

5 **THE REPUBLIC OF UGANDA**
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

FAMILY CAUSE NO. 21 OF 2025

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 308

10 **IN THE MATTER OF DELIA ALMEIDA AND MARIE LOUIS B WILLY**
CHETTY

AND

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF A
PERSONAL REPRESENTATIVE BY ARIELLA ALMEIDA GINSBERG

15 **RULING**

BEFORE: LADY JUSTCIE IMMACULATE BUSINGYE BYARUHANGA

This application was brought by way of Notice of Motion under Sections 60, 62, 63 and 64 of the Mental Health Act, Cap 208, Section 98 of the Civil Procedure Act cap 282, Section 33 of the Judicature Act, Cap 16 and Order 52 rule 1 and 3 of the Civil
20 Procedure Rules SI 71-1 and other enabling laws seeking that;

1. Arielle Almeida Ginsberg be appointed a personal representative of Mrs Delia Almeida and Mr. Marie Louis B Willy Chetty.
2. Costs of the application be provided for.
3. Such other orders be made as the nature of the case may be.

25 The application is supported by an affidavit deponed by **Ms. Arielle Almeida Ginsberg**. The grounds of the application are stated in the application and the affidavit in support but briefly, they are as follows;

1. That Mrs. Delia Almeida is a seventy-seven (77) year old patient receiving treatment and care for mental illness.

- 5 2. That Mr. Marie Louis B Willy Chetty is an eighty-seven (87) year old patient receiving treatment and care for a mental illness.
3. Mrs. Delia Almeida and Mr. Marie B Willy Chetty both lack independence and informed cognitive ability to understand the nature and effects of their decisions and actions.
- 10 4. That Mrs. Delia Almeida owns property comprised in Leasehold Register Volume 466 Folio 7 Plot 18 Mackenzie Vale Kampala where she currently resides with Mr. Marie Louis B Willy Chetty.
4. That Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty are holders of joint bank accounts held with Bank of Baroda namely US dollar Account No.
- 15 9515010000084 and Uganda Shillings Account No. 951501000001436 and Fixed Deposit Account No. 951503000001303.
5. That Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty also own various chattels and moveable properties such as motor vehicles UAF 266Z-Isuzu Bighorn and UAG 002S Toyota Rav 4.
- 20 6. That there is an urgent need for court to make an order for the management of their estate and for their guardianship over medical decisions that shall need to be made.

Representation

During the hearing, the applicant was represented by **Counsel Raymond**

25 **Ndyagambaki of Verma & Partners** who made written submissions.

Issues for determination

The issues for determination as framed by counsel for the applicant are;

1. Whether Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty have a mental illness.

- 5 2. Whether the applicant is a fit and proper person to be appointed as a legal representative.

Determination

1. Whether Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty have a mental illness.

10 It is Counsel for the applicant's submission that mental is defined under Section 2 of the Mental Health Act and that a person's mental health must be determined before they are considered to have a mental illness as prescribed in Section 55 (1) and (2) of the Mental Health Act. Counsel proceeded to submit that in accordance with paragraph 8 of the affidavit in support of the instant application, Mrs. Delia
15 Almeida was diagnosed with advanced idiopathic parkison's disease presenting with progressive cognitive decline (increasing forgetfulness), inability to manage medication and cognitive impairment jeopardizing financial or medical decision making.

In addition, counsel submitted that according to paragraph 9 of the same affidavit, it
20 was deposed that Mr. Marie Louis B Willy Chetty was diagnosed with Parkinson's disease, metastatic prostate cancer, sick sinus syndrome with recurrent pleural effusions and bilateral chest drains with a pace maker inserted. Counsel cited several cases to support his arguments among them **Re Songolo Difasi Mugabo HCMC No. 16 of 2019, Jordan Sebuliba Kiwanuka v. Mohan Musisi Kiwanuka CACA**
25 **No. 61 of 2020** among others and prayed that this court finds that Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty are suffering from a mental illness.

Resolution

Section 2 of the Mental Health Act, Cap 308 defines 'mental capacity' as the independent and informed cognitive ability to understand the nature and effects of

5 one's decisions and actions. The Act also defines 'mental illness' as a diagnosis of
a mental health condition in terms of accepted diagnostic criteria made by a mental
health practitioner or medical practitioner authorized to make such diagnosis and for
purposes of this definition, mental health conditions include but are not limited to
depression, bipolar, anxiety disorders, schizophrenia and addictive behavior due to
10 alcohol or substance abuse among others.

Therefore, for one to be found to be of unsound mind, his or her mental capacity
should be one that does not allow him or her to take independent decisions or to
comprehend the consequences of his or her decision or the ordinary nature of things.
The determination of one's mental status is provided for under Section 55 of the Act.
15 Section 55 (1) & (2) of the Act provides that:

*“(1) A determination of the mental health status of a person shall be carried
out, where it is required for proceedings before a court of law or for any other
official purpose.*

*(2) A determination under subsection (1) shall only be carried out by a
20 psychiatrist or where a psychiatrist is not available, by a senior mental health
practitioner.”*

In the instant case, the deponent/ applicant deposed in paragraphs 8 and 9 of the
affidavit in support respectively that Mrs. Delia Almeida was diagnosed with
advanced idiopathic parkinson's disease presenting with progressive cognitive
25 decline (increasing forgetfulness), inability to manage medication and cognitive
impairment jeopardizing financial or medical decision making, while Mr. Marie
Louis B Willy Chetty was diagnosed with Parkinson's disease, metastatic prostate
cancer, sick sinus syndrome with recurrent pleural effusions and bilateral chest
drains with a pace maker inserted.

5 I have critically examined the medical reports attached to the affidavit in support and marked annextures “F” and “G” from Roswell Women and Children’s Hospital and Nakasero Hospital Limited respectively where the aforementioned diagnosis was confirmed. Mrs. Delia Almeida was reviewed by Dr. Richard Lukandwa from Roswell Hospital on 9th June 2025 with reference from Dr. Hooker from Aga Khan
10 Hospital while Mr. Marie Louis B Willy Chetty was reviewed by Dr. Ssonko.

During the trial, counsel for the applicants submitted that Mr. Marie Louis B Willy Chetty and Mrs. Delia Almeida are very unwell and are kept at their home under close supervision by nurses and the same was confirmed by the applicant. Whereas, I did not examine the patients as they were not presented in court, I have critically
15 studied their medical reports and I am satisfied based on this medical evidence that the patients are persons suffering from mental illness hence are of unsound mind who are incapable of managing their affairs.

2. Whether the applicant is a fit and proper person to be appointed as a legal representative.

20 Herein, counsel for the applicant submitted that **Section 62 (1) of the Mental Health Act** makes an allowance for the appointment of a suitable relative to be a legal representative of a person suffering from a mental illness for the purpose of supporting and managing the affairs of the person suffering from a mental illness. Counsel submitted that Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty do
25 not have any children or dependents, therefore the applicant is the best person available to manage these persons’ estate so that she can get a source of income for the medical support of the persons suffering from mental ailments. Counsel cited several cases in support of his argument including **Lakot Rhoda v Odongo Paineto Miscellaneous Cause No. 5 of 2024, Aseru Joyce v Anjoyo Agnes HCMA No. 1**
30 **of 2016**. In conclusion, counsel prayed for the grant of the prayer sought.

5 *Resolution*

Section 61 of the Act allows a person of unsound to appoint a personal representative to take decisions on his behalf. This provision in my view is only applicable where the illness is seasonal and the patient gains moments of soberness or where he can comprehend the decisions he is taking. Otherwise a personal with mental illness as
10 defined under the Act may not be in position to take sound decisions.

Where a patient is mentally ill and cannot take decisions, then court can appoint a personal representative to manager his or her affairs under Section 62 of the Act. This provision stipulates thus:

- 15 1) *Where an order is made under Section 63 that a person with mental illness is not capable of managing his or her affairs, or where a person with mental illness does not appoint a personal representative, court shall appoint a suitable relative to be his or her personal representative.*
- 20 2) A personal representative shall-
 - a) *manage the estate of the person with mental illness; or*
 - b) *be the guardian of the person with mental illness and of the dependents of that Person.*
- 25 3) *Where court determines that a person with mental illness is capable of managing himself or herself and that that person is not dangerous to himself or herself or to others and is not likely to act in a manner". that is offensive to public decency, the court may make an order only for the management of the estate of that person and not for guardianship.*
- 30 4) *Where court cannot identify a relative, suitable to manage the affairs of the person with mental illness, the court shall appoint as a personal representative, the Public Trustee, to manage the affairs of the person with mental illness.*
- 35 5) *The personal representative or public trustee shall act in the best interest of the person with mental illness, to the extent determined by court to- (a) manage the estate of the person with mental illness; and (b) ensure proper care of the person with mental illness and the dependants of that Person.*

5 6) *Where, upon review, a person with mental illness is found capable of managing his or her affairs, the court shall revoke the order made to the personal representative or Public Trustee”.*

The above provisions empower court to appoint a representative to manage the affairs of a person with mental illness who is not capable of managing his or her
10 affairs. Such person can be a relative or a public trustee where a relative cannot be found. Section 2 of the Act defines a relative to include 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 the instant case, the applicant, Ms. Arielle Almeida Ginsberg deponed in
15 paragraphs 4 and 7 of the affidavit in support that she is the grandniece of Mrs. Delia Almeida through the applicant’s biological mother, Mrs. Rhea Almeida and her passport was attached as annexure ‘E’. During an inquiry by court, the applicant stated that the patients are under her care and she often returns to Uganda for this very purpose. The applicant further deposed in paragraphs 14, 15 and 17 that the
20 patients are terminally ill and there is imminent danger that third parties may attempt to transact in the properties mentioned in the application hence the need for a legal representative to manage Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty’s financial affairs.

It is my considered opinion that Mrs. Delia Almeida and Mr. Marie Louis B Willy
25 Chetty require help to manage their personal, medical and financial affairs and since the applicant is a relative to Mrs. Delia Almeida and by extension through marriage to Mr. Marie Louis B Willy Chetty, the applicant is in the best possible position to take over these responsibilities.

5 I am therefore satisfied that the applicant is a fit and proper person to be appointed a representative of the estate of Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty and is hereby appointed as such. In the premises I order as follows;

10 a. The applicant Ms. Arielle Almeida Ginsberg is hereby appointed as the personal legal representative and manager of Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty to manage their joint assets comprised in joint bank accounts held with Baank of Baroda namely US Dollar Account No. 9515010000084 and Uganda Shillings Account No. 951501000001436 and Fixed Deposit Account No. 951503000001303 and chattels and moveable properties such as motor vehicles UAF 266Z- Isuzu Bighorn and UAG 002S
15 Toyota Rav 4.

b. Ms. Arielle Almeida Ginsberg is hereby appointed as the personal legal representative and manager of Mrs. Delia Almeida's property comprised in Leasehold Register Volume 466 Folio 7 Plot 18 Mackenzie Vale Kampala.

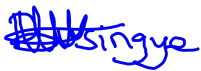
20 c. Ms. Arielle Almeida Ginsberg shall make medical decisions on behalf of Mrs. Delia Almeida and Mr. Marie Louis B Willy Chetty. The said medical decisions should be in the best interests of the patients referred to above.

d. The applicant shall meet the costs of this application.

e. The applicant shall file an account of how she has managed the estate within six months from the date of this ruling.

25 **I so order.**

Ruling delivered this **15th day of July 2025** via **ECCMIS**.



Immaculate Busingye Byaruhanga

Judge

