

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

MISC. CAUSE No. 46 of 2018

5 **IN THE MATTER OF JOHN MUWANGA KAWESA (PATIENT)**

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS MANAGER BY
KIMULI HENRY KAWESA (SON), KISAKA BEATRICE (DAUGHTER) AND
SSENDYOSE AMOSI (SON)**

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Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This is an ex parte application brought by Kimuli Henry Kawesa, Kisaka Beatrice, and
Ssendyose Amosi for an order that they be appointed as managers to administer the estate of the
15 patient, their biological father John Muwanga Kawesa.

The application is brought under S.2 of the Administration of Estates of Persons of Unsound
Mind Act cap 155, Rules 3(1), Rule 3 (2) (A) and Rule 4(2) of the Administration of Estates of
Persons of Unsound mind (Procedure) Rules S.155-1) . In support of the application are two
affidavits; one of kindred and fortune sworn by Kimuli Henry Kawesa on behalf of all the
20 applicants and an affidavit of the medical practitioner who examined the patient.

By way of background to this application, the patient John Muwanga Kawesa was diagnosed
with a major vascular neuron-cognitive disorder (Dementia) at Mulago Hospital where he
continues to receive treatment. This is according to the medical report annexure 'B' dated 27th
April 2018 prepared by Dr. Nalugya Joyce Sserunjogi, a Consultant Psychiatrist at Mulago
25 Hospital. The patient is not an inmate in a mental hospital. He is a resident of Watuba, Wakiso

District under the care of the applicants. The applicants who are siblings wish to manage the estate of their father which comprises private mailo land in Kyadondo County on Block 101 Plot 1024 land situate at Watuba, Wakiso District measuring approximately 1.146 Hectares. The property has a residential house thereon. A copy of the certificate of title was attached to the application and marked annexure 'C'.

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 managers of his estate.**

As regards the first issue, rule 3 (2) of The Administration of Estates of Persons of Unsound Mind (Procedure) states that 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.

S.1 of the Administration of Estates of Persons of Unsound Mind Act 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.*

In the case of Abiria Emmanuel V Afema Richard Miscellaneous Civil Application No.0053 of 2017, Justice Stephen Mubiru noted that; “ *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”.....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”.

In the instant case the patient was not able to appear before this court as directed. Counsel for the
5 applicants explained that the patient had a heart problem which made moving him risky. However the applicants submitted a medical report dated 27th April 2018, indicating that the patient suffers from major vascular neural cognitive disorder (Dementia) associated with major cognitive deficits in attention and concentration, marked impairment in executive function which has to do with planning, decision making, working memory and mental flexibility in addition to
10 auditory hallucinations. Upon the direction of this Honourable Court, the applicants also attached an affidavit of Dr. Nalugya Joyce Sserunjogi, a consultant Psychiatrist at Mulago Hospital confirming that she has personally examined the patient which revealed that the patient is of unsound mind and she reiterated the same information stated in the medical report.

Although this court was unable to see the patient because he could not be produced before court
15 on account of his delicate heart condition, I am satisfied with the medical evidence and the affidavits presented before it. Based on that evidence, it is undisputed that the patient is suffering from a mental disorder known as Dementia which has rendered him unable to conduct himself or manage his affairs. He is no longer capable of making rational decisions in his best interests.

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2. Whether the applicants qualified to be appointed managers of his estate.

Turning to whether the applicants are suitable persons to manage the patient’s affairs, the
25 applicant who swore an affidavit on behalf of the other applicants stated that the patient is their biological father aged 93 years old. He had six children in total who were all of majority age, the youngest being 46 years old. The 1st applicant added in his affidavit that the cost of the patient’s treatment is 50,000/= per day.

The applicants brought the application to request for permission to deal with the patient's estate by firstly managing it and administering it and secondly to bring a suit and defend a suit on behalf of the patient.

I am unable to find any adverse interests on the part of the applicants against the patient who is their biological father and currently under their care. What, in this court's opinion, renders urgency to the application is the need to file a suit to protect the property of the patient. This court is however mindful that the interests of Mr. John Muwanga Kawesa must be duly protected.

It is hereby ordered as follows;

- 10 1. The applicants Kimuli Henry Kawesa, Kisaka Beatrice and Ssendyose Amosi are appointed managers of the estate of Mr. John Muwanga Kawesa (a person of unsound mind).
2. The applicants shall not without special, express permission of this court, mortgage, charge, or transfer by sale, gift, surrender, exchange or otherwise, any
15 immovable property of which the estate may consist.
3. The applicants shall file in this court within three (3) months from this date an inventory of the property belonging to Mr. John Muwanga Kawesa (a person of unsound mind) and of all such sums of money, goods, and effects they will receive on account of the estate together with a statement of all the debts due from and
20 credits due to Mr. John Muwanga Kawesa.
4. Mr. John Muwanga Kawesa shall remain in the care of the applicants.
5. The applicants are allowed to file a suit to protect and defend the property of Mr. John Muwanga Kawesa (a person of unsound mind).
6. The applicants shall execute a non-cash bond of UGX 5 million each for the due
25 administration of Mr. John Muwanga Kawesa's estate.
7. The applicants are to serve gratuitously.
8. No order as to costs of this application.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 6th of February 2019