

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

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**CIVIL REVISION No. 02 of 2022**

*(Originating from Hanang District Court Miscellaneous Civil Case No. 11/2021 and No. 8 of 2020)*

**HJD (HER NAME IS WITHHELD) .....APPLICANT**

**VERSUS**

**PETER MICHAEL SLAGHWE.....1<sup>ST</sup> RESPONDENT**

**PAULO MICHAEL OMBAY.....2<sup>ND</sup> RESPONDENT**

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**RULING**

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Date: 6/1/2023

**BARTHY, J**

This is one of unusual cases, where the applicant, whose estate was ordered by Hanang' district court to be administered and managed by the respondents for having mental disorder, appeared before court claiming to have never been of unsound mind and requested to have her estate back.

Henceforth, this revision was commenced by this court *suo motu* following the complainant letter made by the applicant (her name is withheld to protect her privacy) dated 21<sup>st</sup> December 2022, addressed to the district resident magistrate in-charge of Hanang'. The district court magistrate in-charge forwarded the said letter to this court for directions.



This court therefore ordered revision matter be opened so that this court can probe into legality of the decision of the matter.

Before embarking to the merit of this matter, it will be best to narrate, albeit briefly, the background of the matter leading to this application.

The matter has an intrigued history; it started with Miscellaneous Civil Application No. 8 of 2020 where the respondents herein, filed the application before the district court of Hanang' moving the court under the certificate of urgency to appoint them to be the administrator of the estate of the applicant who was the respondent herein.

The respondents sought to be appointed the caretakers and custodian of the applicant who was said to be of mental disorder. They also sought to be appointed managers of the estate of the applicant and operating her account No. 50202400567 NMB Katesh Branch.

The application was made under section 19(1)(3), 24(5) and 33(1) of the Mental Health Act, 2008.

In the affidavit accompanying the application, it was deposed that, the applicant had mental health condition suffering from *haloperidol* and *carbamazepine*.

During the hearing of the application, Mr. Erasmo Mbeya the learned counsel for the respondents had submitted that the respondents were the cousins of the applicant who had no parents and not married.

It was further argued that the properties of the applicant were in a danger of being eliminated and wasted. Therefore, the respondents after the meeting with the clan sought to manage them and meet her

medical expenses in the total sum of Tsh. 20,655,000/-. The prayer which was granted by the trial court.

The respondents prayed to the court to withdraw a lump-sum to the tune of fifty-four million shillings (Tsh. 54,000,000/-) from account number 50202400567 NMB Katesh Branch belonged to the applicant for tractor purchase investment.

They also prayed to withdraw the lump-sum tune of seven million eight hundred thousand shillings (7,800,000/-) from the same account for debt's payments incurred in maintaining the applicant who was of unsound mind, for the period of January to December 2021.

They further prayed to withdraw monthly sum to the tune of six hundred thousand shillings (Tsh. 600,000/-) from the same account for the maintenance of the applicant, including catering for her medical expenses.

Upon hearing of the application, the trial court went ahead to order the lump-sum withdrawal of the total of the sum of sixty-one million and eighty hundred shillings (Tsh. 61,800,000/-) and monthly withdrawal to the tune of six hundred thousand shillings (Tsh. 600,000/-) from account No. 50202400567 NMB Katesh Branch belonged to the applicant for her maintenance and medical expenses.

The applicant in her letter she had complained against the order of the court made in favour of the respondents to withdraw the said sum and manage her account while she is not suffering from any mental disorder. She also claimed it was her son who is of unsound mind but not herself.



The applicant had also asked the court to vacate its order and allow her manage her account.

The district resident magistrate in-charge of Hanang' after meeting the applicant and her complaint he thought he has no mandate to deal with the decision that has been determined with fellow resident magistrate, he forwarded the complaint and records of both matters to this court for guidance.

The complaint having landed to this court and the order to open the revision *suo motu* was made. For the interest of justice, the court found it prudent to summon the parties to appear before this court and address on the matter.

Aligning with the principle of natural justice requiring the parties to be heard on the matters affecting their right. See the case of **Wegesa Joseph M. Nyamaisa v. Chacha Muhogo, Civil Appeal No. 161 of 2016 CAT** Mwanza (unreported).

Despite the fact that there is no laid procedure for the court to conduct the proceedings of revision *suo motu*, what matters therefore is affording the parties with their right to be heard. The same was stated by this court in the case of **Pemba Festus v. Pudenciana Mkami Majula, Civil Revision No. 49 of 2022, High Court at Mwanza (unreported)**.

During the hearing of this matters, both parties appeared in person.

The applicant submitted before this court that she had retired as the teacher in the year 2020 and she returned to her home in Hanang' district from Kondoa where she was working.



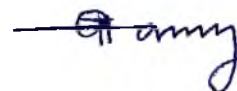
She informed the court that her account has not been operating because there was no money in her account. She went on to state that, the respondents were the one helping her to operate with her NMB account at Hanang'.

She went further to submit that; she wanted to withdraw some money from her account for her upkeep. She went on to state she has been well since the year 2021 and 2022 as she did not go for any medical treatment. Save for her son who was mentally ill. She added that the respondents were not maintaining her anyhow.

She further contended that she had not sent the respondents to withdraw any amount from her account and they will not do that without consulting her and rested her submissions.

The first respondent on his submission had argued that, the applicant was their relative who has mental illness since she was in Kondoa. They managed to take her back home and block the person who was operating her account at Kondoa. The respondent helped the applicant get the new account number.

He went on to argue that, the applicant's son had mental sickness as well and they had to take care of both of them. He added that they were responsible for their maintenance and medical support as the applicant is even well now. To conclude he insisted that, the respondents should continue managing and administer the estate but the court should decide for them.

A handwritten signature in blue ink, appearing to read "A. A. A. A. A.", is written over a horizontal line.

The second respondent in his submission he contended that the, applicant and his son are mentally ill and they are the one looking after them with the consultation of the whole clan in all their needs.

He added that they were able to return the applicant from Kondoa and managed to build the applicant the house. He went on to argue that, the applicant's condition is well known to the whole village and even the District Commissioner pointed the committee to probe on her condition.

He further submitted that they have accounted to the court on the money used to attend the applicant. He also thought they are still fit to continue with the management administration of the account of the applicant because she is still unable to operate it on herself.

He remarked further on the present condition of the applicant was because she was under medication which made her mentally well for some times. The second respondent then rested his submission.

The applicant become too emotion after hearing the respondents and she claimed they were lying and she could not believe her relatives want to finish her and asked not to add anything further. That marked to the end of both side submissions.

Having in mind the rival submissions, also having gone through the records of the trial court, there is no doubt that the respondents were dully appointed by the trial court to be the managers and administrator of the estate of the applicant who was said to have mental disorder.

The trial court had therefore ordered the respondents to withdraw the total sum of Tsh. 61,800,000/- (sixty-one million and eight hundred thousand shillings) from account No. 50202400567 NMB Katesh Branch



belonged to the applicant for her maintenance and medical expenses vide the ruling of the court on Misc. Civil Application No. 11 of 2021.

It is also clear that, before that the applicants were appointed by the court to administer and maintain the estate of the applicant vide Misc. Civil Application No. 8 of 2020 where they were also granted order with the same court to withdraw the total sum of Tsh. 20,655,000/- (twenty million, six hundred and fifty-five thousand shillings) from account No. 50202400567 NMB Katesh Branch belonged to the applicant for her maintenance and medical expenses.

Now the applicant is before this court claiming she is the fit person and never had mental disease. The applicant therefore wanted to manage her account for her maintenance as the respondents have never been responsible for her upkeep. The applicant stated her son is the one with mental disease but not herself.

The respondents have claimed the applicant has the periodical mental disease for long time and they were responsible to maintain her. They also claimed the condition of the applicant is well known in her village and the whole family is involved in her care and maintenance.

The respondents added that the money used for applicant's upkeep was well accounted before the court and they were able to build her the house near the relatives for further assistance. The respondents stated, they can continue to manage and administer her estate on her behalf.

It should be known that the administration and management of the estate of the mentally disordered person should be made is in



accordance to the law. In that regard, the provision of section 24(2) of the Mental Health Act [to be referred to as the Act], 2008 provides;

*The court may, after being satisfied with the inquiry make such orders regarding the **disposal of any movable property not exceeding three million shillings in value** belonging to a person in respect of whom a reception order is made. [The emphasis is supplied].*

In giving orders relating to management and administration of the estate of the person with mental disorder, when the court giving an order for disposal of movable property, the law requires not to exceed three million shillings (Tsh. 3,000,000/-) in value. The word disposal has been defined by Cambridge Dictionary to mean "**available to be used by someone**".

Therefore, according to the law, movable property available to be used for person of mental disorder in respect of whom an order is made it shall not exceed three million shillings (Tsh. 3,000,000/-) in value. In both Misc. Civil Application No. 11 of 2021 and 8 of 2020, the court has granted leave to the respondents to withdraw the total sum of Tsh. 82,455,000/- (eighty-two million, five hundred and fifty thousand shillings) and withdraw every month Tsh. 600,000 (six hundred thousand shillings) from account No. 50202400567 NMB Katesh Branch belonged to the applicant for her maintenance and medical expenses.

The high court is vested with powers to do revision if it appears there has been an error material to the merit of the case and not otherwise.





Under section 44(1)(b) of the Magistrates' Courts Act, Cap 11 [R.E. 2019] it provides;

*44.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*

*(a) ...*

*(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf **by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit: [Emphasis is supplied].***

The revision is sought if it appears that there has been an error material to the merits of the case involving injustice.

Due to the reasons established above, and the circumstances of this case, it is without a doubt that the court had no powers to order such sum to be withdrawn from the account of the applicant. It is not within the scope of law to give orders to dispose the assets more than three million shillings. Therefore, the decision of the trial court was unlawful.

Owing to the circumstances of this case, this court must invoke its revisional powers and order the proceedings, ruling and orders of the trial court to be set aside and quashed for being nullity. In the meantime, the applicant is restored to her old position to run and operate her bank account No. 50202400567 with NMB Katesh Branch and use it as deemed fit.



It is so ordered.

**DATED** at **Babati** this 6<sup>th</sup> January, 2023.



A handwritten signature in blue ink, appearing to read "G.N. Barthly", is written over the printed name.

**G.N. BARTHY**  
**JUDGE**  
**6/1/2023**

Delivered in the presence of the applicant and his accompanying relative and the respondents in person.