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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

In The Matter of the Mental Health Act No. 15 of 2019

And

In The Matter of Mzee Echimu Charles t/a Egwau son of Elabu

10

And

In The Matter of an Application by Echimu Simon Peter (son)

To Manage the Affairs of the said Mzee Echimu Charles t/a Egwau s/o  
Elabu

Miscellaneous Cause No. 04 of 2022

15 Echimu Simon Peter :: Applicant

Versus

- 1. Egwau John Robert
- 2. Ewechu Bernard :: Respondents

20

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling.

1. Background:

25 This application was brought by way of notice of motion under section 60(1) & (3) (b) of the Mental Health Act, section 98 of the Civil Procedure Act, section 33 of the Judicature Act, order 32 rules 1(1), 4, 15, 19 & 23 and Order 52 rules 1&2 of the Civil Procedure Rules for orders that;

- a) The applicant be appointed to manage the affairs of the said Mzee Echimu Charles t/a Egwau son of Elabu.

[1]



- 5 b) The applicant be granted leave to act as the next friend of the said Mzee Echimu Charles t/a Egwau son of Elabu for purposes of all legal actions/suits where the said Mzee Echimu Charles t/a Egwau son of Elabu is a party and or has an interest including to institute law suits for and on behalf of his father.
- 10 c) Costs of the application be provided for.

The application is supported by grounds which are contained in the body of the motion and an affidavit deposed by the applicant dated 21<sup>st</sup> February 2022.

15 Earlier on the applicant had filed Misc. Cause 22 of 2021 *ex parte* for orders that he be appointed to manage the affairs of the respondent (Mzee Echimu Charles t/a Egwau s/o Elabu) but upon consideration of the same the court found that it contained procedural improprieties which were outside the proper rules and directed that a new application be filed *inter partes* which complies with the appropriate rules hence this application,

20 Misc. Cause 004 of 2022.

When this matter was brought to the attention of this court on 14<sup>th</sup> March, 2022, counsel for the respondents sought to raise preliminary points of law with regard to firstly, the application being incompetent for being filed prematurely without fulfilling legal requirements and secondly, on alleged

25 incurably defective affidavit of Echimu Simon Peter. Given this position, this Honourable Court gave directions for counsels representing parties to file submissions in order for the same to be considered and disposed of before dealing with the head application.

30 On the 27<sup>th</sup> April, 2022 a ruling was delivered in which the court upon thorough consideration of pleadings of the parties and taking into account the affidavits sworn for and against the application ruled that all the averred matters were contentious requiring each party to be given the

5 opportunity to properly prosecute and or defend the application. Accordingly, the preliminary points were overruled with directions that the application be heard on its own merits and determined judiciously.

Upon the decision which overruled the preliminary objections being made and on the same date, counsel for the respondents sought leave to cross-  
10 examine the applicant on his affidavit. Likewise, counsel for the applicant similarly sought to cross examine the respondent on his affidavit. These requests were allowed on condition that parties restricted themselves to averments of the parties herein on record.

During cross-examination of the applicant informed court that he did not  
15 have a trading certificate in the names Mzee Echim Charles t/a Egwau s/o Elabu but that he had a certificate of renewal of a business name of Egwau s/o Elabu which was registered in registered in 1972 when his father begun business in Soroti but that the certificate of registration Egwau Elabu Family Enterprise was registered in 2019 by him though the  
20 date of commencement of the business was 1<sup>st</sup> January, 1972 by which date he was not yet borne.

The applicant continued to state that the business name registered is not the same as Echim Charles t/a Egwau s/o Elabu and that there was no registration certificate in that name.

25 He further stated that from 1994 up to 2022 the affairs of his father had been handled by all his children who are his issues with his wife called Ruth Achan Echim.

The applicant further told court that he was the one who had requested for a medical report from Soroti Regional Referral Hospital on the basis  
30 that before that request Mzee Echim had previously been admitted in the

5 said Hospital although he admitted that he did not carry out any mental assessment of Mzee Echimu as recommended by a psychiatrist.

The applicant similarly admitted that the proprietor of Plot 17 Gweri Road was Egwau John Robert and that the customary land owned by his father in Obutei Arapai was occupied by his children and partly by his second  
10 wife who left him 20 years ago but was now staying on the land and occupying about 2 to 3 acres though his own mother was allocated the main portion of the land measuring about 7 acres which she and her children occupy.

The applicant, however, on his own part told court that he was staying at  
15 Orwadai ward, Eastern division, Soroti city to which he had shifted from Mbale Cell, Pamba Ward Western Division, Soroti city while Mzee Echimu was resident of plot 17 Gweri Road.

He further admitted that in some correspondences he used the name Echimu Charles t/a Egwau s/o Elabu which was an error. That Inwaku  
20 Florence, Eegu Samuel and himself gave a background on Mzee's illness. He stated that the request for the medical report was made on 08/02/2021 and the treatment report on 21/01/2021, the request was made after the treatment and the report made on 10/02/2021. He did not  
25 have any court order to make the request and Mzee Echimu had never been declared by court as a person of unsound mind.

The applicant continued to state that the family meeting where Mzee's health and the family business name were discussed only involved the children of Mzee's first wife who had been managing the affairs of Mzee Echimu but Egwau John Robert and Samson Ewechu did not attend. He  
30 also admitted of never inviting his stepmother and her children to attend the various family meetings.

5 During re-examination, the applicant admitted that most of the so called family meetings were majorly convened verbally and hat the business of Mzee Echimu Charles began in 1972 before he was born but that some of decided to maintain the same business name for which he signed an application for the registration of the business because his father was of  
10 unsound mind.

After cross-examination of the applicant, counsel for the respondent sought leave to cross-examine Dr. Emoit John Ekol, the Principal Psychiatric Officer who authored the medical report dated 10/02/2021. Although counsel for the applicant objected, court allowed the said cross  
15 examination in the interest of justice. Accordingly, Dr. Emoit John Ekol, the Principal Psychiatric Officer who authored the medical report dated 10/02/2021 was called to court to be cross examined.

During cross-examination of Dr Emoit John Michael he told court that he received a request from the Secretary, Records Office Soroti Regional  
20 Referral Hospital dated 08/02/2021 with a note and signature from the director of the hospital to carry out an assessment though the copy which the parties had did not have such an authorisation and a receipt stamp. He stated that the patient was an involuntary one when he was brought to the hospital and that such patients upon receipt by the psychiatrist is  
25 received by a nurse, a file is opened, hospital number availed and the patient is taken to a clinician on duty for assessment and diagnosis.

That, thereafter, the clinician would then decide to treat the patient as an outpatient or admit as an inpatient. That with in-patient admission, a detailed history of the patient is taken and then patient is then put on  
30 treatment with every week on Wednesday, a team of psychiatrists convening for a ward round where each patient is reviewed. He told court

5 that for Mzee Echimu he personally assessed the patient by asking questions from him and making thereafter a report.

That the patient told him that he was married to two wives but that one had passed on and the other separated due to his poor mental health.

Dr Emoit John Michael further told court that Mzee Echimu was  
10 readmitted on 28/01/2021 and that on that day an officer called Okoboi John Robert was the one who conducted an assessment of him but he was not sure as to how long the patient was admitted.

That the patient told him that he was reported to hospital by his wife but he later came to learn that the one who reported him was Stella Adong,  
15 his daughter and not his wife.

Dr Emoit John Michael told carried out a mental assessment of the patient when he was stable but could not make a diagnosis as patterns of symptoms keep on changing according to the assessment.

He stated that he did not carry out perception, cognition and thoughts  
20 assessments of the patient because he was severely unstable but recommended that the same be carried out when stable.

He admitted that though at Soroti Regional Referral Hospital there was no psychiatric doctor, he did carry the assessment as the most senior psychiatrist at the hospital. He told court that the patient was not  
25 examined by a psychiatric medical doctor but managed by principal officer as most regional referral hospitals in Uganda did not have such officers as it was a deployment issue by the Ministry of Health.

During re-examination, Dr Emoit John Michael told court that his document is not received and annotated as the Hospital only receives that  
30 of the patient.

5 The respondents were not cross-examined as counsel for the applicant dropped cross-examination and instead sought this courts directions on submissions.

The parties complied with court directions and filed submissions which are on court record.

10 Submissions:

Counsel for the applicant M/s Engoru, Mutebi Advocates raised two preliminary issues in his submissions. The first being that the affidavit of the 2<sup>nd</sup> respondent cannot be maintained in law since it is a re-gurgitation of the evidence of the 1<sup>st</sup> respondent on all fronts. Secondly, that court  
15 awards the said Emoit John Ekol the costs of travel for the two times he travelled to court at the instance of the respondents i.e. on 7/8 June 2022 and 22/23 August 2022.

With regard to the first preliminary issues counsel submitted that the affidavit of the 2<sup>nd</sup> respondent deposed on the 24<sup>th</sup> of February, 2022 and  
20 filed on the same day was irrelevant and unnecessarily repetitive when compared to the one of the 1<sup>st</sup> respondent and so he prayed that it be struck out with costs.

Counsel relied on *Ongwen and Anor vs Ocaya Micheal CA No. 012 of 2017* and section 135 of the Evidence Act to support this submission.

25 With respect to the second preliminary issue, counsel submitted that the attendance in court by Emoit John Ekol was at the instance of the respondents and it was on record that he was transferred to Butabika National Referral Mental Hospital and on both occasions when he came to court he had to travel from Kampala a day before.

30 Counsel prayed that the out-of-pocket expenses, fuel refund and accommodation of up to Ugx. 2,500,000/= (Uganda shillings Two

5 Million, Five Hundred Thousand Only) be paid to the witness by the respondents.

On the substance of the application counsel submitted that the application which has been presented under **section 60 of the Mental Health Act** determines that a person with mental illness cannot administer their estate, the court grants the reliefs under section 61 and 62 which make  
10 direct reference to section 60.

That the affidavits of the respondents sought to invoke **section 24 (7) of the Mental Health Act** yet the application was brought under section **60 (3) (b)** with section 24(7) being inapplicable to the current  
15 application and has been wrongly cited.

Counsel submitted that that the subject matter under section 24 is separate and distinct from the subject matter in sections 60 & 62 under which the current application has been brought and so accordingly counsel invited court to find that Annexure A3- the medical report by  
20 Emoit John Ekol dated 10/02/2021 had been properly made and it was in line with the law.

Counsel further submitted that the medical report is evidence of Mzee Echimu's medical condition and it has not been controverted and Mr. Emoit in his testimony maintained that Mzee Echimu was a person of  
25 unsound mind.

That under section **60 (3) (b) of the Mental Health Act** the applicant need not attach a court order as suggested by the respondents but rather provide evidence that on account of the person's mental condition they are incapable of managing their own affairs and as such there is need for  
30 court, on application by a relative or a concerned person, to appoint someone to manage the affairs of that other person which is what this



5 application is centrally about. Counsel additionally submitted that when a court is presented with an application under **section 60(3)(b) of the Mental Health Act** it makes an assessment under section 60 (6) of the Act based on the evidence before it.

10 Counsel submitted that on the strength of the medical report the court should find that Mr. Echimu Charles is a person of unsound mind and hence not capable of managing his own affairs and subsequently grant orders sought in the application.

15 Counsel additionally submitted that the orders sought place the applicant in a fiduciary relationship with his father and the averments by the respondents and other family members in opposition of the application that the 1<sup>st</sup> respondent is the proprietor of plot 17 Gweri Road put them in a position of severe conflict of interest against their father which interests this application seeks to preserve.

20 Counsel contended that the clear conflict of interest and opposition by the respondents is only an advancement of personal interests and he prayed that this court finds that there is no opposition to this application.

25 Counsel finally submitted that the centrality of this application is evidence of Mzee Echimu's mental condition and his incapacity to manage his own affairs and not about who owns which property and prayed that this application and orders sought be granted.

In reply counsel for the respondents' M/s Amodoi Associated Advocates submitted first on the preliminary issues raise by counsel for the applicant before submitting on the legality of the application.

30 Pertaining to the first preliminary issue counsel submitted that the 2<sup>nd</sup> respondent rightfully filed his affidavit in reply as required by the law. That on the authority of Order 19 rule 3(1) of the Civil Procedure Rules the

5 affidavit of the 2<sup>nd</sup> respondent is confined to such facts as his is able on his own knowledge to prove and it is trite that parties proceed on the basis of their pleadings.

***See: Interfreight Forwarders vs East African Development Bank (1990-1994) EA 117 page 125.***

10 Counsel further submitted that the effect of not filing an affidavit where the law requires one is a fatal omission.

***See: Agro Supplier Ltd Vs Uganda Development Bank HCCS 379 f 2005.***

15 Counsel submitted that the authorities cited by counsel for the applicant were inapplicable for even that of ***Ongwen and Anor Vs Ocaya Michael supra*** is distinguishable from the present case as it was concerned with witness statements vide Order 18 rule 4 of the Civil Procedure Rules and witness disqualification but not affidavit evidence. He prayed court overrules the prayer sought in respect of the 2<sup>nd</sup>  
20 respondent's affidavit.

In regard to the transport refund to Emoit counsel submitted that his cross examination was in the interest of justice as court was able to get issues in detail that the applicant never wanted to be brought to the court's attention.

25 He further submitted that under the cited provision of Order 19 rule 2(1) & (2) of the CPR court is invited to find and hold that the prayers advanced by counsel for the applicant abide the outcome of the ruling taking due consideration of the nature of the application.

30 With regard to the main application counsel for the respondents submitted that he did not concur with the reasoning of the applicants on the law under which this application was brought. He submitted that no

5 court has ever made a determination that the Echimu Charles is unable to  
manage his own affairs and during cross-examination, this fact was clearly  
brought out by Echimu Charles who authored the medical report and  
clearly stated that Mzee Echimu was an involuntary patient whose  
perception, cognition and thoughts were never assessed and his mental  
10 status assessment was never carried out.

Basing on the foregoing, counsel invited court to make a finding on the  
following issues;

- 15 (i) Whether the psychiatric assessment report for Echimu Charles  
IP No. 338 of 2021 dated 10/02/2021 was made under section 24  
of the Mental Health Act 2019 or section 60 of the Mental Health  
Act?
- (ii) Whether the legal procedures envisaged in section 24 of the  
Mental Health Act 2019 or section 60 of the Mental Health Act  
were fulfilled?
- 20 (iii) Whether the Applicant filed this application in the interest of  
Echimu Charles or to satisfy his personal interest?
- (iv) Remedies available.

On issue (i) counsel submitted that the psychiatric assessment report that  
the applicant is solely relying upon was made under section 24 of the  
25 Mental Health Act which makes provision for involuntary assessment,  
admission and treatment.

Counsel relied on Principle 4 of the Principles for the protection of persons  
with mental illness and improvement of mental health care and section 24  
of the Mental Health Act. Counsel further submitted that he is alive to the  
30 fact that order 32 rule 15 of the CPR enables the application of rules 1-14  
of Order 32 where a person is adjudged to be of unsound mind or found  
by court on inquiry to be incapable of protecting his interest, however, in

5 the present case no inquiry has ever been carried out in relation to the alleged infirmity of Echim Charles.

In making this assertion, Counsel relied on **Misc. Cause 026 of 2017, in the matter of an application adjudging Khalid Latiff a person of unsound mind** and **Misc. Cause 003/2018 in a matter**  
10 **of an inquiry into the suspected unsound mind of Amanyire Mark.**

On issue (ii) counsel submitted that the detailed procedure under section 24 and 60 of the Mental Health Act were never fulfilled. Counsel based this further on principle 5 of the Principles for the protection of persons  
15 with mental illness and improvement of mental health care.

Counsel relying on **Misc. Cause No. 18 of 2015 relating to the estate of Kiggundu James a person of unsound mind**, submitted that that the report marked annexure A3 does not amount to court adjudication that Echim Charles is a person of unsound mind and was  
20 issued in contravention of the law with the sole purpose of opening up Echim Charles to fraudulent people like the applicant who is advancing his personal selfish interest.

Counsel additionally submitted that the medical report is full of contradictions and inconsistencies given the fact that the nature of the  
25 report is such that one is left wondering whether Emoit just noted he condition of the patient and ever carried out any assessments to the medical standard required.

Counsel additionally submitted that in absence of a mental state examination in relation to perception, cognition, thoughts of the patient  
30 and mental status assessment it would be speculative of court to rely on the report which is inconclusive. That this was so because no court had

5 ever made assessment and determination that Echimu Charles as not  
being able to manage his own affairs so as to invoke the operation of  
**section 60(6) of the Mental Health Act, 2019.**

On issue (iii) counsel submitted that the application is primarily filed in  
hot pursuit of personal interest of the applicant as opposed to Echimu  
10 Charles.

Counsel stated that the applicant averred that his father began  
experiencing mental breakdowns in 1994 when his mother died which is,  
however, a period of 28 years before the application was filed. He further  
submitted that from the minutes dated 22/01/2019 adduced by the  
15 applicant in court it is clear that Mzee Echimu and other family member  
were never invited to the meetings. That the personal interest of the  
applicant is further shown by the certificate of registration of the business  
name which he registered solely in his name.

He submitted that the personal interest of the applicant is further shown  
20 by the various annexures to the 1<sup>st</sup> respondent's affidavit in reply where he  
misrepresents himself as the father of the 1<sup>st</sup> respondent and also the  
landlord of Plot 17 Gweri road.

That the same annexure B which is an intention to sue bears the name  
Simon Peter Echimu t/a Egwau s/o Elabu.

25 That the applicant was not endorsed by the family members to file this  
application as alleged and the permission attached to the application was  
signed on 29<sup>th</sup> September 2021 by Inwaku Florence, Eegu Samuel, Elasu  
Mackay and Adongo Stella on the same date this application was filed.

Counsel finally prayed that the application is dismissed, an order or  
30 pronouncement specifically striking off the issue of plot 17 Gweri Road as  
it does not form part of the affairs or estate of Echimu Charles and in the

5 alternative the court should appoint Egwau John Robert and Anyago  
Florence to manage the affairs of Echimu Charles and costs of the  
application be provided.

In rejoinder, counsel for the applicant submitted that the application is  
competent under the laws it was brought and the medical report is  
10 sufficient to support the grant of this application. Counsel reiterated his  
earlier submissions and further submitted that the submissions by  
counsel for the respondents on observation of the patient's current state  
of mind are pure hearsay as counsel does not have the required  
qualification to make a psychiatric medical procedure or competence to  
15 challenge the report.

Court's findings:

I will first consider the preliminary issues raised by counsel for the  
applicant.

20 First with regard to the regurgitation of the 1<sup>st</sup> respondent's affidavit by  
the 2<sup>nd</sup> respondent. I find that no fatality or injustice was occasioned to  
the applicant by it.

With regard to the costs borne by Emoito to testify in court, I agree with the  
respondent's submissions that they will have to abide the outcome of the  
ruling of court in respect of this. Accordingly, the two preliminary issues  
25 are overruled.

In regard to this application, I note that it was brought under **section  
60(1) & (3) (b) of the Mental Health Act, section 98 of the Civil  
Procedure Act, section 33 of the Judicature Act, order 32 rules  
1(1), 4, 15, 19 & 23 and Order 52 rules 1 & 2 of the Civil Procedure  
30 Rules.**

5 However, there is contention by both counsel that is premised on section **60 (1) & (3) (b)** and **section 24 of the Mental Health Act 2019**.

**Section 24** is a lengthy one that provides details for involuntary assessment, admission and treatment. It provides for what amounts to an involuntary patient, who may request that that the patient be assessed and  
10 treated and the procedures to be followed.

**Section 60** on the other hand provides for the capacity and competence of a person with mental illness.

**Section 60 (1)** provides that a person with mental illness has the right to enjoy legal capacity on equal basis with others in all aspects of life.

15 Subsection 2 provides that a person with mental illness has the right to manage his or her affairs.

Subsection 3 provides that notwithstanding subsection (2), a person with mental illness may be stopped from managing his or her affairs where-

20 (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.

25 Counsel for the applicant is relying on section 60(1) & (3)(b) for the orders sought. Counsel for the respondents on the other hand finds this improper arguing that Echimu Charles had not yet been adjudged a person with mental illness by any court.

Counsel also seeks to rely on section 24 because from the evidence led in court Echimu Charles was an involuntary patient and the report made by  
30 Eموit resulted from this involuntary admission and assessment.

5 My interpretation of **section 60 of the Mental Health Act** is that a person with mental illness has the right to enjoy legal capacity and manage their own affairs unless it is determined otherwise.

**Section 60(3)** mandates either the **Uganda Medical Advisory Board** or a **competent court** to make this determination.

10 This assessment as per subsection 6 is restricted to evaluating the capacity of a person with mental illness to determine the ability of managing his or her own affairs.

Clearly before the board or competent court can make this determination the person must undeniably be mentally ill which requires proof by the  
15 applicant and upon determination that the mentally ill person is incapable of managing their affairs, the court may then appoint a personal representative under to manage the estate of the mentally ill person and or be their guardian as provided under **section 62 of the Mental Health Act**.

20 This means that before an applicant can approach a court for an order appointing them to manage the mentally ill person's affairs they must first seek court's decision that person was mentally ill and incapable of managing his own affairs.

The applicant in the instant applied for orders appointing him the  
25 personal representative of Echimu Charles and leave to act as his next friend in legal actions.

The applicant then goes on to adduce the medical report as proof that Echimu Charles is mentally ill and further adduces in his affidavit that the father's property specifically plot 17 Gweri road is at risk from actions by  
30 third parties including the 1<sup>st</sup> respondent.



5 In my considered view, it is clear that the applicant is required by law to have first sought an order of court that determines that Echimu Charles is mentally ill and unable to manage his own affairs before seeking orders to manage the estate and be his next friend.

The above notwithstanding, the applicant sought to prove that Echimu  
10 Charles was mentally ill using primarily the report authored by Emoit John Ekol.

This psychiatric assessment report for Echimu Charles dated 10/02/2021 indicates Emoit John Ekol in his capacity as a principal psychiatric clinical officer and head of mental health services as the author.

15 Emoit writes that Echimu Charles is an 82-year-old male who was brought to the unit for psychiatric assessment and medical report because he was behaving abnormally for some time now and he would present erratic and unusual behaviours characterised by forgetfulness, being irritable, not sleeping at night and speaking uncoordinated words.

20 He further observes that Mzee Echimu was readmitted to the mental health unit accompanied by his elder brother, wife and son because of talking to himself, sitting under the sun for long, gesturing and wondering far from home and his wife also reported him to be very destructive of property.

25 The report then goes to indicate Mzee's past psychiatric history and states that this was his fourth admission, first was in 1992, second 1993 and third 1995.

The report under mental state examination indicates that he was an  
30 elderly man, dressed in clean clothes, dirty sandals, long dirty finger nails and continuously laughing to self.

5 Psychomotor activity was reduced and his speech is irrelevant and uncoordinating. His mood and affect are flat.

It further states that perception, cognition, thoughts not assessed as patient was not stable to be engaged in a full assessment. It was noted that he lacks sleep.

10 And finally the investigations done included B/S for Malaria, RCT and CBC all negative.

Emoit then concludes that based on the above findings, Mzee Echimu was presented with a major mental health disorder (schizophrenia), R/O Manic episode and therefore confirmed by him on behalf of the Hospital  
15 Director to be a person of unsound mind.

Emoit then makes recommendations that Echimu Charles is kept in the Ward and given medication and also a mental status assessment be carried out when he is stable.

20 During cross-examination it was established that this mental status assessment was never carried out. Eموit also stated that in psychiatry you cannot make a diagnosis as patterns of symptoms keep on changing and the diagnosis can change according to the assessment.

The question that arises from the foregoing is that without mental status assessment of Mzee Echimu Charles how did Eموit come to the  
25 conclusion that Echimu was schizophrenic?

And if indeed a diagnosis changes with the patterns of symptoms shown by a patient, can this court rely on a report made in February 2021 over a year ago to find Mzee Echimu Charles a mentally ill person, especially when such a report was not based on a mental status assessment?

5 In my considered opinion, I would find that the medical report relied  
upon by the applicant wanting in relations to Mzee Echimu mentally  
illness since his mental status assessment was not carried out. There ought  
to have been report in which a proper mental status assessment was  
carried, given the fact that the Mzee Echimu Charles is claimed to have  
10 been admitted in January 2021.

It would thus be unfair and unjust for court to rely on an inconclusive  
report adduced by the applicant to determine that Mzee Echimu Charles  
is unable to manage his affairs.

Having determined thus I see no reason to go into the provisions of section  
15 24 of the Mental Health Act and whether the procedures provided therein  
were followed.

I further find that the applicant has not brought this application in good  
faith or in the interest of his father for the following reasons;

a) The applicant admitted that he never invited his stepmother or her  
20 children to any of the meetings where they discussed the health of  
Mzee Echimu or the so called family business and this treatment was  
also extended to the respondents. The applicant well aware that his  
father had two wives selfishly ignored the 2<sup>nd</sup> wife's children in any  
planning for the Echimu Charles' estate which also affects them, in  
25 fact the applicant confirmed that the land at Obutei Arapai is  
currently occupied by children of both Echimu's wives. The  
applicant in his evidence excludes the 2<sup>nd</sup> wife and her children from  
handling the affairs of Echimu Charles and claims it's only the first  
wife's children. And this extends to the authority he claims he got  
30 from the family to bring this application, the authority excludes  
most of his siblings and is countered by a letter attached by the first  
respondent in where Mzee Echimu's clan finds the applicant an unfit

5 person to manage Mzee Echimu's estate and appoints the 1<sup>st</sup>  
respondent as a responsible person and it should be noted that the  
applicant does not refuse this letter his only contention is that the 1<sup>st</sup>  
respondent has not done anything about his appointment. It is also  
interesting as brought out by the applicant's cross-examination that  
10 the children of the 2<sup>nd</sup> wife were never involved in the admission and  
treatment of Echimu Charles, the applicant stated that it was him,  
Inwaku Florence and Eegu Samuel all children of the first wife who  
gave a background on Echimu Charles' health.

15 b) The applicant throughout his application focuses on the  
proprietorship of Plot 17 Gweri road and how the same belongs to  
his father and should be protected from the 1<sup>st</sup> respondent, however,  
he does not adduce any evidence that property belongs to his father.

20 c) The business name Echimu Charles t/a Egwau s/o Elabu which  
business he claims his father started in 1972. He failed to prove this  
as well, instead as seen in the certificate of registration, the applicant  
registered Egwau Elabu Family Enterprise on the 15<sup>th</sup> of February  
2019 and the statement of particulars indicates him as the sole  
partner yet it also indicates that the business commenced in 1972-  
01-01 more than a year before he was born. And these forms are not  
25 for business name renewal as claimed by the applicant but  
registration.

The applicant, as rightfully submitted by counsel for the respondents,  
appears to be advancing his personal interests through this application  
and not the interest of his father given the revelations that he had invited  
30 not invited any of the family members to meetings held concerning his  
property and apparent business name.

5 From the foregoing, I find that it has not been conclusively proved that Mzee Echimu Charles is mentally ill and so the orders sought herein by the applicants cannot at this stage be granted.

Furthermore, basing on the fiduciary relationship that the orders sought by the applicant would create between him and Mzee Echimu Charles, I  
10 would find that unless proper process is followed with all concerned members of Mzee Echimu being in agreement, it would be erroneous for this court to grant the orders sought as this would not be in the interest of justice.

Also, the other remedies sought by counsel for the respondent with regard  
15 to appointment of the first respondent as manager of the estate and the declaration with regard to Plot 17 Gweri Road cannot be determined within the sphere of this application.

The applicant is advised to follow the proper process for the declaration that Mzee Echimu is a person who is not capable of managing his affairs  
20 and in doing so the involvement of all interested family members should be assured to avoid any future mismanagement of the estate of Mzee Echimu, if at all an order were to be granted as such.

The application is accordingly dismissed with costs to the respondents.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

18<sup>th</sup> October ,2022