

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

MISC. CAUSE No. 40 of 2018

5 **IN THE MATTER OF YAMBUKA EMMANUEL (PATIENT)**

AND

IN THE MATTER OF AN APPLICATION BY KYEYUNE JAMES (APPLICANT)

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

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RULING

This is an ex parte application brought by Kyeyune James for an order that he be appointed a manager to administer the estate of the patient, his biological brother Yambuka Emmanuel. The application is brought under S.1(a)-(d) & 15 of the Administration of Estates of Persons of Unsound Mind Act cap 155, S.45 of the Mental Treatment Act Cap 279 & Rules 3(1) & 2(a) of
15 the Administration of Estates of Persons of Unsound mind (Procedure) Rules S.155-1) & S.98 Civil Procedure Act. In support of the application were an affidavit of kindred and fortune sworn by the applicant, and a mental health report on the patient.

The grounds for this application are that the patient Yambuka Emmanuel suffers from a mental health condition called Major Depression and has done so since 2015. Medical treatment notes
20 submitted indicate that he has been on treatment since December 2015 and is currently undergoing Chermal treatment and Psychotherapy to date. This is according to the medical reports Annexure ‘D’ dated 28th December 2017 and Annexure ‘B’ dated 8th October 2018, prepared by Dr. Wasswa Paul the Head of Department of the Mental Health Clinic Ndejje Health Centre IV. The applicant wishes to take care of the patient, the patient’s children, most of whom
25 are still minors and to manage his entire estate including looking after the patient’s current fiancée, Nambalirwa Allen.

It was the duty of this court to determine the following:

- 1. Whether the patient was a person of unsound mind.**
- 2. Whether the applicant qualified to be appointed manager of his estate.**

As regards the first issue, S.1 of the Administration of Estates of Persons of Unsound Mind Act
5 Cap 155 defines a ‘person of unsound mind’ as *any person adjudged to be of unsound mind under S.4 of the Mental Treatment Act or any person detained under S. 113 or 117 of the Magistrate’s Courts Act.*

The patient in this matter fell in neither of these categories. In Misc. Civil Application No.0001 of 2016, Aseru Joyce Ajuu v Anjeru Agnes (a Patient), the Hon. Justice Stephen Mubiru, when
10 faced with a similar dilemma invoked the inherent powers of the High Court to conduct an inquiry into whether the patient in that matter was a person of unsound mind. Such an inquiry would be done by a magistrate for purposes of issuance of a Reception Order under section 4 or 5 of the *Mental Treatment Act*, Cap 279 such as would eventually lead to the issuance of a medical certificate (Form B to the rules) required by rule 3(2) (c) of *The Administration of*
15 *Estates of Persons of Unsound Mind (Procedure) Rules* which envisages that the patient should have been adjudged to be a person of unsound mind by the time an application of this nature is made.

The Judge noted that the need to conduct an inquiry into the mental state of the patient before making orders of this nature is further explained in the Indian case of *Moohammad Yaqub v*
20 *Nazir Ahmad and others, 1920 58 Ind Cas 617*as follows’ -

When a person is alleged to be insanethere ought to be a careful and thorough preliminary enquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition. It is impossible to lay down any hard and fast rule, but in the first place it is essential that the person making the application should support it
25 ordinarily by affidavit or by tendering himself for examination to the Judge on oath in support of the allegations in his application. The learned Judge would naturally want to know what relationship existed, what previous association had existed between the applicant and the alleged insane person, how long the illness was supposed to have lasted, why no previous steps had been taken and what were the

present symptoms and actual causes which had induced the applicant to make the application as and when he did.an application of this kind ought to be supported by some medical evidence in the nature of a certificate of some doctor, lady or otherwise, who has had a reasonable opportunity of seeing the condition of the alleged invalid. If no medical evidence is forthcoming of more recent date than eight years before the application, so much the worse for the applicant. In many cases, and we think that this case is probably one, it would be very desirable that the Judge should seek some personal interview with the alleged insane, not with a view to forming a final opinion as to her real condition but to satisfy himself in the ordinary way, in which a layman can do, that there is a real ground for supposing that there is something abnormal in her mental condition which might bring her within the Lunacy Act. Of course it cannot be done without the consent of the person ...she would probably have no objection to comingto Court and sitting in the Judge's Chamber where the Judge could have some rational conversation with her if possible.

In the instant case the patient was in court and this court heard his testimony on oath as well as the evidence of his fiancée and the applicant. On the face of it the patient appeared well and he ably communicated his condition in as far as he understood it. He said he had been mentally ill for 10 years and he was aware that his brother had applied to help him manage his affairs. The patient told this court that he needed his brother's help to look after his home, and his young children. When asked by this court why he appeared to be normal he said he was on treatment that subdued his symptoms but this was only temporary. He identified Ms. Nambalirwa Allen, who was also in court, as his wife.

PW3, Nambalirwa Allen testified that she had been living with the patient as husband and wife for twelve years and they had four children together. She stated that when the patient was ill, he did not have coherent speech, holds his forehead and his eyes tear. The episodes last for about a week and he is given medication and taken to hospital when the condition worsens. At best, he is lucid for two months and then the condition returns.

The affidavit of kindred and fortune sworn by the applicant indicated that the patient was the father of nine children, one of whom was deceased and five of whom were still minors

aged between 13years old and 3 years old. The same affidavit listed the properties of the patient which included a residential house at Nabbingo, NSSF benefits and household properties. The applicant averred that the patient is of unsound mind as documented in the medical report attached and marked 'D' and 'E'.

- 5 The medical expert who assessed the patient diagnosed him with major depression. Coupled with this court's inquiry into the patient's illness, the only conclusion to be drawn was that the patient was not mentally healthy and he was in fact of unsound mind, by his own admission, so much so that he required his brother's help to manage his affairs.

Turning to whether the applicant was a suitable person to manage the patient's affairs, the applicant stated that he was already assisting his brother in the management of his affairs and he was prepared to continue doing so. The patient's wishes were that his brother, the applicant should manage his affairs. This court finds no reason not to grant his wishes.

In light of the foregoing and to protect the rights of the patient, this court makes the following orders;

- 15 1. The patient, Yambuka Emmanuel is adjudged to be person of unsound mind.
 2. The applicant Kyeyune James is appointed manager of the patient's estate.

This court is further empowered to make such orders as it may think fit for the management of the estate of the patient, including proper provision for his maintenance and for the maintenance of such members of her family as are dependent upon him for maintenance.

In addition, 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 patient's estate. This bond will be without sureties.

This court further directs that in the execution of his obligations, the applicant/manager 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 on behalf of the estate, without the prior consent of
5 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. Yambuka Emmanuel (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. Yambuka Emmanuel (a person of
10 unsound mind). The manager shall annually, within the month of January, furnish this court with
an account showing the sums received and disbursed on account of the estate and the balance
remaining in his hands.

Unless otherwise subsequently expressly ordered by this court the manager herein appointed
shall serve gratuitously. The costs of this application are not to be charged to the estate of the
15 patient, otherwise there is no order as to the costs of this application.

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Olive Kazaarwe Mukwaya

20 **JUDGE**

Dated at Kampala this 15th day of November 2018