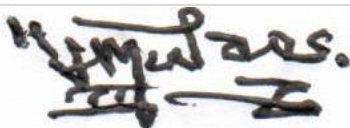


2. That the costs of taking out the application be provided for.

The application is supported by the two affidavits, that is, the affidavit of Ibanda Martin, a psychiatrist at Buhinga Referral Hospital and another affidavit by Birungi Grace, a sister to the patient/Respondent where it was contended as follows:

- 5
1. That Ibanda Martin has been in charge of medical examination of the Respondent who has always been taken for review at Buhinga Hospital since 2017. That the Respondent has a mental illness that brings him schizophrenia with drug abuse. That it is a major illness which runs a downward course affecting the normal health and functioning of the patient.
- 10
2. That he was examined and found to be of unsound mind and a report was attached to that effect. That because of his mental health, the Respondent is unable to take care of himself, his mother and his affairs as such the Applicant should be appointed as a manager of his estate.
- 15
3. That the estate of the Respondent is stated in the schedule and he is not entitled to any other estate: He has savings with NSSF amounting to UGX 3,562,000/= . He has no credit on his Bank Account No. 1300009212 in Housing Finance (Kabarole) Branch.
- 20
4. That the debts of the Respondent (patient) and security thereof are indicated in the schedule: He owes Badyega Rose & Namara Costa UGX 100,000/= for the purchase of maintenance needs.
 5. That it is necessary that a manager is appointed to manage the estate of the Respondent and the Applicant is qualified to perform such duties and as such
- 25

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she should be appointed as a manager. That the maintenance costs of the Applicant amount to UGX 1,000,000/= a year.

6. That the Respondent has relatives who depend on him to wit; Bamanyisa Stella aged 65 years. That the patient has never made a will and the Applicant
5 requires the appointment to manage his estate.

7. That the Applicant will administer the estate according to the law and render an account of all property real or personal which shall come into her possession, custody or control as its manager and give such security as court
10 may require for the due administration of the estate.

Representation and hearing:

Counsel Mirembe Gerald represented the Applicant and proceeded by way of written submissions which I have considered.

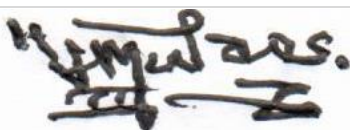
15 Issues:

- 1. Whether the Respondent is a person of unsound mind.**
- 2. Whether the Applicant should be appointed a manager of the estate of Rubongoya Patrick, a person of unsound mind.**
- 3. Remedies available to the parties.**

20

Issue No. 1: Whether the Respondent is a person of unsound mind:

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

Therefore, for one to be found to be of unsound mind, his or her mental capacity should be one that does not allow him or her to take independent decisions or to comprehend the consequences of his or her decision or the ordinary nature of things.

10

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:

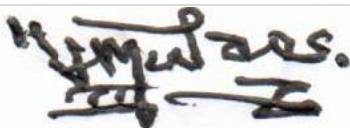
“(1) A determination of the mental health status of a person shall be carried out, where it is required for proceedings before a court of law or for any other official purpose.

15

(2) A determination under subsection (1) 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 status to a psychiatrist or a senior mental health practitioner. The new Act seems to alter the old position in **Misc. Cause No. 18 of 2015 (in the matter of the Estate of Kiggundi James (person of unsound mind))** where it was a requirement to first secure an order of court from the magistrate's court declaring a person to be of unsound mind.

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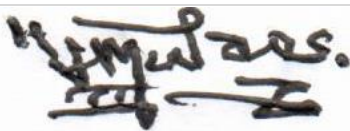


In this case the affidavit evidence of Mr. Ibanda Martin shows that he is a psychiatrist currently stationed at Muhinga Referral Hospital and that he has been in charge of the medical examinations and reviews of the Respondent who was brought for review at Buhinga Referral Hospital by the Applicant. The evidence further shows
5 that the Respondent has mental illness that brings him schizophrenia with drug abuse. Further that the major mental illness runs a downward course affecting the normal health and functioning of the patient. That he examined the patient and found him to be of unsound mind and attached the medical reports to that effect (Annexure B).

10

I have critically examined the medical reports. The medical report that is described as a MEDICAL CERTIFICATE indicates that the patient (Respondent) was attacked sometime in 2017 and was enrolled into treatment at Buhinga Referral Hospital under file no. 5/17; that he was treated for schizophrenia with drug abuse which has
15 existed for the last 6 years. The facts indicating insanity were indicated as; perpetual disorders especially auditory hallucinations, thought disorders (bizarre thoughts) loosening of association, dysfunction in both physical and mental functioning.

I also took the trouble to examine the patient during identification. He stated that he
20 was a porter at Kichwamba Technical College and stopped working in 2017 when he got diagnosed with a mental illness. That he gets attacks which cause him to see so many (imaginary) people talking and shouting. That the day he was brought to court he was stable but if attacked, he would not know what happens next. That he wanted his sister (the Applicant) who was looking after him to get his savings with

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NSSF and look after him. That he was not working and he was weak and stays home sleeping and when she falls sick he does not eat or take drugs.

5 I personally observed the Respondent and the manner in which he answered the questions put to him. I also looked at his general outlook, the way he was looking at me and acting in court. His total demeanor exhibits a person who is not in full control of his faculties.

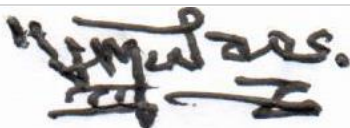
10 I am satisfied based on the medical evidence and personal observation of the Respondent in court, that the Respondent (patient) is a person of unsound mind and I declare him to that effect. I therefore find and declare that the Respondent is a person with mental illness who is not capable of managing his affairs.

Issue No. 2: Whether the Applicant should be appointed a manager of the estate of Rubongoya Patrick, a person of unsound mind.

15 Section 61 of the Act allows a person of unsound to appoint a personal representative to take decisions on his behalf. This provision in my view is only applicable where the illness is may be seasonal where the patient gains moments of soberness or where he can comprehend the decisions he is taking. Otherwise a personal with mental illness as defined under the Act may not be in position to take sound decisions.

20 Where a patient is mentally ill and cannot take decisions, then court can appoint a personal representative to manager his or her affairs under section 62 of the Act. Section 62 provides thus:

(1) Where an order is made under section 63 that a person with mental illness is not capable of managing his or her affairs, or where a person with mental

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illness does not appoint a personal representative, court shall appoint a suitable relative to be his or her personal representative.

(2) A personal representative shall-

(a) manage the estate of the person with mental illness; or

(b) be the guardian of the person with mental illness and of the dependents of that Person.

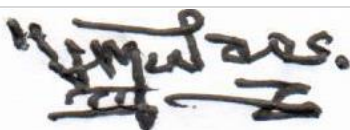
(3) Where court determines that a person with mental illness is capable of managing himself or herself and that that person is not dangerous to himself or herself or to others and is not likely to act in a manner". that is offensive to public decency, the court may make an order only for the management of the estate of that person and not for guardianship.

(4) Where court cannot identify a relative, suitable to manage the affairs of the person with mental illness, the court shall appoint as a personal representative, the Public Trustee, to manage the affairs of the person with mental illness.

(5) The personal representative or public trustee shall act in the best interest of the person with mental illness, to the extent determined by court to- (a) manage the estate of the person with mental illness; and (b) ensure proper care of the person with mental illness and the dependants of that Person.

(6) Where, upon review, a person with mental illness is found capable of managing his or her affairs, the court shall revoke the order made to the personal representative or Public Trustee'

The above provisions empower court to appoint a representative to manage the affairs of a person with mental illness who is not capable of managing his or her

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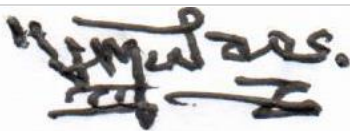
affairs. Such person can be a relative or a public trustee where a relative cannot be found.

5 Section 2 of the Act defines a relative to include a spouse, parent, grandparent, child, sibling, uncle or aunt, of a person with mental illness, whether by blood, marriage or a relationship established by law.

10 In the present case, the Applicant, Birungi Grace indicated that the patient is a young brother aged 31 years, single and not an inmate in a mental hospital nor detained in prison and resides at Butudya Village, Kihindo Parish, Kicwamba Sub county, Kabarole District and he is under her care as a person of unsound mind. That she is qualified to manage the estate of the patient and as such she should be appointed a manager.

15 During an inquiry by court, she stated that the patient has been under her care for the last 6 years and she has been fending for his living. That she will manage the estate of the patient with care at the best interest of the patient. I have considered the application and the supporting affidavits and the evidence secured from the Applicant and Respondent. I believe it is in the interests of justice that the Applicant
20 is appointed as a personal representative of the Respondent (patient) who shall manage the estate and follow up on the patient's savings with NSSF so that he can get proper treatment. The Respondent needs help and the Applicant has been doing so for some time before she was appointed by court. I believe appointing her will ease her journey to help a brother recover.

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I am therefore satisfied that the Applicant is a fit and proper person to be appointed a representative of the Respondent to manage the estate of the Respondent and she is hereby appointed as such.

5 **Issue No. 3: Remedies:**

The Applicant contended that the Respondent is entitled to entitled to NSSF savings of UGX 3,562,000/= and has a debt of UGX 100,000/=. That this is what forms part of the estate that the Applicant is meant to administer. I therefore find that this is the only property and debt due to the Respondent.

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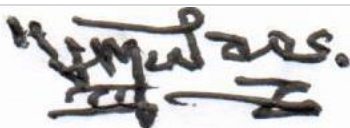
This application therefore succeeds with the following orders:

15

1. **The Applicant BIRUNGI GRACE is hereby appointed as the Personal Representative and Manager of the Respondent RUBONGOYA PATRICK to manage his estate and authorized to collect and administer his NSFF savings of Uganda Shillings 3,562,000/= or such amount as may be rightfully and lawfully determined by the NSSF.**
2. **That after securing the NSSF savings of the Respondent, the Applicant shall pay the debt of UGX 100,000/= owed from the Respondent.**
3. **That the Applicant shall use the NSSF savings of the Respondent to ensure proper care of the Respondent and his dependants and in this regard, shall make decisions taking into account the best interest of the Respondent.**

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4. That the Applicant shall file an account of how she has managed the estate within six months from the date of this ruling.

5. I make no orders as to costs.

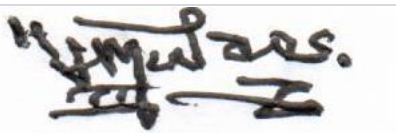
5 It is so ordered.

DATED at High Court Fort-portal this 31st day of May 2023

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31.05.2023

10 Vincent Wagona
High Court Judge

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