

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 578 OF 2019**

**(Made under section 24 of The Mental Disease Act, Cap 98 RE 2002)**

PETITION FOR THE APPOINTMENT OF THE MANAGER OF THE ESTATE OF  
WATSON SIMTOWE A PERSON OF UNSOUND MIND.

AND

IN THE MATTER OF AN APPLICATION FOR THE APPOINTMENT OF BEING  
APPOINTED AS A MANAGER BY LUCY DIU SIMTOWE

**RULING**

*Date of last order: 06.05.2020*

*Date of Ruling: 18.05.2020*

**EBRAHIM, J.**

The Applicant has petitioned before this Court to be appointed to manage the estate of Watson Simtowe of Dar Es Salaam, a person of unsound mind.

The petition has been brought under **section 24 of the Mental Disease Act, Cap 89 RE 2002** and it is supported by an affidavit of Lucy Diu Simtowe, the applicant.

As gathered from the affidavit of the applicant, the applicant and Mr. Watson Simtowe contracted a Christian Marriage on 31<sup>st</sup> December 2004 and were blessed with one issue namely James Watson Simtowe (**Marriage certificate appended "A"**). The applicant averred that Mr. Simtowe is an employee of Merry Water and has been sick for a while unable to attend his daily duties. On 3<sup>rd</sup> July 2019 he has been diagnosed to suffer from Major Mental Disorder (**major depression with psychotic symptoms – A copy of medical report appended – "B"**) and he is mentally ill i.e. a person of unsound mind to make any informed consent or sign any legal document due to impaired cognitive functions. The applicant declared further that she is the only legal wife and she is aware of her husband's employment benefits; a house at Chang'ombe Maduka Mawili Plot No. 11 Chang'ombe Shopping Centre; and a house with Residential Licence No. ILA001911 covering area No. ILA/ILL/SSH18/30 Sharifu Shamba, Ilala Ward in Ilala Municipal.

Before the hearing of the application could proceed, one Anna Simtowe emerged and prayed to be allowed to file counter affidavit on the reason that she has registered caveat on some of the

properties and she is also a legal wife of Mr. Watson Simtowe. The court granted a prayer and on 21<sup>st</sup> April 2020 Anna David Simtowe filed a counter affidavit objecting the management of a property with Title No. 20570 located at Chang'ombe Maduka Mawili, Plot No. 11. She stated that she is also a legal wife of Mr. Watson Simtowe having contracted a customary marriage on the 15<sup>th</sup> January 1960 at Tatanda Village, Kalambo District within Rukwa Region and were blessed with 4 issues. She averred that she has entered a caveat (annexure Anna – 1) in respect of the above mentioned property which was jointly acquired in 1975; hence a matrimonial property between Mr. Watson Manda Simtowe and herself. She averred further that she has no problem in the management of house stated at para 7 of the affidavit save for the one with Title No. 20570. She also objected that the Petitioner should not be appointed as a manager with full powers and authority to sign and execute any document on behalf of Mr. Watson Simtowe.

When the matter was called for hearing, the petitioner was represented by Mr. Luguwa, learned advocate and the Objector/

caveator through powers of attorney was represented by Mr. Kennedy Moses Abraham Simtowe.

Mr. Luguwa told the Court that Mr. Simtowe has contracted mental problems and cannot currently manage himself and has to be cared for in all state of his affairs by the Petitioner. He thus prayed in terms of **section 24 of the Mental Disease Act, Cap 98 RE 2002** that the Petitioner be appointed as Manager of the welfare of Mr. Watson Simtowe.

Referring to the averments in para 9 of the counter affidavit, Mr Luguwa argued that since the caveator's only concern is on the properties registered in the name of Watson Simtowe which she claims to have interest as a legal wife; the Petitioner should therefore be appointed as a manager as it is not disputed.

Mr. Kennedy Simtowe after narrating the marriage history between objector and Mr. Simtowe, told the court that Mrs Anna Simtowe is objecting for the Petitioner to manage a house at Chang'ombe. They do not object for the petitioner to continue taking care of Mr. Watson nor managing a cheque at Merry Water.

In rejoinder, Mr. Luguwa stressed that since there is no objection on the appointment of the Petitioner as a manager save for the management of Chang'ombe property; the petitioner should be allowed to manage the interest of Mr. Watson as a person with unsound mind.

I have carefully followed the submissions by both parties. The law i.e. **section 23 (c) of the Mental Disease Act, Cap 98 of the Mental Disease Act** provides for the provisions of management and administration to a person who is proved to the satisfaction of the court that is of unsound mind and incapable of managing his affairs. Further the management and administration of the estate of a person with unsound mind can be made by any friend, a relative or any person in whose care or charge that person is cared for/detained – **section 24 of Cap 98.**

Clearly as it could be gathered from the proceedings, it is indisputable that the petitioner is the wife of Mr. Watson. It is also indisputable that Mr. Watson has contracted mental issues and that he is capable of taking care of himself and managing his affairs. This

has also been proved through a medical report – **annexure B** which this court takes judicial notice in terms of **section 27(2) of the Act**.

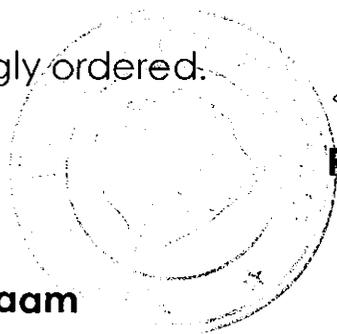
The Caveator does not dispute the management of the estate of Mr. Watson by the Petitioner save the landed properties as she claims to have interest on the same. She also claimed in her affidavit that the petitioner had been extravagant before.

That being the position therefore and upon this court being satisfied that Mr. Watson is incapable of managing his own affairs; this Court accordingly appoints the Petitioner LUCY DIU SIMTOWE to manage and administer the estate and affairs of Mr. Watson Simtowe. The Petitioner's administration and management of the estate and affairs of Mr. Watson shall be only for the purpose of making provision for his welfare, maintenance and that of members of his family dependent upon him and the payment of his debts and costs. Further the management and administration of the Petitioner shall be only to the extent that she can collect a gratuity cheque from the employer of Mr. Watson Simtowe i.e. Merry Water Limited, deposit and withdraw the same in maintenance of Mr. Simtowe as well as maintenance of his accounts. The Petitioner shall also

collecta portion of money/rent payable to Mr. Simtowe as per the previous family arrangements whereby the other portion is collected by Mrs Anna David Simtowe in respect of a house located at Chang'ombe Maduka Mawili Plot No. 11 Chang'ombe Shopping Centre with Title No. 20570. Moreover, the Petitioner shall have no powers to dispose or transfer any immovable property in the name of Mr. Watson Simtowe including but not limited to the above mentioned house i.e. a house located at Chang'ombe Maduka Mawili Plot No. 11 Chang'ombe Shopping Centre with Title No. 20570. Further the Petitioner shall not charge, mortgage or transfer any immovable property or lease any property in the name of Mr. Watson Simtowe for more than two years without express permission of the Court.

Application is allowed to the extent stated above. Following the nature of the matter, I give no order as to costs.

Accordingly ordered.



Handwritten signature of R. A. Ebrahim in black ink.

**R. A. Ebrahim**

**JUDGE**

**Dar Es Salaam**

**18.05.2020**