

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KABALE**

**CIVIL MISCELLANEOUS APPLICATION NO.026 OF 2017**

**IN THE MATTER OF AN APPLICATION ADJUDGING KHALID LATIFF A  
PERSON OF UNSOUND MIND**

**AND**

**IN THE MATTER OF AN APPLICATION FOR THE APPOINTMENT OF ASHMAT  
LATIFF A MANAGER OF THE ESTATE OF KHALID LATIFF.**

**BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI**

**RULING**

This is an Application by Notice of Motion brought under Section 2 of the Administration of Estates of Persons of Unsound mind, Section 100 of the Civil Procedure Act and Article 126(2)(e) of the Constitution of Uganda. The Applicant, Ashmat Lattif seeks orders of this Court for;

1. The Respondent, Khalid Lattif to be adjudged a person of unsound mind;
2. The Applicant to be appointed as manager of the Estate of the said Khalid Lattif with powers to dispose of the property of his Estate only for purposes of paying debts due to Crane Bank and DFCU Bank.

The Application was supported by an Affidavit sworn by the Applicant in which she avers that she is the biological mother of the Respondent who is indebted to Bank of Baroda and DFCU Bank. That the debts owed to the two financial institutions can only be paid by disposing of some of the property of the Respondent which he cannot personally do on account of his unhealthy mental status. Attached to the Affidavit is a medical report prepared by the Principal Psychiatric Officer, Kabale Regional Referral Hospital with an accompanying Affidavit certifying that the Respondent has since 2013 been attending the Psychiatry Clinic at the Hospital and his condition is irreversible. The Respondent was not produced before Court and there was no evidence of any prior inquiry about his mental status provided to Court.

Counsel for the Applicant urged Court to appoint the Applicant as the Manager of the Respondent's Estate as it would be in the best interest of the Respondent.

Section 2 of the Administration of Estates of Persons of Unsound Mind Act (CAP.155) gives the High Court jurisdiction to appoint managers of estates of persons of unsound mind. The appointment may be made from several classes of people who are then tasked to act in the best interest of the person of unsound mind. Court is further guided by the provisions of the Administration of Estates of Persons of Unsound mind (Procedure) Rules in determining the conditions for the appointment of the Manager.

A person of unsound mind is defined under the Act to mean

*“ Any person adjudged to be of unsound mind under Section 4 of the Mental Treatment Act or a person detained under Section 113 or 117 of the Magistrates Courts Act.”*

Sections 2,3 and 4 of the Mental Treatment Act outline the procedure applied by the Magistrates Court before adjudging any person to be of unsound mind. This involves an inquiry by the Magistrate upon getting information on oaths by a person suspecting the subject to be of unsound mind. This involves a personal observation and interview of the person suspected to be of unsound mind and the acquisition of Medical Certificates from two Medical Practitioners appointed by the Court based on whose reports Court may thereupon adjudge the person to be of unsound mind. It is the requirement of the Law that one of the Medical Personnel appointed for that purpose must be a registered practitioner.

The Applicant in this case has not furnished any evidence that Khalid Lattif was adjudged to be a person of unsound mind under the provisions of the Mental Treatment Act which must precede the appointment of a manager for his estate.

In the Indian case of **Balakrishnan Vs Balachandran(1956)1 Mad LJ 459** it was observed in reference to the inquiry by Court that;

*“ this is intended to ensure that no man is adjudged a lunatic without proper enquiry, and that the Court should hold a judicial inquiry and it may seek the assistance of medical experts..... if the precaution of a judicial inquiry is not observed, a man cannot be declared a lunatic(or unfit to protect his interests) and a guardian appointed on that basis.”*

The requirement for the mandatory inquiry process to be followed before a person is adjudged to be of unsound mind was also emphasized **in Civil Miscellaneous Application**

**No.18/2015 In the Matter of the estate of Kiggundu James** .The acquisition of a medical report from a sole medical practitioner as in this case before producing the subject before a judicial officer who then directs the medical examination of the subject of the inquiry does not in my view amount to the kind of judicial inquiry envisaged in the Mental Treatment Act.

In the circumstances, I find the Application prematurely filed and therefore incompetent. It is dismissed with no order as to costs.

Moses Kazibwe Kawumi

Judge

21<sup>st</sup> March 2017.