

UGANDA / JUDGMENT

Babirye Annet (Applicant) – In the Matter of the Estate of Kironde Mark Park (A Person of Unsound Mind) (Miscellaneous Cause No. 2 of 2025) [2025] UGHC 460 (30 June 2025)

[2025] UGHC 460

COURT

High Court of Uganda

BEFORE

Deepa Verma, J

CASE / FILE NUMBER

Miscellaneous Cause No. 2 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT MPIGI MISCELLANEOUS CAUSE NO.
02 OF 2025IN THE MATTER OF THE ESTATE OF KIRONDE MARK PARK, A PERSON ALLEGED
TO BE OF UNSOUND MIND

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 2 OF THE
ADMINISTRATION OF ESTATES OF PERSONS OF UNSOUND MIND ACT FOR THE
APPOINTMENT OF A MANAGER OF THE SAID PERSON'S ESTATE

BABIRYE ANNET =====APPLICANT

RULING

BEFORE HON. LADY JUSTICE DEEPA VERMA

1. Introduction

This Application is brought by Chamber Summons (*ex parte*) under Section 2 of the Administration of Estates of Persons of Unsound Mind Act, Cap 155 and Rule 3(1) of the Administration of Estates of Persons of Unsound Mind (Procedure) Rules. It is supported by the Affidavit of Babirye Annet, being the Applicant, sworn on 3rd March 2025 and filed in this Court the next day. She seeks to be appointment as the manager of the estate of her husband, Kironde Mark Park, who is alleged to have a mental illness.

The matter came up for hearing on 22nd April 2025. At the hearing were the Applicant, Kironde (person alleged to be of unsound mind), Namubiru Justine (his sister) and Bunjo Yusuf (the paternal uncle). The Court physically observed Kironde whose demeanour

was one of a person with unstable mind but given that the Application did not have proof by a medical expert, I could not proceed with the Application. The Court however confirmed from his sister and Paternal uncle that the Applicant was his customary wife and the family had given her consent to make this application. Court then ordered for the Applicant to provide proof of her allegations and authority from the family, Counsel was also ordered to file written submissions. On 16th June 2025, a Supplementary Affidavit was sworn and on 19th June 2025 it was filed in this Court.

The grounds are:

- i. That the Applicant lives and cohabits with Kironde Mark Park who is male aged 57 years.
- ii. That the said Kironde Mark Park has been mentally sick since 2019
- iii. That despite treatment in several hospitals, including Butabika Hospital, the mental sickness of Kironde Mark Park has become incurable.
- iv. That Kironde Mark Park and the applicant have 3 children namely Nakazzi Elizabeth aged 16y years, kibudde Mark aged 14 years and Ndawula Geoffrey aged 11 years.
- v. That Kironde and his infant children are under the care of the applicant.
- vi. That Kironde has been a government teacher at Bugula primary school and he has been earning a salary as a teacher.
- vii. That the applicant is capable of looking after the said infant children as they are under her care
- viii. That it is in the interest of justice that this application is granted.

Representation

The Applicant is represented by Esther Nalunkuma of M/s Xander Advocates who filed submissions on 19th June 2025 raising one issue for determination by this Court being:

Whether the Applicant should be appointed as a manager of the Estate of Kironde Mark Park, a person with Mental illness.

This Court shall however frame issues thus:

- *(i) Whether Kironde Mark Park is a person of unsound mind.*
- *(ii) Whether the Applicant should be appointed as a manager of his Estate.*

Determination and Consideration of Court

(iii) Whether Kironde Mark Park is a person of unsound mind.

Section 2 of the Mental Health Act Cap 308 (the Act) defines "mental capacity" as the ability to independently and knowingly comprehend the nature and consequences of one's decisions and actions. "Mental illness" is defined as a diagnosis of a mental health condition, based on recognized diagnostic criteria, made by an authorized mental health or medical practitioner. Such conditions include, but are not limited to, depression, bipolar disorder, anxiety disorders, schizophrenia, and addictive behaviors stemming from alcohol or substance abuse.

For a person to be deemed to have a mental illness, their mental capacity must be impaired to the extent that they cannot make independent decisions or understand the consequences of their actions or the ordinary nature of matters.

Section 55 of the Act governs the determination of a person's mental health status. Subsections 55(1) and (2) provide:

- *(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 psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner.*

The Act restricts this assessment to qualified psychiatrists or senior mental health practitioners. Annexure "C" of the Supplementary Affidavit is a medical report dated 29th May 2025, prepared by Dr. Leticia Kyohangirwe, a consultant psychiatrist at Butabika Hospital, confirms that Mr. Kironde suffers from Neurocognitive Impairment (Dementia). The report details that Mr. Kironde's five-minute recall, short-term and long-term memory,

serial sevens test (scoring 0/5), spelling ability, general knowledge, abstract thinking, judgment, and numeracy skills are significantly impaired. A Mini Mental State Examination (MMSE) conducted on 10th December 2024 scored 9/30, indicating severe neurocognitive impairment (dementia). The psychiatrist noted that dementia is a chronic, progressively worsening condition that impairs a patient's ability to register, learn, recall information, reason, and make rational decisions, necessitating family support to manage the patient's affairs.

This Court observed Mr. Kironde during an in-court identification. His demeanor, characterized by incoherent speech and disorientation, suggested significant mental impairment, corroborating the medical findings.

Based on the medical evidence and this Court's observations, I am satisfied that Kironde Mark Park is a person with a mental illness, as defined under the Act, and lacks the capacity to manage his affairs. Accordingly, I declare him to be a person with a mental illness.

I will now go ahead to resolve the issue as raised by Counsel for the Applicant in their submissions

(ii) Whether the Applicant Should Be Appointed as Manager of the Estate

The Applicant relies on the Administration of Estates of Persons of Unsound Mind Act, Cap 155, which was repealed by Section 77(b) of the Mental Health Act 2018 (Cap 308). The applicable law is now the Mental Health Act Cap 308, and now governs the determination of mental illness and the appointment of a personal representative to manage the estate of a person with a mental illness.

Counsel for the Applicant in her submissions prayed that references to the repealed law be disregarded, citing **Saggu v Road Master Cycles** [2002] EA 258, where the Court of Appeal held that citing an incorrect or repealed law does not invalidate an application if the court has jurisdiction to grant the relief sought. This principle was affirmed in **Nanjibhi Prabhudas and Company v Standard Chartered Bank** [1968] 1 EA 670. Accordingly, this Court will apply the Mental Health Act, disregarding references to the repealed law.

Section 60(2) of the Act provides that a person with a mental illness retains the right to manage their affairs. Under Section 60(3(b) **Notwithstanding subsection (2), a person with mental illness may be stopped from managing his or her affairs where- court, on an application by a relative or a concerned person, determines that the person is not able to manage his or her affairs.**

Section 62(1) permits the court to appoint a suitable relative as a personal representative to manage the estate of a person with a mental illness if an order is made under Section 63 that the person is incapable of managing their affairs.

Section 2 defines a "relative" as including a spouse, parent, grandparent, child, sibling, uncle, or aunt, whether by blood, marriage, or a relationship established by law.

Although the Applicant, Babirye Annet, is not legally married to Kironde Mark Park, she has been cohabiting with him for over 15 years, and they have three children together, namely Nakazzi Elizabeth (16 years), Kibudde Mark (14 years), and Ndawula Geoffrey (11 years). She is currently responsible for their welfare and that of Kironde Mark Park. In court, Bunjo Yusuf, a paternal uncle to Kironde Mark Park, confirmed this relationship and testified that the family recognizes Babirye Annet as Kironde's wife. "Annexure D" to the supplementary affidavit are minutes from Kironde Mark Park's family meeting where they unanimously appointed her to administer his estate.

*Justice Henry Peter Adonyo in *Baryamureba James V Kabanyoro Abwooli and 6 other Civil Suit No. 20/2013** held that while interpreting section 38 A of the Land Act, court gave a broader interpretation to the term "spouse" to be for not only those married under the laws of Uganda but to include also people that have been cohabiting for a longer period to avoid absurdities. Court considered such relationships as constructive marriages.

This Court shall follow the same principle, especially given the Applicant's long-term cohabitation, shared children, and family recognition and hold that the Applicant qualifies as a "spouse" for purposes of Section 2 of the Mental Health Act, Cap 308.

Having established that Kironde Mark Park is a person of unsound mind and following the case of **Echimu Simon Peter v Egwau John Robert (Miscellaneous Cause No. 4 of 2022) [2022] UGHC 97**, where Court held that a judicial determination of mental illness and

incapacity, supported by proper evidence, is a prerequisite for an order to manage a person's estate.

The Applicant is responsible for the care of Kironde and their three minor children, Nakazzi Elizabeth (16 years), Kibudde Mark (14 years), and Ndawula Geoffrey (11 years). The Applicant provided her national ID and Kironde's, demonstrating her identity and relationship. In court, she appeared credible, expressing genuine concern for Kironde and their children, and demonstrated knowledge of Kironde's employment as a government teacher at Bugula Primary School and his financial affairs, indicating her capability to manage his estate.

Based on the evidence, I am satisfied that the Applicant is a fit and proper person suitable to manage Kironde Mark Park's estate.

I hereby appoint Babirye Annet as the personal representative to manage the estate of Kironde Mark Park.

The application succeeds with the following order:

- 1. Kironde Mark Park is declared a person with mental illness incapable of managing his affairs under the Mental Health Act, Cap 308.

- 2. The Applicant, Babirye Annet, is hereby appointed as the personal representative and manager of the estate of Kironde Mark Park to administer his estate, including his salary as a government teacher, in the best interest of Kironde and his dependants.
- 3. The Applicant shall file an account of how she has managed the estate within six months from the date of this ruling.
- 4. As this is an ex-parte application, the Applicant shall bear her own costs

It is so ordered.

Delivered at Mpigi this 30 th day of June, 2025.

Hon. LADY JUSTICE DEEPA VERMA

Acting Judge

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