

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

MISCELLANEOUS CAUSE 05 OF 2013

IN THE MATTER OF ATIM RACEAL LUKWIYA (AN ADULT) A PERSON OF UNSOUND MIND

AND

**IN THE MATTER OF AN APPLICATION BY RUGASIRA WILLIAM RONALD TO BE APPOINTED
LEGAL MANAGER OF THE ESTATE OF ATIM RACHEAL LUKWIYA (AN ADULT)**

AND

**IN THE MATTER OF THE ADMINISTRATION OF ESTATES OF PERSONS OF UNSOUND MIND ACT
CAP 155**

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application by chamber summons *ex parte*, under section 2 of the Administration of Estates of Persons of Unsound Mind Act cap 155 and rules 3(1), (2)(a) & (4) of the Administration of Estates of Persons of Unsound Mind (Procedure) Rules SI 155 - 1 . The applicant is seeking the following orders:-

1. That the applicant be appointed legal manager of the estate of Atim Racheal Lukwiya.
2. That this honourable court dispenses with the service of this application upon the said Atim Racheal Lukwiya
3. Costs of this application be in the cause.

The grounds of the application are that:-

1. The applicant is the husband to Atim Racheal Lukwiya (hereinafter referred to as the patient) having got legally married on 7th day of January 2011 at Watoto Church.
2. In July 2012, the patient was diagnosed with a medical condition known as Bipolar Affective Disorder.
3. Subsequently, in November 2012, the applicant filed miscellaneous application no. 164/2012 in the Chief Magistrate's Court of Mukono at Mukono seeking to have the patient adjudged a person of unsound mind and the same was granted on 13th December 2012.

4. The patient is not an inmate in a mental hospital nor detained in a prison but is at present residing with the applicant in Jinja – Musindye, Goma sub county Mukono District and is still a person of unsound mind.
5. It is in the interests of justice that the application is granted.

The application is supported by the affidavit of the applicant, and other affidavits sworn by staff of Mulago Hospital, namely Emoit John a psychiatric clinic officer, professor Ssegane Musisi a psychiatric doctor who attended to the patient, and Dr. Noeline Nakasuja a consultant psychiatrist. The applicant attended court with the patient Racheal Atim Lukwiya, and their daughter.

The background is that the applicant is the husband of the patient Racheal Atim Lukwiya, the two having wedded at Watoto Church on 7th day of January 2011. After their marriage, Racheal was diagnosed with a medical condition known as Bipolar Affective Disorder. She was adjudged a person of unsound mind on 13th December 2012 on the application of the husband. The applicant now seeks this court to appoint him legal manager of the estate of Atim Racheal Lukwiya.

Learned Counsel Akurut Irene, after highlighting the affidavit evidence on record, submitted that the applicant is a fit and proper person to be appointed legal manager since the two are wedded, reside together, and have a daughter together. She reiterated the applicant's prayers and also requested court to dispense with the patient's need to give bond to court.

It is a finding of this court that the applicant is married to the patient Racheal Atim Lukwiya, as is evidenced by a copy of the marriage certificate attached to the applicant's affidavit as **A**. The patient was diagnosed to be suffering from Bipolar Affective Disorder in June 2012, as revealed by the affidavit evidence of staff of Mulago Hospital who attended to the patient, namely Emoit John a psychiatric clinic officer, professor Ssegane Musisi a psychiatric doctor, and Dr. Noeline Nakasuja a consultant psychiatrist.

The patient is still of unsound mind and is on medication, as revealed by the affidavit evidence of Noeline Nakasuja. The medical reports ascertaining the patient's medical condition are annexed to their respective affidavits. The patient was adjudged a person of unsound mind on 13th December 2012, as revealed by a copy of the court order annexed as **B** to the applicant's affidavit. This is corroborated in the affidavit of Emoit John. The applicant and the patient have a daughter Aineomugisha aged one year and eleven months. They reside together at their house in Jinja – Musindye, Goma sub county Mukono District. The applicant is willing and seeks to manage the patient's (his wife's) estate.

In the given circumstances, and on the adduced evidence, I am satisfied that the applicant is a suitable person to manage the patient's estate under the Administration of Estates of Persons

of Unsound Mind Act and rules made under the Act. Such order should be granted as it is in the interests of the patient and it is for her protection.

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he applicant's counsel also prayed this court to dispense with the need to give bond, and with service of the application on the patient.

On the issue of bond, rule 9(1) of the Administration of Estates of Persons of Unsound Mind (Procedures) Rules requires every manager appointed under rule 8 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 patient is vulnerable by virtue of her mental condition. There is need for this court to put in place reasonable mechanism for the protection of her estate. Much as the applicant is a husband to the patient whose estate he is desirous of managing, it is important to put in place a mechanism of ensuring due diligence and compliance in administering the patient's estate. The applicant himself undertakes in paragraph 9 of his affidavit that, among other things, he will give such security as the court may require for the due administration of the estate. The patient's estate, according to the schedule to the applicant's affidavit, concerns only her pensions/annuities/life policies from the National Social Security Fund. They amount to Uganda shillings 9, 597,227/= (nine million five hundred and ninety seven thousand, two hundred and twenty seven). The applicant should, in the circumstances pay a non prohibitive cash bond of Uganda shillings 2,000,000/= (two million) for the due administration of the patient's estate. This bond will be without sureties.

I note that the prayer to dispense with service of the application on the patient was contained in the same application. This prayer is overtaken by events. By the time the matter came up for hearing, the patient, had, indeed not been served, though, as the record of proceedings shows, she actually attended court with the applicant (her husband) when this application was being heard. Rule 4(2) of the Administration of Estates of Persons of Unsound Mind (Procedures) Rules provide that a registrar can dispense with the service of any notice of an application if he/she is satisfied that the person of unsound mind is incapable of understanding the notice, or that the service would be injurious to his/her health, or that service is impracticable or inexpedient.

In my opinion, the application to dispense with the serving of the patient should have been made to the registrar of this court before the hearing of the application, rather than including it as a prayer in the main application. It is no wonder that it was already overtaken by events by at the time it was addressed by this court in the main application. Addressing it at this time will just be for moot purposes. It is a well known principle of law that courts adjudicate on issues

which actually exist between litigants and not academic ones. Court orders must have practical effect and must be capable of enforcement. This court will not indulge in matters which are already moot. See *The Environmental Action Network Ltd V Joseph Eryan Civil Application No89/89/2005*; *Uganda Corporation Creamaries Ltd & Anor V Reamaton Ltd Civil Ref No. 11/1999*, Court of Appeal.

I accordingly make the following orders for the welfare and best interests of the patient:-

1. The applicant is appointed legal manager of the estate of Atim Racheal Lukwiya.
2. The legal manager of the estate of Atim Racheal Lukwiya will deliver to court an inventory of the said estate within six months of the date of this order and within a year furnish to court an account of the property in his charge, showing the sums received and disbursed on account of the estate and any balance.
3. The manager will pay to court a cash bond of Uganda shillings 2,000,000/= (two million), without sureties, for the due administration of the patient's estate.
4. Costs of this application will be met by the applicant.

Dated at Kampala this 19th day of December 2013.

Percy Night Tuhaise

Judge.