

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
MISCELLANEOUS CAUSE No. 0004 OF 2016

1. LEKU CHRISTOPHER	}		
2. ATIMAGO VICKY	}	APPLICANTS
VERSUS			
NATIONAL SOCIAL SECURITY FUND.....			RESPONDENT

RULING

When this application came before me for hearing on the 24th of June 2016, none of the applicants was present but Mr. Onencan Ronald was holding brief for Mr. Samuel Odoma, counsel for the applicants, with instructions to seek an adjournment.

Nevertheless, upon perusal of the pleadings filed by the applicants, I noted that the application is brought under the provisions of section 2 of the *Administration of Estates of Persons of Unsound Mind Act*, Cap 155, section 4 of the *Mental Treatment Act*, cap 279, Order 52 rules 1 and 3 of the *Civil Procedure Rules*, SI 71-1 and section 98 of the *Civil Procedure Act*, cap 71 and is supported by the affidavit of the first applicant, Mr. Leku Christopher.

I further observed the following anomalies; the application does not reference *The Administration of Estates of Persons of Unsound Mind (Procedure) Rules*, SI 155-1. As a result, it is brought by way of notice of motion whereas rule 3 (1) requires such applications to be made by summons in chambers. It does not have the following supporting documents required by rule 3 (2); an affidavit of kindred and fortune in Form A in the First Schedule to the Rules, a certificate in Form B in the First Schedule to the Rules, by the superintendent of the mental hospital where the person of unsound mind is a patient, or where the patient is not in a mental hospital, an affidavit by a medical practitioner stating that he or she has personally examined that person and that the person is still of unsound mind.

The application is instead supported by a photocopy of a letter, annexure “A” dated 15th May 2015, signed by a one Dr. Abiriga Jino of Masindi Hospital, stating that the patient suffers from *Bipolar Mental Disorder*, which condition is stated, in the same letter, to be “on and off”. There is no accompanying affidavit by this medical practitioner confirming that he has personally examined the patient since then (more than a year ago) and that the person is still of unsound mind. The medical certificate (Form B to the rules) required by rule 3(2) (c) envisages that the patient should have been adjudged to be a person of unsound mind. Such a decision is evidenced by issuance of a reception order under section 4 or 5 of the *Mental Treatment Act*, Cap 279. There is no such attachment to this application. Instead there is a “guardianship Order” (annexure “D”) issued by a Magistrates’ Court on 11th January, 2016. The *Mental Treatment Act*, does not provide for such orders and it is doubtful that the order can be construed as one adjudging the patient to be a person of unsound mind since there is no evidence on record or in the wording of the order that explicitly declares that it was made after an inquiry by that court, in which the magistrate personally saw the person suspected of being of unsound mind.

Furthermore, although the application was filed on 23rd March 2016 and the notice of motion issued for service on 5th April 2016, to-date, more than two months later, there is no proof of personal service upon the person of unsound mind, to whom the application relates, as required by rule 4 (1) of the said rules. The applicants joined National Social Security Fund, who in my view is not a necessary party to proceedings of this nature.

According to *Kayondo v Attorney General [1988 - 90] H.C.B 127*, court can on its own motion strike any pleadings where there is a defect apparent on the face of the record and where the defect cannot be cured by amendment.

It is my considered opinion that in light of the foregoing anomalies, this application is incurably defective and I, for that reason, strike out these pleadings with no order as to costs.

Delivered at Arua High Court this 24th day of June 2016

Stephen Mubiru
Judge.