

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS CAUSE 18 OF 2015
IN THE MATTER OF THE ESTATE OF KIGGUNDU JAMES A PERSON OF
UNSOUND MIND
AND
IN THE MATTER OF AN APPLICATION UNDER SECTION 2 OF THE
ADMINISTRATION OF ESTATES OF PERSONS OF UNSOUND MIND ACT FOR THE
APPOINTMENT OF A MANAGER OF THE SAID PERSON'S ESTATE
BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application by chamber summons *ex parte*, brought under section 2 of the Administration of Estates of Persons of Unsound Mind Act cap 155, and rules 3(1) of the Administration of Estates of Persons of Unsound Mind (Procedure) Rules SI 155 - 1. The applicant **Sam Ssali Kiggundu** is seeking an order allowing him to manage the estate of his son **Kiggundu James** alleged to be of unsound mind.

The grounds of the application are that:-

1. The applicant is the father of **Kiggundu James** who is a male adult aged 43 years.
2. The said **Kiggundu James** has been mentally sick since 2003.
3. Despite treatment in several hospitals, including Butabika Hospital, the mental sickness of **Kiggundu James** has become incurable.
4. **Kiggundu James** has five infant children.
5. **Kiggundu James** and his infant children are under the care of the applicant.

6. **Kiggundu James** has a plot of land (kibanja) at Ntooke, Bugerere, in Kayunga District and savings with the National Social Security Fund (NSSF) which can be used to maintain him and his children.
7. The applicant is capable of looking after the said properties for the benefit of **Kiggundu James** and his infant children.

The application is supported by the affidavit of the applicant. The applicant attended court and was identified by his national identity card number 004560495. He was, in addition to his supporting affidavit, also interviewed on oath by this court. **Kiggundu James**, the alleged person of unsound mind, did not attend the hearing of this application. Learned Counsel Simeon Lutakome made oral submissions that the applicant should be allowed to manage the estate of his son especially by virtue of the letter of 13/11/2013 confirming **Kiggundu James** to be a mental patient, and since the applicant was clearly identified by his national identity card.

Section 2 of the Administration of Estates of Persons of Unsound Mind Act cap 155 provides that the court may appoint a manager of the estate of a person of unsound mind on the application of a superintendent or other person in charge of a mental hospital, the commissioner of prisons, or a relative of any such person of unsound mind. Section 1 of the same 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.*” (emphasis mine).

Rule 3(1) of the Administration of Estates of Persons of Unsound Mind (Procedure) Rules SI 155 – 1 requires applications for appointment of a manager to be supported by an affidavit of kindred and fortune in Form A of the First Schedule to the Rules; a medical 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 by the officer in charge of the prison where that person is detained; and if the person alleged to be of unsound mind is not a patient in a mental hospital or is not detained in prison, an affidavit by a medical practitioner stating that he or she has personally examined the person and that that person is still of unsound mind.

The applicant’s sworn affidavit and sworn oral testimony are to the effect that the applicant is the biological father of **Kiggundu James** who used to work as a chef in Kampala Sheraton Hotel;

that his son became mentally sick and has been receiving treatment at Mulago Hospital and Butabika National Mental Hospital; that his son was retired from the job and is now, together with his five children, depending on the applicant for his living and the children's maintenance; that the wife of his son has since abandoned the son; and that the son has a plot of land (kibanja) at Ntooke Bugerere Kayunga district and savings with NSSF. The applicant annexed to his supporting affidavit his identification documents, a letter from Makerere II Local Council Cell A addressed to the Manager NSSF recommending the applicant to be helped, letters from Consultants of Butabika and Mulago Hospitals, and NSSF printouts showing his son's savings at the NSSF. He also availed court, on request, a baptism certificate of **Kiggundu James** showing that he was the father of the said **Kiggundu James** .

Annexures **C** and **D** to the applicant's supporting affidavit are letters by a Consultant Psychiatrist and Consultant Surgeon respectively, both addressed to the Managing Director of the NSSF recommending **Kiggundu James** for NSSF invalidity benefits to support his family. Annexure **C** states that **Kiggundu James** was treated for psychosis and alcohol dependence, that he had since shown some improvement though he still had poor interaction, inappropriate smiles and blunt affect, and that he has a mental illness called schizophrenia. Annexure **D** states that **Kiggundu James** has features of mental illness associated with alcoholism. The two letters, as deduced from their wording, were meant to recommend **Kiggundu James** for the NSSF invalidity benefits.

The applicant's affidavit, other than stating that he is the father of **Kiggundu James** and outlining **James Kiggundu's** property and savings, does not state that the said son was adjudged a person of unsound mind, or that he was detained under the Magistrates Courts Act as is required under rule 3 of the Administration of Estates of Persons of Unsound Mind (Procedure) Rules; neither is there any affidavit sworn by a medical practitioner stating that he or she has personally examined **Kiggundu James** and that the said **Kiggundu James** is still of unsound mind; nor is there a medical certificate as specified in Form B of the First Schedule to the Rules by the Superintendent of Butabika Hospital where **Kiggundu James** is stated to have been a patient.

Section 2 of the Administration of Estates of Persons of Unsound Mind Act, according to its long title, is meant to make provision for the administration of the estates of persons of unsound mind.

This, in my opinion, protects estates of persons of unsound mind by placing their estate under the management of suitable persons who can manage the estates responsibly and be held accountable for the benefit of a person of unsound mind.

The import of the Administration of Estates of Persons of Unsound Mind Act and the rules made under it, is, in my opinion, that a person must first be adjudged to be a person of unsound mind by a magistrate's court under section 4 of the Mental Treatment Act or must be a person detained under sections 113 or 117 of the Magistrates Courts Act before this court can determine the suitability of the applicant to manage the estate of such person. This court would thus rely on the findings of such magistrate's court that a person is of unsound mind, or that the person was detained under the Magistrates Courts Act, before appointing a suitable manager for that person's estate.

In the instant case there is no evidence of **Kiggundu James** being adjudged a person of unsound mind, or evidence of him having been detained under sections 113 or 117 of the Magistrates Courts Act to qualify his estate to be administered by a court appointed manager. The letters availed by the applicant do not in my opinion amount to a court adjudication that **Kiggundu James** is a person of unsound mind. They could perhaps assist a magistrate's court in its inquiry into the mental status of the person alleged to be of unsound mind for purposes of adjudicating such person to be a person of unsound mind.

In the given circumstances, I find this application incompetent for purposes of allowing the applicant to manage the estate of **Kiggundu James** as a person of unsound mind within section 2 of the Administration of Estates of Persons of Unsound Mind and rule 3 of the Administration of Estates of Persons of Unsound Mind (Procedure) Rules.

The application is dismissed and the applicant is to meet his costs.

Dated at Kampala this 31st day of March 2016.

Percy Night Tuhaise

Judge.

