

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**MISCELLANEOUS CAUSE NO.42 OF 2022**  
**IN THE MATTER OF THE ESTATE OF BYEKWASO GEORGE, A PERSON WITH**  
**MENTAL ILLNESS**

**AND**

**IN THE MATTER OF AN APPLICATION UNDER THE MENTAL HEALTH ACT**  
**2018 FOR THE APPOINTMENT OF A PERSON REPRESENTATIVE OF THE SAID**  
**PERSON'S ESTATE BY ROSE BYEKWASO (DAUGHTER)**

**BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI**

**RULING**

**Introduction**

This Application is brought exparte under the provisions of Sections 60(3)(b) and 62 of the Mental Health Act (2018) seeking orders that George Byekwaso be declared unable to manage his affairs by reason of mental illness; that the Applicant be appointed his personal representative and the Applicant be granted costs for the suit.

The grounds of the Application are set out in the affidavit in support of the Application deponed by Byekwaso Rose and are briefly stated below;

1. That the Applicant is the biological daughter of George Byekwaso and has lived with and taken care of him and she still does so.
2. George Byekwaso has no capacity to manage his affairs as per the medical assessment made.
3. The said George suffers from moderate to severe dementia.
4. That it is vital for the good of the said George that the Applicant be appointed manager of his estate.

**Representation**

The Applicant was represented by Counsel Martin Asingwire.

**Submissions by Counsel for the Applicant**

Counsel submitted that in an application of this nature, there are two considerations; firstly, that the person who is the subject of the application is unable to manage his affairs by reason

of mental illness and secondly, that the Applicant is an able and a fit person to be appointed a personal representative.

Counsel further submitted that court is clothed with the powers to appoint the Applicant as personal representative under Section 62 of the Mental Health Act. He referred court to the affidavit deposed by Dr. Catherine Abbo who is an associate Professor and Psychiatrist at Makerere University Department of Psychiatry wherein she attached a medical report that she authored and concluded that George Byekwaso suffers from moderate to severe dementia. That he loses his memory and loss in thinking which is severe enough to affect his daily life.

Counsel submitted that this Application is urgent because George Byekwaso cannot effectively run his business due to the forgetful condition he possesses. Counsel argued that the Applicant is a fit person to be George Byekwaso's personal representative since she is his daughter and that the Applicant, George Byekwaso has been dependent on her.

Counsel prayed that the court be pleased to determine this Application and appoint the Applicant as the personal representative of George Byekwaso.

#### **Determination of the Application**

In determining this Application, the court considered the issues below;

1. Whether George Byekwaso is a person with mental illness and is incapable of administering his estate.
2. Whether the applicant is fit to be appointed as the personal representative of George Byekwaso.

#### **Issue 1: Whether George Byekwaso is a person with mental illness and is incapable of administering his estate**

**Section 2 of the Mental Health Act of 2018** defines mental illness to mean;

*“a diagnosis of mental health conditions in terms of accepted diagnostic criteria made by a mental health practitioner or a medical practitioner authorized to make such diagnosis; mental health conditions include but are not limited to depression, bipolar, anxiety disorders, schizophrenia and addictive behaviour due to alcohol/substance abuse among others.”*

**Section 55 (1) & (2) of the Mental Health** requires that in proceedings before a court of law involving a person suspected to be suffering from a mental illness, a determination of the

mental health status of that person shall be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner.

The determination by the psychiatrist shall be based on factors which are exclusively relevant to the mental health status of the patient and not on any other factors. Justice Eva K Luswata in *the matter of Songolo Difasi Mugabo High Court Miscellaneous Cause No.16 of 2019* underscored the importance of this determination of the mental status when she held;

*“The requirement for a proper investigation or inquiry should not be undermined. Nobody should, be adjudged or determined to be of unsound mind when no professional expert advice is available. This would be a serious affront to the personal integrity and would also open up to fraudulent people who may wish to take over their property.”*

It is also important that the examination done by the psychiatrist reveals that the person is suffering from a mental illness that prevents him from managing himself and his affairs. This is because persons suffering from mental illness not only have a right to enjoy legal capacity on an equal basis with others but also a right to manage their affairs (*Section 60 (1) & (2) of the Mental Health Act*). These two rights can only be taken away when it has been proven to the court that a person with mental illness cannot manage his/her affairs. It is not automatic that once one has a mental illness, they cannot take care of themselves and their affairs.

In the affidavit in support of this Application deposed by Rose Byekwaso, she stated that her father George Byekwaso started showing tendencies of forgetfulness which prompted her to take him for a medical examination on the advice of her lawyers. She states that she contacted Makerere University School of Medicine and an examination of George was conducted by Dr. Catherine Abbo who concluded that her father suffered from short-term and long-term memory loss and also was diagnosed with moderate to severe dementia which is likely to interfere with his daily life.

Dr. Catherine Abbo deposed an affidavit wherein she stated that she examined George Byekwaso and found him to be a person who cannot manage his affairs as shown in the medical report marked “A” Upon reviewing the medical report authored by Dr. Catherine Abbo, she clearly states on page 5 as follows;

*“From this current psychiatric evaluation, I conclude that Mr. Byekwaso is suffering from moderate-severe Dementia. Dementia is a general term for loss of memory,*



*language, problem solving and other thinking abilities that are severe enough to interfere with daily life. He may therefore not be able to read and understand written documents or undertake a legal contract. Mental state evaluation may need to be repeated 6 months after this assessment."*

From the above, it is clear that Byekwaso George is a person suffering from mental illness and may not be in a position to manage his affairs as a result of the dementia he is suffering from.

Issue 1 is resolved in the affirmative.

**Issue 2: Whether the applicant is fit to be appointed as the personal representative of George Byekwaso**

Where the court finds that a person with mental illness cannot manage his personal affairs and such a person has not appointed a personal representative, the court shall go ahead and appoint a suitable relative to be his or her personal representative as stipulated under **Section 62 of the Mental Health Act**.

**Section 2 of the Mental Health Act** goes ahead to define a relative to mean 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.

In Paragraphs 1 & 8 of the affidavit in support, Rose Byekwaso states that she is the biological daughter of George Byekwaso and that she has been taking care of him for the last twenty years.

In light of the above facts, this court finds that Rose Byekwaso being George Byekwaso's relative who has been taking care of him, is a fit to be the personal representative of George Byekwaso.

Issue 2 is resolved in the affirmative.

**IT IS HEREBY ORDERED AS FOLLOWS;**

1. George Byekwaso is a person suffering from a mental illness which illness has affected his ability to manage himself and his affairs.
2. Rose Byekwaso is appointed as the personal representative of George Byekwaso to manage the estate of George Byekwaso.

3. Rose Byekwaso shall fulfil the duties and obligations of the personal representative laid out in the Mental Health Act diligently.
4. Applicant shall bear the costs of this Application.

I so order



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**FARIDAH SHAMILAH BUKIRWA NTAMBI**

**JUDGE**

Delivered on the 3<sup>rd</sup> day of July 2024