

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0053 OF 2017

5 **ABIRIA EMMANUEL** **APPLICANT**

VERSUS

AFEMA RICHARD **RESPONDENT**

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Before: Hon Justice Stephen Mubiru

RULING

This is an application by Notice of motion under section 98 of the Civil procedure Act and
15 Order 52 rules 1, 2, and 3 of The Civil Procedure Rules. I note that the application ought to have
been made by way of Chamber summons *ex parte*, under section 2 of the *Administration of*
Estates of Persons of Unsound Mind Act, Cap 155 and rule 3 of *The Administration of Estates of*
Persons of Unsound Mind (Procedure) Rules, SI 155 – 1. Being presented by an un-represented
20 lay person, I have chosen to disregard this flaw in procedure. The applicant is the biological
father of the respondent and seeks an order appointing him as manager of the estate of the
respondent, on grounds that because of a mental illness affecting his mind, he has become
incapable of sound decision making and is now under the applicant's care and maintenance.

According to Rule 3 (2) of *The Administration of Estates of Persons of Unsound Mind*
25 *(Procedure) Rules* an application of this nature should be supported by; an affidavit of kindred
and fortune and 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, as well as an order of a
Magistrate' by which the respondent was adjudged a person of unsound mind. Although rule 4
(1) of *The Administration of Estates of Persons of Unsound Mind (Procedure) Rules* requires
30 personal service, this requirement was dispensed with within the terms of Rule 4 (2) by court at
the hearing of the application, since the respondent appeared in person together with the
applicant.

Section 1 of *The Administration of Estates of Persons of Unsound Mind Act* defines a person of unsound mind to mean, “...any person adjudged to be of unsound mind under section 4 of the *Mental Treatment Act* or any person detained under section 113 or 117 of the Magistrates Courts Act.” A person is deemed to be of unsound mind for purposes of these proceedings if he or she is afflicted by a total or partial defect of reason or the perturbation thereof, to such a degree that he or she is incapable of managing himself or herself or his or her affairs. This is the standard suggested in *Whysall v Whysall* [1960] P. 52 where Phillimore J, expressed the following opinion as to the degree of insanity which had to be found: “If a practical test of the degree is required, I think it is to be found in the phrase “incapable of managing himself and his affairs” and that the test of ability to manage affairs is that to be required of the reasonable man. The elderly gentleman who is no longer capable of dealing with the problems of a “take-over bid” is not, in my judgment, to be condemned on that account as “of unsound mind”.

According to the decision in *Re Cathcart* [1892] 1 Ch. 466 at page 471, Lindley LJ, the test is whether the person’s insanity is so marked and of such a nature that he is not able to manage himself and his affairs. It is necessary to consider his position, and what management is wanted in the particular case, and whether his friends and relatives are bestowing such care and management as are required. In considering the reasonableness of taking hostile legal proceedings against an alleged lunatic, it is very material to ascertain whether he could or couldn’t be brought to realize his own position and submit himself to the care of others.

The applicant must provide some cogent evidence, tending to prove that a person is mentally unsound. Once the court is so satisfied then it can go on to ahead to consider whether the applicant has also provided cogent evidence, tending to prove that a person is incapable of managing herself and her affairs. No doubt such considerations may be simultaneous but the court should consider them separately, bearing in mind that it is always for the applicant to prove her case on a balance of probabilities. Such a determination is important so that others may not be in a position to take advantage of the Respondent. It is only when satisfied that the two limbs are satisfied that the court would be justified to make an order appointing a manager of the estate of the respondent.

The applicant has submitted a medical report dated 4th December, 2017, indicating that the respondent suffers from Psychotic Depression associated with extreme sadness and inability to enjoy life coupled with suicidal thoughts. It is therefore undisputed that the respondent has some form of mental illness which has caused or contributed to the deterioration of his cognitive functions, to a degree where he is no longer capable of making rational choices or competently manage his own affairs.

Based on the clinical evaluation that was submitted to this court detailing the nature, possible duration and reasons why the respondent is unable to manage his own affairs, I find that the respondent is incapable of managing himself and his affairs. It is my settled opinion, having considered the material before me that the respondent suffers from infirmity of mind, of such a character that prevents him from safeguarding his interests. He is no longer capable of making decisions that need to be made in daily life about his personal welfare, financial affairs and medical treatment. His mental capacity requires substituted decision-making rather than a supported decision-making arrangement. For that reason the applicant has proved on the balance of probabilities that it is necessary to appoint a manager of the respondent's estate.

The next question is whether the applicant is a fit and proper person to be so appointed manager. The respondent's condition of impaired or diminished mental capacity exposes him to abuse, neglect and exploitation. For the applicant to be found a suitable manager of his estate, court should be satisfied that he is capable of preventing the potential abuse, neglect and exploitation of the respondent. He should be capable of taking control over the respondent's real and personal estate, his personal welfare, and make decisions in the best interests of the respondent and his dependants. He should be an adult of sound mind and his interests should not be adverse to those of the respondent, in the estate for which he proposes to act as manager.

Section 2 of *The Administration of Estates of Persons of Unsound Mind Act*, empowers court to appoint, among several classes of people, a relative of a person of unsound mind to be the manager of the estate of such person. I had the opportunity of observing the applicant in court during the hearing of the application, I have perused his affidavit in support of the application, I have considered the fact that he is the biological father of the respondent and that he now cares

for him and the respondent is entirely dependent on the applicant in all his humanly needs. I am unable to find any adverse interests between the applicant and the respondent. I have no reason to doubt the applicant's ability to prevent the potential abuse, neglect and exploitation of the respondent, take control over the respondent's real and personal estate, his personal welfare, and to make decisions in the best interests of the respondent and his dependants. For that reason, I hereby appoint the applicant, Mr. Abiria Emmanuel as Manager of the estate of his son, Mr. Afema Richard (a person of unsound mind).

Furthermore, rule 9 (1) of *The Administration of Estates of Persons of Unsound Mind (Procedures) Rules* requires every manager appointed to give a bond to the court, with or without sureties, unless the court directs otherwise. The bond is in essence security given by the manager for due administration of the patient's estate. The applicant should, in the circumstances execute a non-cash bond of Uganda shillings 5,000,000/= (five million) for the due administration of the respondent's estate. This bond will be without sureties.

In the execution of his obligations, the applicant shall not without special, express permission of this court, mortgage, charge, or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of which the estate may consist, or lease any such property for a term exceeding 5 years or invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has a direct personal interest, nor purchase immovable property, without the prior consent of the court.

I further order the manager to file in this court within three (3) months from today an inventory of the property belonging to Mr. Afema Richard (a person of unsound mind) and of all such sums of money, goods, and effects as he will receive on account of the estate together with a statement of all the debts due from and credits due to Mr. Mr. Afema Richard (a person of unsound mind). The costs of this application are not to be charged to the estate of the respondent, otherwise there is no order as to the costs of this application.

Delivered at Arua this 7th day of December, 2017

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Stephen Mubiru
Judge.
7th December, 2017