decisions nevertheless, still represent good law, and therefore remains  
persuasive to this court and bind all lower courts, and could apply, *mutatis  
mutandis*, to matters for adjudication under the Mental Health Act 2018.

Mental illness, under section 2 of the Mental Health Act means a diagnosis  
20 of a mental 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 limited to,  
depression, bipolar, anxiety disorders, schizophrenia and addictive  
behavior due to alcohol or substance abuse. Mental health practitioner  
25 means a psychiatrist, a registered psychiatry nurse, psychiatry clinical  
officer, a mental health social worker and a clinical psychologist. On the  
other hand, medical practitioner is a person registered as a medical



5 practitioner under the Medical and Dental Practitioners Act and includes  
a psychiatry nurse registered under the Nurses and Midwives Act.

Court notes that a person with mental illness is differently defined from a  
patient under the Mental Health Act. A patient is a person who receives  
10 treatment and care for mental illness under the Act. On the other hand, a  
person with mental illness is a person who is proven, at a particular time,  
by a mental health practitioner to have mental illness, at that particular  
time, and includes a patient.

15 For the purposes of determining the mental health status of a person,  
section 55 (1) of the Mental Health Act is instructive. There, it is provided  
that, where it is required for proceedings before a court of law, or for other  
official purpose, the determination of the mental health status of a person  
shall be carried out by a psychiatrist, or where a psychiatrist is not  
20 available, by a senior mental health practitioner.

The law clarifies that a determination of the mental health status shall  
only be based on factors which are exclusively relevant to the mental  
health status of the patient and not on any social, political, economic,  
25 cultural, religious or other factors. See s. 55 (3) of the Act.

5 Turning to the present matter, it was deposed by the Applicant that the  
'patient' was diagnosed with schizophrenia. This was stated to be an illness  
characterized by delusions and hallucinations, which is said to have  
affected the hearing and memory of the 'patient'. The Applicant attaches  
to her affidavit, three sets of documents. Annexure "A" is a document  
10 indicated as having been issued by UNSOS, Somalia. I examine this  
document first.

Annexure "A" is headed "Medical Report", File No. A5262. It is dated  
27/12/2021, and the patient name is Ayella Godfrey, born on  
16/06/1983. The Clinician is Dr. Mulugeta Tsegaye. The employer of the  
15 patient is REED. The AMI clinic where the diagnosis took place is UNSOS  
Medical Facility, Mogadishu Somalia. The diagnosis is indicated as  
"Paranoid Schizophrenia F20." The Chief Complaint is described as,  
"Hallucinations and bizzare behavior."

20 Among other things, the report gives a history of the illness. Mr. Ayella is  
described as a 38 year old male (at the time) Ugandan national working for  
REED as a security guard. He was stated to have been in the (medical)  
care of UNSOS, from 15 to 27 December 2021, with confirmed COVID-19  
mild symptoms. That, during the follow up, Mr. Ayella showed symptoms  
25 of persecutory delusions and hallucinations which resulted in admission  
and management and close follow-up from 21/12/2021 to 26/12/2021 (6  
days.) The report states, "with the appropriate management by the team



5 of internists and a clinical psychologist, the acute symptoms resolved and the patient improved significantly.”

The report indicates “on further history the patient showed similar symptoms in the past.” That, during the acute episode, he was treated with  
10 haloperidol 3 mg PO TDS and psychotherapy by clinical psychologist. On the past medical history, it is stated, “No past history of diabetes mellitus, heart diseases and hypertension. But showed symptoms of persecution (sic) and hallucinations.” On family history, it is written, “Denied history of mental illness among family members.”

15 On Neurological examination, the report states the finding, thus “Clear mental state.” At the end of the document is a recommendation in these terms “*the patient needs evaluation by psychiatrist at a level 3 facility as soon as possible.*” Dr. Mulugeta Tsegaye signs off the report.

20 Court therefore notes that, even without an affidavit evidence by Dr. Mulugeta, court is able to make a fair lay-person conclusion about the import of the medical report. A Neurological examination is the assessment of sensory neuron and motor responses, especially reflexes, to determine whether the nervous system is impaired. This includes, typically, physical  
25 examination and review of the patient’s medical history, not covering deeper investigations such as neuroimaging. (See Wikipedia.)

5 This court finds it intriguing that the examination of Mr. Ayella while in Mogadishu on 27 December, 2021 returned the finding that he had clear mental state, although he had complained of hallucinations and bizarre behavior. Hallucination is a perception of having seen, heard, touched, tasted or smelled something that was not actually there. During the court  
10 inquiry, Mr. Ayella told court that he hears some sounds, as if someone is calling, saying "hullo, hullo, hullo." That, something attacks him (he did not specify how). He stated that he also hears words in Kiswahili language, translated as, "they have talked, they have talked." That, sometimes when he is working during day, he sees birds following him. That, his episodes  
15 got worse when he was working in Somalia with Reed Inc., and as a result, he lost his job.

These description, in court's finding, constitute hallucination. As to what causes it, there was no Doctor to explain to court. However, according to  
20 webmd.com/schizoph, there are many different causes of hallucinations. It could be mental illness called schizophrenia, it could as well be a nervous system problem like parkinson's disease, or epilepsy, or Alzheimer's disease, and other forms of dementia; it could be brain tumor, migraines, among others. It is opined that more than 70% of people with  
25 schizophrenia get visual hallucination, and 60-90% hear voices. It is advised that a person with hallucinations should see a Doctor and that treatment can help control it, but that a lot depends on the root cause.



The above view resonates with the recommendation of Dr. Mulugeta, that Mr. Ayella needed evaluation by a psychiatrist at a level 3 medical facility. Court's finding is that, level 3 medical facility is a categorization of such facilities within the United Nations Mission Area, such as in Mogadishu, where Mr. Ayella worked. The recommendation, in court's view, would assure the highest level of mental health evaluation, if followed by the 'patient'. In the case of Uganda, what comes to mind, and this court takes judicial notice, is Butabika National Referral Mental Hospital, which would, in court's view, ably provide the highest level of mental health examination recommended by the UNSOS Doctor. However, no evidence was led to show that the 'patient' before court has ever been subjected to an independent medical evaluation at a specialized mental health facility in Uganda. During the court inquiry, he confirmed that he has never been to Butabika National Referral Hospital. He did not specify any alternative specialized facility either, which he visited.

Court next examines annexure "B" to the affidavit of the applicant. It is a Psychological Report, covering the period the 'patient' was seen by a clinical psychologist, a one Dr. Bharosa Basnyat of UNSOS Medical Facility, Mogadishu, Somalia. The report captures the information given to the Dr. by both Mr. Ayella, and an unnamed informant. It was reported by the informant that *"shouting was heard from inside the room of Godfrey,*

5    *banging sounds of the walls of his container (read accommodation) for 30*  
mins around 4:00 am on 21 December, 2021.” On his part, Mr. Ayella  
narrated thus *“my colleagues have performed witchcraft on me since June*  
2021.”

The psychological report gives further details of the narration given by the  
10 colleagues of the ‘patient’ about the event of 21 December, 2021. Of  
interest, is the narrative by the supervisor of ‘the patient’, that “his staff  
(the ‘patient’) had been working in Somalia since May 2017 in Beletweyne  
and was doing perfectly fine not until June 2021 when he started claiming  
that other colleagues did not like him and were trying to harm him. That  
15 the colleagues were (allegedly) taking his pictures and informing everyone  
that he was a bad person. That on request by Mr. Ayella, he was  
transferred (from Beletweyne) to Mogadishu. That whilst there, he  
continued mentioning that his colleagues and neighbors in his area of  
accommodation were trying to harm him. That he alleged that his  
20 colleagues had been performing witchcraft on him, claiming he is a witch  
(read wizard).

The report gives other similar narration of the claims by ‘the patient’,  
touching on his alleged fights with evil spirits. The clinical psychologist  
25 concluded that some of the unusual behaviors which had been noted  
earlier in the ‘patient’ had since 22 December to 27 December, 2021 not  
been observed. This, according to the psychologist, was after receiving the



5 treatment mentioned in annexure “B” above. That, the above notwithstanding, the ‘patient’ still believed that his colleagues had been conspiring against him (to harm him.)

10 In the same annexure “B”, the Clinical Psychologist was more succinct in his last observation of the ‘patient’ on 27 December, 2021. He reports, *inter alia*, “Auditory hallucination was not present”. This was after observing all the positive features from 21 December 2021, although he noted there was “persecutory delusion.” In his recommendation, and court agrees, the Clinical Psychologist recommended thus “*Neuro-psychiatrist evaluation is*  
15 *highly recommended.*” This, court notes, is a specialist who deals with mental disorders connected to the problem with the nervous system. Cases of brain malfunction fall in this category.

The third annexure is marked “C”, being an undated letter, on the headed  
20 paper of Medicals, of plot 12, Acacia Avenue, Kololo, P.O Box, 35220, Kampala. The Medicals is described as a facility that does “travel clinic, international vaccination, and employment medical screening.”

Court is unable to tell if Medicals does more than what the headed paper  
25 says. The annexure appears in the form of a letter, and is addressed to the Human Resource of REED INC. (the last employer of the ‘patient’). The subject of the report reads ‘*medical report of Ayella Godfrey.*’ The relevant

5 part states, "This is to certify that I have reviewed Godfrey and find him to  
be suffering from a mental illness called Schizophrenia. This is an illness  
characterized by paranoid delusions and hallucinations, among other  
symptoms. I hereby confirm that he is now much better after 1 month of  
therapy and all the above cleared. I have explained to him that he should  
10 always adhere to his maintenance medication if he is to avoid relapses. He  
is not likely to relapse because he is doing so now. I advise that he be  
allowed to resume work but that he can only do tasks which don't involve  
handling of firearms as this is to protect himself and others around him.  
However, he can do office work and other clerical work. He is required to  
15 go for regular review to any psychiatrist for the purpose of follow up at  
least once a month. Please render to him the necessary support. Thank  
you."

The letter is signed by Dr. Apio Irene Wengi, a Psychiatrist. Although  
20 undated, the letter discloses that, at the time it was written, the 'Patient'  
was cleared of paranoid delusions and hallucinations. This exhibit would  
of course have been more helpful to court, if it was dated, to enable court  
appreciate how far back, before the lodgment of the present application,  
the Doctor assessed the 'patient.' Court at present is unable to tell whether  
25 or not Mr. Ayella has since his last evaluation by Dr. Apio Irene Wengi,  
relapsed.



5 I viewed Mr. Ayella in court and interacted with him. He impressed me as a normal person, who has not suffered relapse. He spoke quite intelligently. Asked why he did not go for review, he responded that he lacks money.

The last annexure is unmarked, but is a Notice of termination of the  
10 'patient', dated February 01, 2022, signed by Neil Hamman, Reed Program Manager, UNSOS, Mogadishu, Somalia. There, the employer was communicating that Mr. Ayella ('patient') was being terminated immediately on medical grounds. The letter indicated that the employee has been diagnosed with Schizophrenia. It continued "*You were contracted*  
15 *to be a security guard and this position put you in possession (of) or contact with weapons. Reed does not have an administrative position available to redeploy you.*"

It appears the 'patient', in the assessment of the employer, could still be  
20 employed, had there been administrative vacancies. It also seems to me that his termination was because of the risk he posed to other persons, in his job setting, as his role involved being in possession of firearms (and by extension, ammunition.)

25 In light of the foregoing pieces of evidence, court is unable to, and finds it unsafe, to conclude that, as at the time the application was lodged in court (6 September, 2022) Mr. Ayella had been conclusively determined by a

5 mental health practitioner, envisaged under the Mental Health Act, 2018,  
as having mental illness. This court accordingly declines to find that Mr.  
Ayella is still suffering from mental illness, in the circumstances.

Before I take leave of this issue, court did not found it necessary to send  
10 Mr. Ayella for medical assessment, as to do so could open room for abuse  
of court process, and more so when he stated that he lacks money for  
medical evaluation. More intriguing is where in his own words, Mr. Ayella  
said he was advised by the NSSF Officers in Gulu, who looked at his  
termination letter, that he obtains an Order from the High Court, to enable  
15 him claim his invalidity benefits from the NSSF. I will revert to this matter,  
when determining the issue of remedies available, in the circumstances. I  
also note that medical examination under the Mental Health Act has to be  
with the consent of the person to be examined, unless the circumstances  
warrant an involuntary action, which Mr. Ayella's condition would not.  
20 Sending him for examination would thus have costs implication. Court, in  
the special circumstances of the case, is unable to descend into the  
administrative bureaucracies associated with admission and evaluation of  
Mr. Ayella in a medical facility of the level recommended by the experts  
who assessed him whilst in Mogadishu, Somalia. He is however still free  
25 to take that route, may be with the help of well-meaning persons, including  
the NSSF, where he is a Fund member.



5 In conclusion on issue number one, I hold that Court is not satisfied, on  
the available evidence, that Mr. Ayella has mental illness, for the purposes  
of the Mental Health Act, 2018. This is so because the last known medical  
examination of Mr. Ayella happened in December, 2021, in Somalia, which  
finding is no basis for this court drawing a conclusion on his mental status  
10 as at September 2022, the month the application was lodged in Court.  
Considering the risks in holding a person to be mentally ill when he/she  
is actually not, which in court's view, are quite serious, court hereby  
declines the invitation by the Applicant (and Mr. Ayella) to find him  
mentally ill. I accordingly answer the first issue in the negative.

15

**Issue 2: Whether the applicant is a suitable person to be appointed as  
Manager of savings due to Ayella Godfrey from the NSSF, and if so  
whether she ought to be appointed by court?**

20 Following my answer to issue 1 above, I would similarly answer the second  
issue in the negative. However, for completeness, I proceed to analyze the  
issue, if court were to find that the subject of the Application was suffering  
from mental illness.

The general position of the law is that a person with mental illness has the  
25 right to manage his or her own affairs. This is on the backdrop that he/she  
enjoys legal capacity on equal basis with other normal persons, in all  
aspects of life. See section 60 (1) and (2) of the Mental Health Act, 2018.

5 This recognition by the law, in court's view, is intended to redress the historical prejudices to persons with mental illness/ persons of unsound mind.

A person with mental illness can only be stopped from managing his/ her  
10 affairs by court, where court determines that the person is not able to manage his/her affairs. This is on an application being lodged by a relative of the person. The other exclusion to self-management is where the mental health advisory board decides that the person with mental illness is incapable of managing his/her affairs. This is upon the person being  
15 assessed by two mental health practitioners appointed by the board.

Court notes that, under the current legal regime, the right of a person with mental illness extends to self-appointment of a personal representative, to make decisions on his/her behalf. That is, substituted or assisted decision  
20 making. This appointment can however only happen where a person with mental illness still has capacity to make the appointment. He/she could appoint a relative, a concerned person, mental health practitioner or a lawyer, among others. Once appointed, the personal representative must, in making any decision, take into account the best interest of the person  
25 with mental illness. This is to prevent any prejudice, such as manipulation of the person with mental illness, abuse of any form, neglect, loss of his/her property, financial or otherwise, among others. See section 61 of



5 the Mental Health Act. See also Aseru Joyce Ajuu Vs. Anjeru Agnes, Misc.  
Civil Application No. 001 of 2016 (supra).

Court therefore has powers to hold that a person with mental illness lacks powers to manage his/her affairs, and therefore may proceed to appoint a  
10 personal representative. See section 62 and 63 of the Act. This would be so, if the mentally ill person would not be capable of appointing a personal representative on his/her own accord. In making the appointment, court may grant either general or specific powers to the personal representative. Court must however assess the suitability of the person to be appointed  
15 by court. The law as it stands, gives preference to a relative, where the appointment is by court. A relative is defined to mean, a spouse, parent, grandparent, child, sibling, uncle, or aunt of a person with mental illness, be it by blood, marriage or a relationship established by law. In court's assessment, a suitable relative would be that who is more likely to take  
20 care of the best interests of the person with mental illness. This will always depend on the circumstances of each case. A court cannot therefore lay a hard and fast rule for determining suitability. However, court may appoint a Public Trustee to manage the estate of the person with mental illness, where court is unable to identify a suitable relative for that purpose. This  
25 could, for instance, be the Administrator General. See section 62 (4) of the Mental Health Act.

5 Court can make a distinct appointment that the personal representative  
either manages the estate of a person generally or specifically; or that  
he/she acts as guardian of the person with mental illness and his/her  
dependants. I hasten to add that, this would normally depend on how the  
application before court is drawn, and the circumstances of each case. In  
10 such a case, courts do exercise discretionary powers on the best course to  
take, which must be done judiciously. In other words, court must decide  
in accordance with the circumstances and in light of what seems just, fair,  
right, equitable and reasonable. See: Yahaya Kariisa Vs. the Attorney  
General and M.K Radia, SCCA No. 07 of 1994, digested in [1997] HCB 29.

15  
Last but not the least, where court determines that the person is capable  
of managing himself or herself (and his/her affairs) and that the person is  
not dangerous to himself or herself or others and is not likely to breach  
public decency, court may make an order strictly for the management of  
20 the estate of the person, and not for guardianship.

Having reviewed the law on the matter, the applicant describes herself as  
a sister of Ayella Godfrey, a person with mental illness. This Court accepts  
this evidence, which was corroborated by Mr. and Mrs. Ayella. The  
25 Applicant therefore qualifies as a relative, within the meaning of the law.  
However, as to whether she ought to be appointed to manage the specific  
property of Mr. Ayella, namely, the processing of and receiving of



5 (invalidity) benefits he expects from the NSSF, court holds that there is no  
need, in the circumstances, given that Mr. Ayella is, on the evidence  
available, capable of managing himself and his affairs. Court is convinced  
that he can manage the processing his funds from the NSSF. If he would  
want the applicant and his own spouse (Mrs. Ayella) to accompany him, it  
10 is fine, and that is not to suggest that the Applicant ought to first be  
appointed by court. Court notes that contrary to the Applicant's averment  
that Mr. Ayella is in her custody, Mr. Ayella and the spouse informed court  
that he and the spouse live under one roof. Although I would not have  
used the false averment against the applicant, court's view is that the  
15 averment was designed to create a wrong impression to court, that Mr.  
Ayella is incapable of managing himself and his affairs. I am not satisfied  
that he is so incapable.

Court also notes the applicant's deposition that, upon the diagnosis of Mr.  
20 Ayella with schizophrenia, his hearing and memory was allegedly affected.  
She makes reference to the medical reports already alluded to. It is court's  
finding that the alleged lapses in the hearing and memory is not proved to  
be subsisting as at the date of lodging the application in court. On the  
contrary, Mr. Ayella struck me with his sharp memory of events,  
25 recounting his employment history, and general family affairs. He also  
recounted his experience at the NSSF Offices where he had gone to apply  
for invalidity benefits. I therefore noted that Mr. Ayella could perfectly hear

5 and rationally comprehend all questions put to him by court, from a distance. Although Court is not an Audiologist, court is nevertheless able to confirm that Mr. Ayella is not what he was described by the applicant to be. Perhaps he could have suffered such health challenges before, but again, there is no medical report to confirm the specific challenges.

10

In the circumstances, Mr. Ayella, although described as suffering from schizophrenia, which court is unable to conclude on the available evidence, nevertheless, is in full charge of his mental faculties, and would therefore be equally competent to appoint a personal representative to  
15 manage his funds with the NSSF, under section 61 of the Mental Health Act, if he so wished and if he qualifies. During the court-led inquiry however, Mr. Ayella informed court, and his assertion was neither doubted by the applicant nor his spouse, that he would be capable of processing any funds due to him from the NSSF, but for the advice by the NSSF  
20 officers that he obtains an Order from the High Court, appointing Manager of his estate. This advice, if truly given, is of course erroneous, having been rendered without a fuller appreciation of section 61 and other relevant provisions of the Mental Health Act, 2018. The advice was also given without assessing the fact that Mr. Ayella is capable of making informed  
25 decisions and thus managing his affairs, even if he had somewhat been found in December 2021 to be suffering from schizophrenia. Mr Ayella further informed court that he operates a bank account in Centenary



5 Bank, and that, if anyone paid him money through the account, he would  
ably withdraw it, without the need for any third-party assistance. He  
however clarified that, he would not mind if his sister (the applicant) and  
his spouse accompanied him, when processing his NSSF benefits.

10 In light of the foregoing analysis, Court would decline to appoint the  
applicant as a personal representative of Mr. Ayella. However, if it had been  
proved, on the balance of probability, that he was not capable of managing  
his affairs, and also unable to appoint a personal representative in that  
15 regard, I would have appointed the applicant and Ajok Nancy (his spouse),  
to jointly manage the processing of the benefits due from the NSSF to Mr.  
Ayella. The two agreed they would work together, and Mr. Ayella was in  
agreement. I note that the Mental Health Act, 2018 is silent on joint  
application and joint appointment of personal representative. However, the  
20 Act does not bar joint or more appointment by court. It therefore seems to  
court that, a court can exercise its powers, both under section 98 of the  
CPA, and section 33 of the Judicature Act, Cap 13, to make joint  
appointment, in the interest of justice, transparency, and to avoid possible  
abuse by a single representative. However, given my earlier findings, I  
decline the application. This issue is accordingly resolved in the negative.

25

**Issue 3: Whether any reliefs are available in the circumstances?**

5 Given my determination of the issues above, I would hold that the Applicant has no relief. I would dismiss the application, with no order as to costs, since this was an *ex parte* application, and lodged in the interest of Mr. Ayella, *albeit* in a misconceived and premature fashion.

10 **Obiter**

Before I take leave of this matter, I feel some deep empathy for Mr. Ayella, who lost his job and was not given an administrative job by Reed Inc., yet he has a family to care for. The recommendation by Dr. Apio Irene Wengi, to Mr. Ayella's erstwhile employer did not yield anything, as the employer  
15 had no administrative job for him, yet the employer could also no longer trust him with firearm, given his then mental condition which posed risk to others. If Mr. Ayella is not able to work again, and therefore unable to earn a reasonable livelihood, as he informed court, then the NSSF Officers and Management ought to humanely assess his condition, in light of  
20 section 22 of the NSSF Act, and pay him what is due to him, as an invalidity benefit. The condition imposed by the NSSF officers, that he first obtains an Order from this court, lacks legal basis, in light of the current provisions of the Mental Health Act, 2018, which is very strict. He therefore need not first be declared by court as a person suffering from mental  
25 illness, before he can claim what is statutorily due to him under invalidity benefit. In court's view, once Mr. Ayella is found to be incapable of performing the kind of job he did before, because of the disability assessed



5 in December, 2021, and thus unable to earn a reasonable livelihood as a  
result, he ought to be considered for payment by the NSSF. This court  
notes that under section 22 of the National Social Security Fund Act, Cap  
222, entitlement to invalidity benefit is not conditioned upon, and the  
benefits do not accrue to a Fund member on condition that a Manager is  
10 first appointed by court, to manage the estate of the member. Accordingly,  
the NSSF Management and staff, and especially its Managing Director,  
ought to consider and review the requirements for processing of invalidity  
benefit, in light of the Provisions of the Mental Health Act, 2018, and the  
concerns of this court, to accord rightful qualifying claimants their full  
15 benefits as by law prescribed. Otherwise, to insist on an order from court  
could cause an absurd situation, and abuse of court process. That, in  
court's considered view, would not be in sync with the policy of court.

Delivered, dated and signed in chambers this 22 September, 2022.

20

  
**George Okello**  
**JUDGE HIGH COURT**


25

Ruling read in chambers.

30 *Applicant absent.*

*Grace Avola, court clerk present*

27

  
**JUDGE**  
*22-9-2022*