

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. CAUSE NO. 0054 OF 2023

IN THE MATTER OF MWESIGE RICHARD, A PERSON WITH MENTAL ILLNESS

AND

IN THE MATTER OF AN APPLICATION FOR THE MANAGEMENT OF AN ESTATE OF A PERSON WITH MENTAL ILLNESS BY MUSINGUZI RONALD NKOJO (APPLICANT)

MUSINGUZI RONALD NKOJO ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERUS

MWESIGE RICHARD ::::::::::::::::::::::::::::::::::::::: RESPONDENT

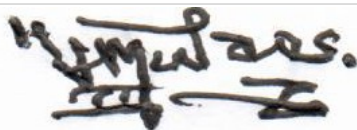
BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

This ruling resolves the motion by Mr. Musinguzi Ronald Nkojo which was brought citing Section 60(3)(b) of the Mental Treatment Act 2019, Section 98 of the Civil Procedure Act, 33 of the Judicature Act and Order 52 rules 1 & 3 of the Civil Procedure Rules for orders that:

1. An order be issued adjudging Mr. Mwesige Richard to be suffering from mental illness.

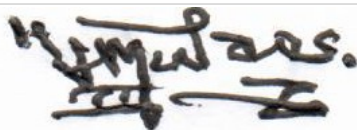


2. An order issues appointing the applicant as a personal representative of the Estate of Mwesige Richard (patient).
3. Any further orders Court deems necessary and appropriate in the circumstances.

Grounds of the application:

6 The application is premised on the grounds in the application and the supporting affidavit deponed by Mr. Musinguzi Ronald Nkojo, the applicant which in brief are:

- 9 1. That the applicant is a brother to the patient (Mwesige Richard). That ever since he become mentally disturbed, it is the applicant who has been looking after his children to wit: Kahunde Lisa, aged 13 years; Ajuna Leone, aged 12
12 years; both studying at Treshade Mixed School; and Katusiime Limah aged 5 years at God's Care Nursery School, Mugusu, Kabarole District.
- 15 2. That Mwesige is believed to be suffering from a mental illness characterized by insomnia and frequent hallucinations, which is presumed to have been progressing since 2013 with no signs of quick recovery in spite of the
18 treatment.
- 21 3. That the patient has since developed tendencies of withdrawing from his family as a result of his consistent ailment and is unable to make sensible decisions as he keeps promising money to the people he meets on the way. That the applicant has a number of obligations but currently has no property
24 save for his savings with NSSF under employment No. 7717800089162, with FINCA as the employer.



4. That he abandoned his job and has of late been seen selling household belongings at a a give away price and was chased from the rented place.
5. That medical advice was sought from specialists from Fort Portal Regional Referral Hospital where the patient continues to receive treatment from with minimal recovery progress.
6. That the application is brought for the benefit of the patient and his school going children. That it is fair and just that the application is granted.
7. That the patient is not an inmate at a mental hospital but resides at the family home in Kiseeru, Mugusu Town Council, Kabarole District.

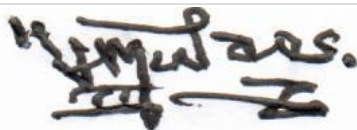
Issues:

I find the following as the issues at the heart of this application thus;

1. **Whether the Respondent is a person suffering from mental illness?**
2. **Whether the Applicant should be appointed a manager of the estate of Mwesige Riachrd, a person of with mental illness?**
3. **What Remedies available in the circumstances?**

CONSIDERATION BY COURT:

The correct citation is the Mental Health Act 2018. Section 2 of the Mental Health Act 2018 (herein referred to as the Act) defines “**mental capacity**” to mean the independent and informed cognitive ability to understand the nature and effects of one's decisions and actions. The Act defines “**mental illness**” as a diagnosis of a mental health conditions 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,

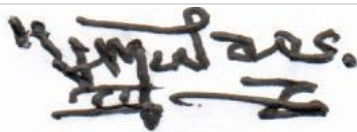


anxiety disorders, schizophrenia and addictive behavior due to alcohol/substance abuse among others.

3 The determination of one's mental status is provided for under Section 55 of the Act. Section 55 (1) & (2) of the Act provides that: "(1) A determination of the mental health status of a person shall be carried out, where it is required for
6 proceedings before a court of law or for any other official purpose and shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner." The Act restricts the determination of one's mental
9 status to a psychiatrist or a senior mental health practitioner.

In addition to the above, section 60(1) of the Act provides that a person with mental illness has the right to enjoy legal capacity on equal basis with others in all
12 aspects of life. Section 60(2) adds that a person with mental illness has the right to manage his or her affairs. Section 60(3) provides an exception 60(2) where it provides that; Notwithstanding subsection (2), a person with mental illness may be
15 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
18 an application by a relative or a concerned person, determines that the person is not able to manage his or her affairs.

Therefore section 60(2) of the Act guarantees the rights of a person with mental
21 illness to manage his affairs like others without discrimination. However, where it is established that a person with mental illness is unable to continue managing his affairs upon a determination by the medical board or an order of court, then he or
24 she may be stopped from doing so. The spirit of 60(3) was to avoid a person wasting his estate as a result of improper decisions taken due to his or her state of

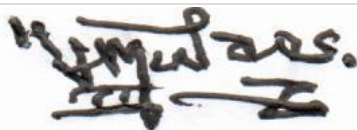


mind. Therefore, where court declares a person to be suffering from mental illness and incapable of continuing to manage his affairs, Section 62 gives the court
3 powers to appoint a representative to manage the estate of the person with mental illness. This can be a relative and where there is none court can appoint a representative as a public trustees under section 64(4) to manage the estate of a
6 person with mental illness.

Section 63 of the Act spells out the responsibilities of the person appointed by court as a representative and the limitations of his powers. Under Section 64, a
9 person so appointed is required to file an account of the properties that have come to him by virtue of his appointment and how he or she has managed the same.

In the present suit, the applicant attached a letter by Mr. Ibanda Martin, the
12 Principal Psychiatric Clinical Officer at Fort Portal Referral Hospital stating that the patient is known to him and was being treated at Fort Portal Regional Referral Hospital Since January 2023. That he had a mental problem called **Generalized**
15 **Tonic Chronic Seizure** with depressive features. That he was on medication. That the patient reports to have been suffering from the said disease for so many years but he delayed to approach the hospital for treatment. That the patient reported a
18 sequence of attacks which have since reduced.

The applicant indicated in the affidavit in support of the motion that Mwesige was his brother and had been behaving in a manner unusual to wit; promising people he
21 finds on the road money, selling household items cheaply and using the money to drink alcohol and sharing the rest with fellow drunkards. That he abandoned his job at Finca Uganda Limited. That he is incapable of managing his affairs. That the
24 applicant has no properties save for his savings with NSSF under employment No. 7717800089182. That he is receiving treatment with minimal signs of recovery.

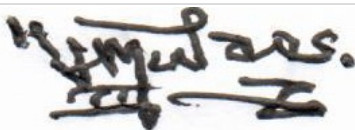


I have examined the report by Mr. Ibanda Martin, the Principal Psychiatric Clinical Officer and the supporting affidavit by the applicant. It is discernable there from
3 that Mwesige Richard suffers from a mental illness which the doctor generalized as
Tonic Chronic Seizure with depressive features. This illness has rendered his
faculties default of making any sensible decisions or managing his affairs and
6 those of his children who are still school going. It is plausible to conclude, that it
was this illness that caused him to abandon his job as an accountant where he was
later dismissed for absconding. It is thus my view that the said Mwesige is
9 incapable of further managing his estate and given his health condition, it is fair to
find alternatives to accesses his savings to salvage his medical condition and meet
his other obligations.

12 The applicant is a biological brother of the patient who has been looking after him
and his children. I believe he is better placed to manage the affairs of the patient
and seeing to it that he regains full control of his faculties. I therefore resolve
15 issues one and two in the affirmative.

Consequently, this application succeeds with the following orders:

- 18 **1. An order is hereby issued declaring Mwesige Richard (patient) a person
with mental illness as provided for under the Mental Health Act 2018.**
- 2. A declaration is issued confirming that the patient is unable to continue
managing his affairs given his mental status.**
- 21 **3. The applicant (Musinguzi Ronald Nkojo) is appointed as a personal
representative of the patient to specifically to pursue the patient's
savings with National Social Security Funds (NSSF).**

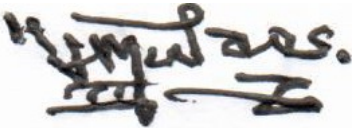


4. That after securing the same, the applicant is hereby directed to furnish
an account to court on how he has managed the said income within six
3 (6) months from the date of delivery of this ruling.

5. No order is made as to costs.

I so order.

6



Vincent Wagona
9 **High Court Judge**
FORT-PORTAL

12 **DATE: 31/05/2024**

