THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.249 OF 2019

IN THE MATTER OF MENTAL TREATMENT ACT, CAP 279&

IN THE MATTER OF ADMINISTRATION OF ESTATES OF PERSONS OF UNSOUND MIND ACT , CAP 155&

IN THE MATTER OF MOHAN MUSISI KIWANUKA, A PERSON PRESUMED TO BE OF UNSOUND MIND TO BE ADJUDGED OF UNSOUND MIND.

JORDAN SSEBULIBA KIWANUKA---------- APPLICANT

VERSUS

MOHAN MUSISI KIWANUKA---------- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application by chamber summons under Section 2 & 4 of the Mental Treatment Act, Cap 279, Section 2 of the Administration of Estates of Persons of Unsound Mind Act Cap 155, Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act for the following Orders;

Preliminary Orders;

(i) An Order doth issue subjecting the respondent whom is presumed to be unsound mind to be medically examined by a neurologist

appointed by the Uganda Medical and Dental Practitioners Council to determine the Respondent's mental state of mind and provide a medical a report in respect of the medical assessment and where necessary in the presence of a person in authority;

(ii) An Order doth issue directing the respondent to attend the entire proceedings of the Court;

(iii) An Interim Order doth issue prohibiting any changes to be made to the companies management in respect to the 33 incorporated companies by the Uganda registration Services Bureau and all immovable assets(real estate) registered in either of the 33 company names or in the names of the respondent by the Commissioner Land Registration until the final determination of this application;

Final Orders;

(iv) Following the respondent's medical examination, an Order doth issue adjudging the respondent to be of unsound mind;

(v) The applicant be appointed as a Personal representative/Manager of the Estate of the respondent.

(vi) Any further and better relief this Honourable Court shall deem appropriate in the circumstances; and

(vii) Costs be provided for.

The grounds in support of this application were stated briefly in the Chamber Summons and in the affidavit in support of the applicant-Jordan Ssebuliba Kiwanuka but generally and briefly state that;

1) The applicant is a biological son to the respondent who is a male adult aged 69 years old. He is also an Advocate of the Courts of Judicature practicing under the name and style of Aegis Advocates.

2) The respondent is believed to be suffering from a debilitating and degenerative condition of Alzheimer's or dementia which is presumed to have been progressive over the last six or so years but has become quite severe and imposing on the respondent's health in the recent past.

3) The respondent is a lawyer by training and runs a vast business empire comprising over 33 limited liability companies that he set up which is managed through a complex cobweb management structure involving several other companies as shareholders, directors and company secretary.

4) The Respondent owns a myriad of real estate properties within and outside jurisdiction that are registered in various company names.

5) The respondent in May 2017 visited a neurologist in the United kingdom in the company of his second wife after the respondent had expressed severe inability to recollect his location when they travelled to the United States of America for a graduation.

6) The Respondent, a known polygamous Muslim, maintains two official homes, has eight (8) sons and daughters from his two wives Mrs Beatrice Luyiga Kavuma Kiwanuka and Mrs Maria Kiwanuka.

7) The respondent is not an inmate in a mental hospital nor detained in prison but is presently residing at plot 15 Prince Charles Drive, Kololo in the care of his second spouse, Mrs Maria Kiwanuka.

8) It is desirable at the onset of the present application to have the Respondent subjected to medical examination to determine the respondent's mental state on grounds that the respondent's care giver has deliberately concealed his medical condition and restricted access to the respondent by his other family members. The respondent has also barred his other family members from accessing and interacting with him in his office.

9) That in the very recent past, the respondent has become so withdrawn from his family as a result of his progressive ailment and inability to make sense of his deteriorating capacity to the extent that he has in severe frustration, barred all his sons and daughters from his first marriage from accessing him at his office in Nakawa Industrial Area or from his residence in Kololo to the detriment of his mental health.

10) Over the years, members of the respondent's immediate family have witnessed the respondent lose his business acumen brought on by severely deteriorated memory and inability to recognise the severity of the deterioration which has resulted in disastrous management, operation and decision making at his numerous companies which

poor operation and decision making has resulted in the respondent's withdrawal not just from his family but from business and social life.

11) The present application is brought for the benefit of the respondent, his immediate family and business in general in order to protect the respondent and his various businesses and family from the growing ravages of dementia and from opportunistic third parties intention of taking advantage to the respondent's impaired and failing mental capacity.

12) That in a space of one year, the respondent under full control of care giver(s) and estate agents has disposed of 7(seven) properties some of which the respondent still believes belong to him with the rest of the estate being put up for sale for immediate quick sale without regard and at grossly discounted prices to the detriment of the respondent and his estate.

13) There is reasonable belief, which belief is based on close and continuous observations and interactions with the respondent, together with a reasonable assessment of a doctor in form of a medical assessment report issued to the respondent and his wife in May 2017 that provided clear evidence of extensive progressive cognitive impairment and conclusive proof that the respondent is suffering from the debilitating brain degenerative dementia condition otherwise known as "Alzheimer's disease" which mental ailment taken firm root and manifested itself in a noticeable decline of the respondent's memory, thinking, character and reasoning skills.

14) The respondent and the applicant have been in the operations and management of the several businesses, the applicant having first been

so entrusted and appointed in 2002 to date vide various powers of attorney by shareholders, Director companies and company secretary and being well versed with the operations and every intent of the respondent and for the future purpose of equitable management of the respondent's assets and estate, and being a suitable member of the respondent's family willing to act as a Manager of the respondent's estate, it is proper that the applicant be appointed manager urgently to guarantee the equitable management of the respondent's various businesses, accounts, properties and assessment of the financial status of the companies.

The respondent opposed this application and filed affidavits in reply through Kyamukungubya Sabri Kiwanuka-(Son), Sophia Nakandi (Lawyer with Fides Legal Advocates), Kenneth Tendo Mdoe (Finance Director to Oscar Industries Ltd) and Edward Kiggundu (friend to the respondent)

1) The 1st deponent in support of the respondent-Kyamukungubya stated that his father has lived with his mother Maria Nabasirye Kiwanuka who has taken good care of his father at Plot 2 Impala and later plot 15 Prince Charles Drive.

2) That he has interacted with his father all the years and has found him to be of sound mind with capacity to comprehend business and general matters. He has not seen any changes in his capacity to appreciate or understand anything. He goes to work by himself and return daily and does not walk around with or depend on a care giver as alleged by applicant.

3) That his father is aging but he sees no reason or sign to indicate that he is an idiot or of a deranged mind as the applicant alleges

and on the contrary he continues to build, expand and manage businesses and take all the necessary business decisions and steps required accordingly.

4) That from his expertise, the respondent and his wife have made good financial decisions such as recently liquidating some of the dormant and non-income generating assets so as to pay debts and complete the acquisition of the Marble mine and factory at Matheniko in Moroto , which are now in commercial production.

5) The applicant is well aware that this decision required large sums of money and he duly signed necessary documents for Multitask Services Limited the Company that acquired the assets, before he was removed as an authorised signatory to any of the respondent's 33 companies.

6) That the respondent carries on his daily activities and errands without the aid of any third parties and in a bid to monitor his good health takes regular check-ups, but no special procedures have ever been taken to determine his mental capacity to run his businesses and he knows this is another of the applicant's schemes to grab properties that belong to the father.

7) That there are several other siblings including the deponent who are more unifying and with vast educational training and experience to manage the respondent's business but not the applicant.

The respondent further replied through Ms Sophia Nakandi a Practising Advocate with Fides Legal Advocates and contended as follows;

1. This application stems from a land dispute in which the applicant is suing the respondent in order to prevent him from evicting him from the land comprised on LRV 434 Folio 7 Plot 10A and 10B Akii Bua Road and FRV 210 Folio 20 Plot 21-29 Golf Course Road Kololo, which land belongs to Visa Investments Ltd.

2. The above dispute was filed in the Land Division of the High Court as HCCS No. 535 of 2019; ***Jordan Ssebuliba Kiwanuka & Lowerhill Management Limited vs Visa Investments Limited and Mohan Musisi Kiwanuka*** and the applicant claims a sum in excess of 1,000,000,000/= and the defendant has counterclaimed against the applicant for use of the property for over 10 years without paying rent.

3. The applicant attempted to lodge caveats on the said properties in an attempt by him to frustrate the company business and to also get himself appointed as a manager which will enable him to easily grab company property in HCCS No. 535 of 2019.

The 3rd deponent in support of the respondent was by Kenneth Tendo Mdoe an Independent Finance and Management Expert working with KTM Consulting Limited contracted by UNIGROUP Limited to provide a Finance Director to M/s Oscar Industries Limited and other associated companies;

1. That UNIGROUP Limited manages M/s Oscar Industries Ltd and other associated industries and he has worked in the said capacity of Finance Director for the said Companies for a period in excess of 15

years during which he got to know the facts surrounding their businesses.

2. The applicant is a director of Jobco Limited which was outsourced by UNIGROUP Limited to provide and supply other skilled and trained labour. In this regard, the labourers supplied by Jobco Limited were to be independent contractors. The agreement was duly performed and at one time the applicant outsourced over 600 labourers, who performed different tasks in the factories of Oscar Industries Limited, Visa Plastics Limited and other businesses managed by UNIGROUP Limited.

3. The applicant failed to and does not appreciate, observe the fact and implications and status of independent contractors, which has since led Oscar Industries Limited losing a colossal sum of money. The applicant made unfounded statements misrepresenting the relationship between Jobco Limited, the Labourers and Oscar Industries Limited to the Uganda Revenue Authority (URA); resulting in URA placing a colossal tax bill of 13,000,000,000/= on Oscar Industries Ltd. The said tax bill includes PAYE for the period 2011-2015 which would not have been levied on Oscar industries Limited had the applicant properly managed the Jobco Limited payroll and explained the said relationship.

4. That as a result URA froze the bank accounts of Oscar Industries Limited bringing the business to a halt, and it was agreed with the respondent that it is logical to close operations at Oscar Industries Limited, until the tax dispute is resolved- while continuing to ran the Visa Plastic factory.

5. The for the past two years, Mrs Maria Kiwanuka, together with the respondent have worked very hard and diligently in fighting the tax bill, and have recently managed to reduce the tax liability to less than 1,000,000,000/= and arrangements are underway to restart the Oscar Industries Limited factory operations.

6. The respondent and the companies have appointed additional directors to ensure efficiency in running the vast business empire.

7. That in absence of a cash flow support from Oscar Industries Limited, a wise and strategic move has been undertaken by different companies; to sell off some underdeveloped or dormant and non-income generating assets to raise money for paying debts, especially banks; and also finance the acquisition of the very valuable mining assets and a concession for a marble mine at Matheniko in Moroto.

8. That as a finance professional, it is prudent financial management, that a business entity disposes of dormant assets in order to capitalize other arms of the business. The acquisition of the mining concerns and other acquisitions have greatly improved the overall business value of the respondent's businesses.

9. That as a person who interacts with the respondent in business, I know he continues to consciously run his businesses and take decisions with reasons he articulates well, demonstrating that he still has capacity to make decisions and manage his affairs. In addition, I spoke to the applicant and asked him why he was taking such steps that would antagonize the business and family of the respondent, and his answer was-*"we have to do anything we can, otherwise we shall get*

nothing". This application is brought in bad faith, only aimed at helping the applicant get assets he seeks in HCCS No. 535 of 2019.

At the hearing of this application the parties made oral submissions which I have had the occasion of reading and consider in the determination of this application.

The main issues that could be deduced from the pleadings for court's resolution was;

1. ***Whether the application is competently before the court?***

2. ***Whether the respondent should be examined to determine his medical state of the mind?***

3. ***What remedies are available to the parties?***

The applicant was represented by *Mr. Alunga Patrick* whereas the respondent was represented by *Mr. Mukasa Faisal, Mr. Buwule Francis* and Mr. *Anthony Wabwire*.

Court Private Inquiry

The court after hearing the submissions of the respective parties moved itself and summoned the respondent to appear in court in order to conduct an inquiry in accordance with section 2 of the Mental Treatment Act Cap 279.

The court in consultation with the parties counsel agreed to conduct the inquiry at a private place and the same was conducted at Golden Tulip Hotel. The same was conducted in presence of both counsel of the parties for about 30 minutes and thereafter with court in absence of both counsel for about 15 minutes.

Preliminary Objection

The applicant's counsel raised some preliminary objection regarding the affidavits in reply. That none of the four persons who have deposed the affidavits in reply have authority to depose to these affidavits. According to the applicant's counsel, it is not indicated anywhere that these affidavits are being deposed to under the authority of the respondent and therefore the respondent practically has no response to the application.

It should be noted that the nature of this application is peculiar to usual applications to the extent that it does not envisage an affidavit in reply for obvious reasons. If a person is deemed to be of unsound mind, then definitely such a person cannot be competent to depose an affidavit.

The Mental Treatment Act only expects the applicant to give information under oath by any informant and then the court would hold an inquiry into the mental state of mind of that person.

The affidavits presented for and on behalf of the respondent could have been given with or without any authority of the person deemed to be of unsound mind. The Court would treat the affidavits in reply like any other evidence it has come across in its inquiry of determining the mental state of mind of the respondent.

The court could in fact invite any person who knows about the person whose mental state is subject to medical examination or inquiry to give such evidence in order to meet the ends of justice. The preliminary objection is accordingly overruled.

Whether the application is competently before the court?

The respondent's counsel also raised an objection as to the competency of the application since it was never brought in accordance with the Mental

Treatment Act since it was not made upon the information on oath in the prescribed form.

Secondly, that this matter was brought by chamber summons and it was brought under the Administration of Estates of Persons of Unsound Mind Act Section 2.

There are rules of procedure provided under that Act; rule 4 specifically provides that a notice of this application shall be served to the person with the state and soundness of mind in issue. Under rules 5,6 and 7 and specifically sub rule 7 provides that there has to be personal service of this notice on the respondent but in this case the respondent was never served personally but the person has not effected evidence of proof of such service nor have they filed any return in the court before hearing of the application or petition.

The form of the notice is form D in Rule 7 sub rule 2 and it is not a matter of form, it is quite detailed but most importantly, it indicates that there shall be a certificate of service. No such service of the notice was made onto Mr. Kiwanuka all was done as to deliver the chamber summons at the lawyers' chambers and indeed no return of service is on the record for that notice.

According to respondent's counsel Mr. Kiwanuka is not obliged to say anything in this matter if he chose not to but what happened is that as (respondent's counsel) thought it wise to file affidavits as friends of court to bring facts to the court that we thought court is interest otherwise you can't fault Mr. Kiwanuka for not swearing any affidavit ideally this application should not be heard at all.

The respondent's counsel further submitted that the application is incompetent and it should be dismissed with costs as it stands and it is on the record. It is brought using the chamber summons that is oppressive if

you look at paragraphs 2 to 6, they contain matters of evidence that should never be in the pleading of chamber summons.

It should be appreciated that the application was brought under different legal regimes and it was an o*mni bus* application and it was impossible on the part of the applicant to strictly confine himself to a specific procedure or restrict himself to one legislation.

This application was brought under Section 2 & 4 of the Mental Treatment Act, Cap 279, Section 2 of the Administration of Estates of Persons of Unsound Mind Act Cap 155, Section 33 of the Judicature Act Cap 13 and Section 98 of the Civil Procedure Act Cap 71.

This court will ignore the objections raised about the competency and compliance with the procedure set out under the different legislations. Guided by Article 126(2)(e) of the Constitution this court shall proceed to determine the substantive dispute between the parties on its merits.

The applicant included grounds in support of the chamber summons within the chamber summons which the respondent counsel has attacked for being oppressive since they contain matters of evidence that should never be in the pleading of chamber summons.

This court notes that the Chamber summons should never contain grounds in support and this court is equally in agreement with the respondent's counsel that the inclusion of evidence in chamber summons is oppressive and baseless. It is wrong for counsel/parties to transplant the evidence set out in the affidavit in support into an application (Chamber summons or Notice of Motion) as grounds in support. This does not render the application incompetent but the practice is irregular and should be discouraged.

Whether the respondent should be examined to determine his medical state of the mind?

Applicant's Submissions

The applicant's counsel submitted that the respondent is not an inmate in the mental hospital nor is he detained in any prison but he is presently residing at Plot 15 Prince Charles drive Kololo in the care of his second spouse Mrs. Maria Kiwanuka. It is desirable at the onset of this application to have the respondent subjected to medical examinations to determine his mental state on grounds that the respondent's caregiver has for a period of three years intentionally and deliberately concealed his medical condition and restricted access to the respondent by his other family members.

The respondent has also barred his family members from accessing and interacting with him at his office. He issued a notice at his office barring four of his sons & daughter from accessing him i.e Jordan Sebuliba who is the applicant, Adnan Ddamula, Jane Kiwanuka, Beatrice Luyiga whose is his spouse and Riad Batanda, that notice was posted at the front gate offices and signed off by the respondent as chairman.

The applicant's counsel further submitted that the grounds for belief that the respondent is laboring from a mental defect is in a report from Doctor Farouk Maniyar . The report was indicated to be a consultant neurologist an honorary senior clinical lecturer. The doctor Farouk wrote his report and says *"I saw this pleasant 66years old right handed gentleman who runs his own factory in Uganda, he is visiting the UK with his wife. He provides for the details of the respondent, his date of birth and the doctor says that he saw the respondent, this was 2017 when the respondent had visited with his wife in the UK. He goes on to say his wife first noticed some problem with his cognition while visiting their son for his graduation in the USA for reason he asked where he was and was a bit confused about it. The respondent and his wife had travelled to the USA and apparently he had no memory of where he was. Since then his wife feels he has gradually worsened memory. He gets appointments or people's names, he forgets*

where he has put his things and uses a diary on which he is quite dependant, he still continues to work."

According to the applicant's counsel, this is reasonable ground to believe that the respondent has a mental disorder which impairs him for which he should be medically examined as is premised on this medical report which is dated 2017.

The applicant's counsel further contended that the applicant reasonably believes which belief is based on close and continuous observations and interactions with the respondent together the reasonable assessment with a doctor in a form of a medical assessment report issued to the respondent and the wife in May 2017 that provided clear evidence of some form of progressive cognitive impairment and conclusive proof that the respondent is suffering from debilitating brain degenerative dementia condition otherwise known as 'Alzheimer disease' which medical element has taken firm root and manifested itself in a noticeable decline of the respondents memory, thinking, character and reasoning skills.

It was counsel's contention that some of these things are already being manifested in the type of resolutions made in the two of his companies. In the meeting of the directors, the above company held at its premises on 30th May 2019 that: Mrs. Maria Nabasirye Kiwanuka be and is hereby appointed as the director, that Mr. Francis Buwule Kabonge of M/s Buwule, Mayega & Co Advocates be appointed as Company Secretary, and the resolution be filed the first resolution is in relation to Bwerenga Estates limited and the second one is Summit Limited in which again Mrs. Maria Nabasirye Kiwanuka is appointed as a director.

The applicant's counsel contended that this was a grave error since the Directors are appointed by general meeting but in this case they were appointed by fellow directors which he believes is contrary to Companies Act.

Respondent's submissions

The respondent's counsel in his submission contended that it is a process of inquiry under the Mental Treatment Act that will give this court jurisdiction, the results of an inquiry and a judgment of unsoundness of mind is what will give this court jurisdiction under the Administration of Estates of Persons of Unsound Mind Act.

Secondly, under Rule 3 sub rule 2(d) if a person is not detained in a mental hospital or prison the application must be supported by an affidavit of a medical practitioner stating that he has personally examined the person and found him to be still of unsound mind.

In this case, Mr. Sebuliba's affidavit admits that Mr. Kiwanuka and indeed the respondent is not in a mental prison or a mental hospital. Cited these cases **Re: Kigundu James Miscellaneous Cause No. 18 of 2015** and **Songolo Difasi Mugabo, Miscellaneous Cause No. 16 of 2019**.

The respondent's counsel submitted that this application is brought under the Mental Treatment Act where a person in issue in this case Mr. Kiwanuka or the applicant alleges to be his father, will be defined as an idiot and to the extent that under Section 4 of that same Act for this court to adjudge a person of unsound mind it has to be satisfied not only that he has any mental impairment but also that he is a fit and proper person to be placed under care and treatment.

According to the respondent's counsel, what Jordan Ssebuliba wants is Mr. Kiwanuka to be declared an idiot who should be placed in Butabika by the import of that section. To the extent what the law provides is unconstitutional, it is in consistent with the Constitution, it is no longer good law in Uganda to that extent it is contrary to Article 24 and 44(a) of the Constitution.

It was counsel's contention that the nature of process that the applicant has evoked was intended for such persons that lie on the street without treatment and they need somebody to come and care for them. It should never be used to find a person in his peace doing his business and you subject them to forceful mental treatment. See **Abiria Emmanuel versus Afema Richard High Court Miscellaneous Application No. 53 of 2007**.

Secondly in the same case the judge said that a person living in a home under his people's care, care of relatives should never be subjected to such an inquiry. In the present case Mr. Kiwanuka lives with his family at Plot 15 Prince Charles drive with his wife and under the care of Maria Kiwanuka the wife that means this court has no business inquiring.

There is no evidence adduced to even put court to an inquiry, the answer is no, evidence of unsoundness of mind. The affidavit of Kyamunkubya who the applicant names as his brother gives positive affirmations that have not been challenged, that Mr. Kiwanuka is sober, he is going on with his business, he is running his businesses and he has capacity to understand or manage his affairs.

The only evidence Mr. Sebuliba has put in his affidavit is that he reached a reasonable conclusion of unsoundness of mind based on continuous observation and interaction.

In reply to the alleged report from Dr Maniyar Farooq, counsel for the respondent submitted that the said doctor has disowned the said report/letter. *" The doctor says I have never undertaken any such medical procedure for purposes of testing the incapacity of Kiwanuka to manage his business or affairs, I have never done it."*

To counsel since the doctor said he has never addressed any letters on the relatives that means or would imply such letters were somehow stolen

from somewhere, that means they are not genuine and in any case, they don't have that effect that Sebuliba claims. It would appear they were stolen from somewhere, because they were not addressed to any of the relatives that would have very big ethical issues and right to privacy. They would offend the United Kingdom ethical proceedings. The alleged doctor has disowned the letters, he has disowned the so called finding of the assessment that is the most important thing," he says *I have never made such assessment"*.

In addition, the said letters clearly show there is nothing conclusive and he says "*I am going to carry out certain tests*". Respondent's counsel wondered why the applicant run to court to appoint doctors if the Mr Kiwanuka has been seeing doctors for his own regular health check. The next letter takes about a score during an examination of 77% only two marks are lost for orientation, only three marks are lost for recall. Therefore according to him there is no need for the court to order an examination.

Respondent's counsel noted that the applicant and the family needs to sit down and they talk Mr. Kiwanuka with Beatrice instead of instituting these hostile proceedings that would continue to impact on the entire family.

Determination

This court noted that the applicant did not follow the procedures set out to the letter under the Mental Treatment Act and the Administration of Estate of Persons of Unsound Mind Act. The Court in exercise of its discretion has proceeded to make an inquiry and come to its own conclusions or findings.

It is in interest of justice that this court resolves the issue of insanity or soundness of the mind that has far reaching implications and consequences against the person of Mr Kiwanuka.

Justice Eva K Luswata, In the Matter of ***Songolo Difasi Mugabo High Court Miscellanoeus Cause No. 16 of 2019*** underscored the importance of such inquiry or investigation. *"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 advise is available. This would be a serious affront to the personal integrity and would also open them up to fraudulent people, who may wish to take over their property*."

Section 1 of the Mental Treatment Act defines "person of unsound mind" to mean an idiot or a person who is suffering from mental derangement.

Black's Law Dictionary Eight Edition defines an "Insane" to mean; Mentally deranged; suffering from one or more delusions or false beliefs that (1) have no foundation in reason or reality, (2) are not credible to any reasonable person of sound mind, and (3) cannot be overcome in a sufferer's mind by any amount of evidence or argument.

In the case of **Aseru Joyce Ajju vs Anjoyo Agnes HCMA 001 of 2016,** Justice 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 perturbation thereof, to such 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 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 purpose of Mental State Examination is to obtain a comprehensive cross-sectional description of the patient's mental state, which, when combined with biographical and historical information of the patients history, allows the clinician to make an accurate diagnosis and formulation which are required for the coherent treatment planning.

The mental state examination is a structured way of observing and describing a patient's current state of the mind, under the domains of appearance, attitude, behaviour, mood, effect, speech, thought process, thought content, perception, cognition & sight and judgment.

According to the **Principles for the protection of persons with mental illness and improvement of mental health care.** *Adopted by General Assembly resolution 46/119 of 17th December 1991-Office of the High Commissioner for Human Rights .*

Under ***Principle 4***.

1. *A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.*

2. *A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to the mental health status.*

3. *Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.*

4. *A background of past treatment or hospitalisation as a patient shall not of itself justify any present or future determination of mental illness.*

Principle 5

No person shall be compelled to undergo medical examination with a view to determining whether or not he or she has a mental illness except in accordance with a procedure authorized by domestic law.

According to the ***Convention on the Rights of Persons with Disabilities***, One of the core principles of the Convention is "respect of individual autonomy including the freedom to make one's own choices, and independence of persons. The Committee on the Rights of Persons with Disabilities has interpreted the core requirement of article 12 to be the replacement of substituted decision-making regimes by supported decision making, which respects the person's autonomy, will and preferences.

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health observed that informed consent is not mere acceptance of medical intervention, but voluntary and sufficiently informed decision. Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services.

There is an intimate link between forced medical interventions based on discrimination and the deprivation of legal capacity which as a result may result in torture or inhuman and degrading treatment. This results in deprivation of legal capacity, when a person's exercise of decision-making is taken away and given to others under the guise of mental health treatment and care.

The forced treatment or subjection of mental health suspect or patient to treatment or examination may amount to torture. A Special Rapporteur noted: Torture, as the most serious violation of the human right to personal

integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. ***(See A/63/175, para. 50)***

The medical treatment of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is especially true when the treatment or examination is performed on persons/patients with disabilities, notwithstanding claims of good intentions or medical necessity.

The discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the Article 1 of the Convention against Torture, notwithstanding claims of "good intentions" by medical professionals.

The court should be mindful of the international obligations under the different Conventions before arriving at its decision of whether or not to subject the applicant to a forced or involuntary mental examination and or treatment.

Justice Mubiru in the case of **Aseru Joyce Ajju vs Anjoyo Agnes HCMA 001 of 2016** quoting the Indian case of *Moohammad Yaqub v Nazir Ahmad & Others 1920 50 Ind Cas 617 as follows:-*

"When a person is alleged to be insane…..there ought to be a careful and thorough preliminary enquiry and the Judge ought to satisfy 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 ordinarily by an 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 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 eight years before application……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 real ground for supposing that there is something abnormal in her mental condition which might bring her within the Lunacy Act…"

The importance of such an inquiry was further underlined in ***Ranjit Kumar Ghose v Secretary, Indian Psychoanalytical Society AIR 1963 Calcutta 261***, also cited in ***Aseru Joyce Ajju vs Anjayo Agnes*** where the court decided as follows;-

> *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 the 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 supposing that there is something abnormal in her mental condition which might bring her within the Lunacy Act….the enquiry which is contemplated…..into the alleged infirmity is a judicial enquiry with notice to the alleged insane person and any order passed against an allegedly insane person without such inquiry will vitiate the order to the extent of making the same a nullity. The court should of its own motion conduct an enquiry in accordance with the provisions of that section*

before accepting the application. It was obligatory that the court conducted an enquiry as to whether the petitioner had become incapable due to any mental infirmity of protecting his interest……..”

In the present case the applicant is relying on two letters dated 18th May 2017 generated by Dr Farooq Maniyar-Consultant Neurologist & Honorary Senior Clinical Lecturer based in the United Kingdom and he noted as follows;

This gentleman’s Addenbrooke’s cognitive evaluation score (ACE-R) was 77. One needs to point out that English is a second language and therefore some of the estimations may not have been accurate.

He lost 2 marks for orientation, 3 marks for recall, 7 marks for verbal fluency, 6 marks for language naming, 3 marks for language-comprehension, 1 mark for visual spatial ability.

He is himself only partially aware that he has some memory problem but he feels this may be normal ageing and he is aware of any significant issues with his cognition.

On examination, he had a slow effect. He spoke well although limited. His gait was normal with good pendular swing movements of his hands. Eye movements were normal. There were no cerebellar signs in his upper limbs or lower limbs. The deep tendon reflexes were normal bilaterally. There were no extra pyramidal signs including cogwheeling or bradykinesia.

Impression and Management: There seems to have been a change in this gentleman’s cognition and I note the problems with the memory domain, visual spatial problems and personality change. A few things are possible including a frontotemporal aetiology or Alzheimer’s etiology.

In the first instance, I will arrange to meet up again with him for an Addenbrooke's cognitive assessment which should also serve as a baseline.

I have asked for an MRI scan of the brain as well as bloods including VDRL, HIV, B12, folate, thyroid function tests, glucose, ANA,ANCA,liver function tests, urea and electrolytes and full blood count.

I will see him with the results

Kind regards,

Dr F Maniyar

The applicant states in his affidavit in support that; There is reasonable belief, which belief is based on close and continuous observations and interactions with the respondent, together with a reasonable assessment of a doctor in form of a medical assessment report issued to the respondent and his wife in May 2017 that provided clear evidence of extensive progressive cognitive impairment and conclusive proof that the respondent is suffering from the debilitating brain degenerative dementia condition otherwise known as "Alzheimer's disease" which mental ailment taken firm root and manifested itself in a noticeable decline of the respondent's memory, thinking, character and reasoning skills.

The applicant's belief is not supported by any cogent medical evidence since the Doctor who examined the respondent on the information available never concluded on anything.

This court agrees with the respondent's counsel that there was nothing conclusive in the said two letters and the doctor noted at the bottom "I *will see him with the results*"

In absence of any new information or report made after the results are handed to the doctor it would highly speculative of this court to rely on such evidence/report which was inconclusive. Secondly a medical report or notes obtained in unclear circumstances should never be the basis of instituting mental examination proceedings. Since this may raise other issues surrounding the right to privacy and also reliance on improperly or illegally procured evidence in a court of law.

The conclusions or basis upon which the applicant is bringing this application falls short for a simple reason, the respondent is equally mindful of his health and that is why he went to see the doctor during his routine check-ups. Alzheimer/dementia is a loss of brain cells and the diagnosis of it is a process and not a one off examination.

There must be a record of history from persons who have lived with the patient for atleast 3 years and then an oral examination of the patient before carrying out a mini mental examination focussed on whether, of all possible physiological conditions, dementia was one. There are many other physical conditions that are not diseases of the mind but outwardly mimic dementia. A full examination of the nerves and a review of the kind of medication the patient was taking are also necessary.

The court forced examination of the respondent could indeed be an infringement on his right against torture or inhuman and degrading treatment/ill treatment under the Constitution and under article 1 of the Convention against Torture. The involuntary treatment and other psychiatric interventions are forms of torture and ill-treatment.

It is equally defamatory for a respondent who is performing his duties and running his businesses to be dragged to court for forceful examination in order to determine his mental state in absence of the conclusive medical

evidence or glaring proof insanity that would led the person being harmful to himself or people around him or her.

The applicant has stated in his affidavit that the present application is brought for the benefit of the respondent, his immediate family and business in general in order to protect the respondent and his various businesses and family from the growing ravages of dementia and from opportunistic third parties intention of taking advantage to the respondent's impaired and failing mental capacity.

According to the applicant, the respondent has lost his business acumen brought on by a severely deteriorated memory and inability to recognise the severity of the deterioration which has resulted in disastrous management, operation and decision making at his numerous companies which poor operation has resulted in the respondent's withdrawal not just from his family but from business and social life.

It would be absurd if this court would allow any businessman who loses his business acumen to be subjected to mental examination. Making or taking wrong business decisions in a business is not insanity or a person should not be condemned on that account as a person of unsound mind.

The applicant decided to bring this application for mental examination after the respondent had removed him from the position of Company Secretary and also appointed Mrs Maria Kiwanuka as a new Director. This means or would imply that if the applicant had not been removed him from the said position in May 2019 by the respondent then the respondent was still of sound mind and everything remained normal and fine with him.

The respondent did not file any affidavit in reply, but rather his son, lawyer, finance director and friend deposed affidavits in opposition to the application and they all confirmed that he is of sound mind.

The court summoned the respondent to appear before it in order to carry out any enquiry envisaged under the Mental Treatment Act. The court interviewed the applicant for over 30 minutes in presence of the lawyers and thereafter for about 15 minutes without the lawyers.

From the interview, the court did not find any noticeable mental problem with the respondent. He spoke calmly especially about the dispute between himself and the applicant and at times he would make some little jokes. It is my settled opinion that the respondent is still in charge of his mental faculties and his only problem with the applicant according to him is that he wants to take over or grab his property which he has worked hard to earn over the years.

Unlike in other cases whose authorities have been availed by the respective counsel-the respondent in those matters never contested the application for manager's to be appointed to take charge of their estates. In this matter the respondent contests the intended or involuntary mental examination. The same cannot be forced through an Order of court since there is no iota of evidence pointing to a mental derangement of the respondent.

The respondent is capable of managing himself and his affairs.

This issue is resolved in the negative.

The application is dismissed but each party should meet their costs. Since this is partly a family dispute, I would urge the parties to reconcile. (Article 126(2)(d) of the Constitution.)

I so Order

SSEKAANA MUSA
JUDGE
27th/09/2019