

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

Civil Suit No: 293 of 2020

**IN THE MATTER OF SHEILAH MAYFIELD
AUSTIN ALSO KNOWN AS SHEILA MAYFIELD
AUSTIN (INTENDED PATIENT)**

**AND IN THE MATTER OF THE MENTAL HEALTH
ACT CHAPTER 45 OF THE MENTAL HEALTH ACT**

**AND IN THE MATTER OF THE INHERENT
JURISDICTION OF THE COURT**

**AND IN THE MATTER OF THE APPLICATION OF
COLTON EDGAR BELGRAVE**

Before: The Hon. Madam Justice Margaret Reifer, Judge of the High Court

**Dates of Hearing: 2020: June 11
 September 7**

Date of Decision: 2020: October 5

Appearances:

**Mrs. Tammy L. Bryan in association with Mr. Traimaine Taylor of George
Walton Payne & Co. for the Applicant.**

RULING

INTRODUCTION

- [1] In this application under the **Mental Health Act** and **Mental Health Rules** this Court has requested a preliminary or *in limine* submission by counsel for the Applicant on the question of whether its jurisdiction to hear and determine this matter lies within the **Mental Health Act Cap. 45 (the Act)** and if there is a discretion to exercise such jurisdiction, whether this Court should do so within this factual matrix.
- [2] The reason this arises is because the Applicant resides in London and appears to be a mere visitor to the Island. Exhibit CEB 1 to his affidavit filed 4 March 2020, shows that he was born in England on 18 November 1963 to Sheila Belgrave, formerly Austin, and her (then) husband Hudson Belgrave. His mother, the Intended Patient resides with him in London and he is her caregiver. She was born in Barbados on 20 January 1935 and is a citizen of Barbados by virtue of her birth. Stated otherwise, Barbados is her domicile of origin.
- [3] There is clearly no intention, expressed or otherwise, for her to reside within the jurisdiction of these courts and for her to be cared for within the jurisdiction of these courts.

[4] The reason for the application is apparent from the fact that the Intended Patient resided in Barbados for the years 2000 to 2013 and appears to have purchased a home for this purpose at lot 299 Ocean View Avenue, Inchcape Terrace, St. Philip and to be the possessor of three bank accounts with modest amounts in this jurisdiction.

The Application

[5] The application, as framed, is clearly meant to facilitate access to the abovementioned bank accounts in order to maintain the Intended Patient's property in Barbados. In short, there are no proposals for her care and for the use of her assets in Barbados to assist with her care. It provides as follows:

"I, COLTON EDGAR BELGRAVE, of 18 Grey Hound Road, London, N17 6XW in the United Kingdom but presently on a visit to this Island hereby apply for the following Orders:

- (a) That SHEILAH MAYFIELD AUSTIN currently of 18 Grey Hound Road, London, N17 6XW in the United Kingdom be declared a Patient under **section 17** of the **Mental Health Act Chapter 45** of the **Laws of Barbados**.
- (b) That COLTON EDGAR BELGRAVE of 18 Grey Hound Road, London, N17 6XW in the United Kingdom the son of the Patient be appointed RECEIVER in this matter for the Patient, SHEILAH MAYFIELD AUSTIN currently of 18 Grey Hound Road, London, N17 6XW in the United Kingdom, for the duration of her illness or until her death for the purpose of administering the affairs of the said Patient and other consequential directions as necessary pursuant to **section 17** of the **Mental Health Act Chapter 45** of the **Laws of Barbados**.

- (c) That the Receiver be at liberty to withdraw such amounts as are needed to maintain the Patient's property in Barbados from the following accounts:
- Scotia Bank Account numbered 449399
 - FirstCaribbean International Bank Account numbered 1000983907
 - RBC Royal Bank Account numbered 57594757
- (d) That the Receiver file a Statement of Account within 12 months of the making of this order and thereafter every 12 months.
- (e) That there be liberty to apply.

Such further Orders and/or Declarations as this Honourable Court may deem just and expedient.

The ground(s) of this application is that the Patient has been diagnosed to be suffering with Dementia of the Alzheimer's type and is incapable of personally handling her own affairs."

[6] The Application was accompanied by two affidavits, the first dated 4 March 2020, the second 26 March 2020. The first, deposed by the Applicant, in so far as it was relevant to this preliminary determination, states as follows at paragraphs 4, 11, 14, and 16:

“4. My mother migrated to England in 1959 and lived there until her retirement in 2000. She then repatriated to Barbados where she lived at # 299 Ocean View Avenue, Inchcape Terrace in the parish of Saint Philip in this Island, a property she purchased in 2001. I have searched through her personal effects but I have not been able to find the conveyance for the property.
...

11. In 2013 my mother suffered an encapsulated CVA in the parietal lobe area of her brain which is a stroke. This had profound effects on her ability to complete daily tasks, care for

herself or manage her affairs. Arrangements were made to take her to England where care could be delivered more effectively and her needs met more easily. She came to England and now lives in my property with my daughter and myself. Here in England my mother received thorough examinations and was diagnosed in 2014 with Vascular dementia. Initially the plan was that any necessary care would be provided between myself and all of my siblings but unfortunately this has not materialized and the responsibility for delivering all care is undertaken by my daughter and myself.

...

14. The care that is delivered by my daughter and myself is augmented by paid care. Three days a week she attends a day center for the elderly which provides her with social contact and stimulation and ensures that her safety is maintained during the day. She is also provided with carers who attend daily to ensure that she has eaten, is appropriately dressed, washed and has taken her medication. I pay for this care and ensure that her needs are met as a part of this package.

...

16. As my mother's primary caregiver, I also have applied for and have been given lasting power of attorney to manage her finances in England as a part of this process have access to my mother's finances. Exhibited hereto and marked "CEB 6" is a copy of the Lasting Power of Attorney showing that I have the Lasting Power of Attorney. I have also assumed responsibility for managing her property at Inchcape in Barbados and paying the bills. I have been undertaken [sic] this process by the use of bank transfers and requesting favours from family members to complete this task. This has proven to be quite stressful as well as costly due to the accumulative charges levied on such international transfers by the banks. It would be more practical to use my mother's funds held in her bank accounts in Barbados."

- [7] The affidavit evidence reveals that the Intended Patient is the mother of four (4) children resident in jurisdictions other than Barbados. The second Affidavit is deposed by daughter Shirley Jackson, apparently a resident of

Canada, who confirms that she has no objection to “my brother Colton Edgar Belgrave being appointed our mother’s Receiver so that he can meet her daily expenses and use her funds to care for her”. She further deposed that her brother is best placed to care for and maintain their mother, as she resides with him and he has a very close relationship with her and that he has been caring for their mother for an extended period of time.

- [8] As it stands this affidavit, supposedly in support, is at odds with the stated purpose and intent of the Application, but at this stage nothing turns on this fact or the fact that the Applicant resides in the United Kingdom.

The *In Limine* Issue

- [9] The issue arising from the facts outlined is whether the Barbados courts have jurisdiction to hear a mental health application where the Intended Patient in particular and the Intended Receiver reside outside of this jurisdiction. Or stated differently, can an individual who merely has assets in this jurisdiction, but is resident (possibly domiciled) elsewhere, fall under the jurisdiction of the Court and the **Mental Health Act** to the extent that they can *in absentia*, be declared a Patient within the meaning of the said **Act**.

- [10] Without such jurisdiction, it is obvious that any orders made by this Court pursuant to the subject application would be null and void. This Court is in

no doubt that it can make property orders of the nature sought, but can it lawfully do so if it has no jurisdiction over the Intended Patient?

DISCUSSION

The Lasting Power of Attorney

[11] Deposed to in the affidavit of 4 March 2020 and exhibited to the same is a Lasting Power of Attorney obtained by the Applicant under the United Kingdom Mental Capacity Act 2005 (MCA). Counsel for the Applicant states that the Applicant “as his mother’s primary care giver, applied for and was granted a Lasting Power of Attorney in England on August 5, 2015. This allows the Applicant to manage his mother’s affairs in England and have access to her finances in England to assist with her care.”

[12] It does not allow him *de jure* authority to manage and administer her affairs in Barbados. The Applicant has, since his mother’s return to the United Kingdom six years ago, been paying her bills in Barbados including land taxes, water rates and electricity rates as stated at paragraph 18 of his supporting affidavit (**supra**):

The Statutory Framework

[13] The **Barbados Mental Health Act** of February 1989 is stated in its preamble to be “An Act to provide for the care and treatment of persons of unsound mind and for related matters”. This is its stated and primary purpose. All other

(related) matters are ancillary thereto. It is an adoption of some parts only of the UK Mental Health Act of 1959 and the UK Mental Health Act 1983, as well as some features of various pieces of similar legislation from across the Commonwealth, including the Trinidad and Tobago Mental Health Act of 1975.

- [14] The United Kingdom Mental Capacity Act 2005, which came into force in 2007, is the successor to the United Kingdom Mental Health Act of 1983. It incorporated the Convention on the International Protection of Adults 2000 which was signed at the Hague on 13 January 2000 and to which the United Kingdom was a signatory. In its material particulars, the Convention states:

“The States signatory to the present Convention, Considering the need to provide for the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests, Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of adults, Recalling the importance of international co-operation for the protection of adults, Affirming that the interests of the adult and respect for his or her dignity and autonomy are to be primary considerations, Have agreed on the following provisions ...”

- [15] This Convention is a recognition of the application of the concept of conflict of laws to situations where a patient resident in one jurisdiction may be in need of the court’s protection in another jurisdiction. It is a recognition that

the UK legislation and courts cannot protect an individual resident in another jurisdiction.

- [16] Barbados is not a signatory to this Convention, nor is there any recognition in Barbados law of the reciprocal enforcement of the UK legislation, such as is the case with the **Probates and Letters of Administration (Resealing) Act Cap. 247**, which provides for the resealing of grants of probate and Letters of Administration; or, the **Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act Cap. 201**, which provides for the reciprocal enforcement of judgments in Barbados and in certain foreign/Commonwealth countries; or the **Evidence (Proceedings in Other Jurisdictions) Act, Cap. 121A** to make provision for enabling the High Court to assist in obtaining evidence required for the purpose of proceedings in other jurisdictions.

The Mental Health Act Cap. 45

- [17] This Act does not define the ambit of the Court's jurisdiction but in the opinion of this Court certain clear inferences can be drawn. It bears repeating here that the **Mental Health Act** in its preamble provides as follows:

“An Act to provide for the care and treatment of persons of unsound mind and for related matters.”

- [18] **Cross on Statutory Interpretation Third Edition** says this about the significance of a preamble in statutory interpretation at page 126:

“When there is a preamble, it sets out the facts and assumptions upon which the statute is based.”

- [19] The author at page 128 makes reference to the dicta of **Lord Normand** in the *locus classicus* on this point in the case of **A.G. v Prince Ernest of Hanover [1957] AC 436** at 467 as follows:

“The courts are concerned with the practical business of deciding a lis, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the court’s business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred.”

- [20] Clearly, the preamble on its own does not resolve this issue.
- [21] **Part IV of the Act** from **sections 17 to 28** deals with the management of property and affairs of patients. The following marginal notes/side notes are found adjacent to **section 17(1)**:

“Persons within jurisdiction of court.”

- [22] This suggests that **section 17** applies only to persons within the jurisdiction of the Court, but it does not define or delimit that jurisdiction.
- [23] Marginal/side notes can be used as an aid to construction or interpretation of a statute. On the question of marginal/side notes as an aid to construction,

Rose-Marie Belle Antoine in her text **Commonwealth Caribbean Law and Legal Systems** summarises the modern approach to marginal notes at page 205 as follows:

“The present position as enunciated in **Skildcamp** is that a court may look at marginal notes in cases of ambiguity. However, in practice, side notes carry little weight and cannot displace the plain meaning of the enactment.”

[24] **Section 17(1)** provides:

“Where the High Court, after considering medical evidence, is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs, the court may exercise the powers conferred on it by this Part.”

[25] I disagree with the submission of counsel for the Applicant at paragraph 12 of her written submissions that “**Section 17(1) of the Act**, sets out who are considered to be persons within the jurisdiction of the Court”.

[26] The authorities cited by counsel, namely **In the Matter of Section 24 of the Act and In the Matter of Sharmaine Fahie BVI HCV 266 of 2008, In the Matter of the Mental Health Act Cap. 45 Maria Annabelle Elias v Mary Carmen Hyacinth Levers CV567 of 2016 (delivered 12 January 2018)** and **Leroy Silston v Edris Silston ANUHCV 2008/0678 (delivered June 2009)** speak to declarations of mental disorder resulting in an incapacity to manage one’s affairs, the making of receivership orders and the making of orders necessary and expedient for the benefit of the Patient. They do not speak to the question of jurisdiction.

[27] **Section 18** enumerates the general functions of the court and **section 19** the special powers of the court. These functions and powers are quite wide and are further amplified in the **Mental Health Rules**, but it is noted that the first and primary function of the court once it has declared that an individual is a patient within the meaning of **Cap. 45**, is to secure the property and affairs of the declared patient for the maintenance or other benefit of the patient and to “have regard to the requirements of the patient”: see **section 18 (1) and (2)**.

[28] **Section 20** makes supplementary provisions with respect to wills executed under **section 19(1)(e)**. **Section 21** deals with the power of the court to make interim orders before declaring an individual to be a patient under the law. **Section 22** empowers the court to appoint a receiver of the patient and **section 23** empowers the Court to vest stock in a curator appointed outside of Barbados. **Section 23** provides as follows:

- (1) Where the court is satisfied
 - (a) that under the law in force in a place outside Barbados a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and
 - (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the court should exercise its powers under this section,

the court may direct any stock standing in the name of that other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person and may give such directions as the court thinks fit for dealing with accrued dividends thereof.

(2) For the purposes of this section the expression “stock” includes shares and any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities and “dividends” are to be construed accordingly.

[29] **Section 23** appears to give our courts a limited jurisdiction to transfer stock or shares or otherwise deal with such stock or shares where a person has been appointed, outside of Barbados, “to exercise powers with respect to property or affairs of any other person on the ground that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs”.

[30] **Section 24** speaks to the preservation of interests in the patient’s property and **section 25** to the appointment of medical and legal visitors as it considers necessary for the purposes of investigating matters relating to the capacity of any patient to manage and administer his property and affairs or otherwise in relation to the exercise of the functions of the court under this Part. **Section 26** deals with appeals from the High Court and **section 27** the making of Rules under the authority of the Judicial Advisory Council.

- [31] The marginal notes, on their own, do not resolve this issue.
- [32] Parliamentary debates are an accepted, but limited, external aid to legislative interpretation, part of the purposive approach to statutory interpretation. Such a source may be limited to the extent that parliamentary debates can be unclear or conflicting: **See Parliamentary Debates as a Judicial Tool** by **Dr. Sonia L. Richards, J** (to be found in *The Barbados Bench Bar Journal* 2018), in which she discusses their use in shedding light on the legislative intention, its historical context and the mischief it sought to remedy. See also **Pepper (Inspector of Taxes) v Hart [1993] AC 593; Fair Trading Commission v BNOC Civ. App. No 20 of 2009 (delivered 25 February 2015)** and **Rose-Marie Belle Antoine in Commonwealth Caribbean Law and Legal Systems on ‘Aids to Interpretation’** at pages 202-211.
- [33] The **Mental Health Act** was debated first in 1980 and then again in 1989 when it was finally promulgated. These debates clearly reveal the mischief or intention of this legislation, putting it in its true context and social reality. It was meant to mitigate the harshness of the **Vagrancy Act** by providing a statutory regime for the detention of persons with apparent mental disorders. There were notable concerns stemming in particular from one notorious detention at the Psychiatric Hospital. Ancillary to this was the recognition that persons with mental disorders are the owners of property or businesses,

which often became the subject of a family dispute and the recognition of the need for efficiency in the management of the property and affairs of persons with mental disorders.

The Mental Health Rules, 1989

[34] These Rules were made by the Judicial Advisory Council pursuant to **section 27** of the **Mental Health Act** and came into effect on 13 March 1989. They provide no direct answer to the question posed by this application. However, it is my submission that a review of their provisions readily reveals a purpose and intent of **the Act** and **Rules** inconsistent with a notion of a jurisdiction in the circumstances of the matter at hand.

[35] Both **the Act** and **Rules** vest in the court a jurisdiction outside the normal boundaries of adversarial proceedings. The Court is vested with extensive investigative and inquisitorial powers to satisfy itself that a person is indeed a patient within the meaning of the Act, for example, the powers of the Court at **section 26** to appoint a Visitor to “visit the patient and report to the court as to the condition and welfare of the patient.” In these proceedings, a Court can accept sworn and unsworn evidence and “may accept evidence and act upon it notwithstanding that it would not be admissible in other legal proceedings”: **Part V. Part IX** sets out extensive provisions for the summoning and ordering the attendance of witnesses and other persons in these proceedings. The Court

can on its own motion order “the patient’s attendance at such place as it directs for examination by the Registrar, a visitor or by a medical practitioner”:

Rule 52.

[36] The role and responsibility of the court does not end with the appointment of a Receiver. The Court is expected to make orders ensuring the continued safety and care of the patient and for the protection of their property. Thus, **Part XIII** requires the Court to obtain security from a Receiver and **Part XIV** deals with the delivery or rendering of accounts to the Registrar at the discretion of the Court. **Part XV** deals with the nature of inquiries to be conducted by the Court as to the desirability of the appointment of a receiver, prior dealings with the patient’s property, to carry out inspections of same and inquiries as to testamentary documents executed by the patient.

[37] Thus, it appears that in a scenario such as this where an Intended Patient appears domiciled and/or resident in another jurisdiction, the Court would be unable to exercise the functions and powers provided by the **Mental Health Act** and **Rules**. These include, but are not limited to:

- (i) the carrying out of preliminary or incidental enquiries: **section 27(2)(a)**; or
- (ii) the authorizing or requiring of the attendance and examination of the Intended Patient: **section 27(2)(g)**; or
- (iii) an order that visitors attend to the Intended Patient: **section 25**.

The Applicability of the Rules of Conflict of laws and “*Forum Non Conveniens*”

[38] The concepts of conflict of laws and ‘*forum non conveniens*’ do not presently appear relevant to the issue at hand as these concepts generally relate to a determination of the appropriate forum or jurisdiction to settle a dispute between parties. This is not presently a dispute between parties, although, given that there are interested parties and that the extent of the Intended Patient’s mental disorder has not yet been addressed by the Court, it does create the potential for such. While the factual matrix raises issues as to the relevance of the concepts of domicile and residence to the matter at hand, no submissions have been made in the context of domicile of choice and domicile of origin and rightly so, in the opinion of this Court. But notwithstanding this, the clearer purpose lies in an interpretation of the **Mental Health Act** and **Rules** since an order is sought pursuant to this legislation.

[39] That notwithstanding, the novelty created by this matter is the reality that a Receiver by another name (a lasting Power of Attorney) has already been appointed in the United Kingdom under their successor legislation, the Mental Capacity Act 2005.

The Applicant’s Submissions

[40] The Applicant’s submissions fail to address the *in limine* issue as framed. The submissions made speak to the jurisdiction of the Court as long as the Intended

Patient is proven to have a mental disorder, without addressing the fact that such a person may be physically outside the reach of the Court. Is it enough for such a person merely to have assets within this jurisdiction? Counsel's answer to this was that there is nothing in the Act to exclude an Applicant and Intended Patient residing elsewhere from falling within the jurisdiction of **the Act**. In short, there is no limitation on where such persons may be in **sections 17 and 18 of the Act**.

[41] Counsel for the Applicant in her written submissions states that **section 17** sets out who are considered to be persons within the jurisdiction of the Court and states at paragraph 13 of these written submissions as follows:

“13. A person who is incapable of managing their affairs as a result of a mental disorder, may be declared a Patient pursuant to the Act by the Court. The Court therefore has jurisdiction over a person with a mental disorder. “Patient” is defined under the Act as a person suffering or appearing to be suffering from a mental disorder. A declaration of an individual as a patient under the Act, is therefore based solely on the medical evidence which is presented before the Court. The Court must be satisfied that the individual is suffering from or appearing to be suffering from a mental disorder”.

[42] In short, the effect of counsel's arguments is that a court has jurisdiction as long as it is proven by medical evidence that the Intended Patient has a mental disorder within the meaning of the **Mental Health Act**.

[43] I do not agree with this submission. The question of jurisdiction arises before the Court determines whether an Intended Patient has a mental disorder within

the meaning of **the Act** and is “incapable by reason of such mental disorder of managing and administering his property and affairs”. There is, in my opinion, a confusion of the terms ‘jurisdiction’ and ‘power’ implicit in this submission. Whether the court has the power or authority to declare an individual a Patient within the meaning of the Act and appoint a Receiver is incontrovertible. Whether the Court has the jurisdiction to exercise that power or authority in the present circumstances is an entirely different question.

CONCLUSION

[44] There is a dearth of authority on this point, but it is my view that as with every application made to the court, the starting point must be to determine whether the court has jurisdiction to hear that application whether that jurisdiction is derived from equity, common law or statute.

[45] Dicey, Morris & Collins in their text **The Conflict of Laws Chapter 21 Mental Incapacity** makes some insightful observations on the development of the law on this point in the United Kingdom and the incorporation in the provisions of the new statute of the Hague Convention on the International Protection of Adults. The extract follows:

“At common law, the English rules of the conflict of laws applying in cases concerning mentally disordered or incapacitated persons and their property were ill-developed. Some principles could be extracted from the relatively few reported cases, and they were supplemented by a number of statutory provisions, but the whole did not make up a

comprehensive set of rules. Section 63 of the Mental Capacity Act 2005 remedies this situation. It gives effect in England to the Hague Convention on the International Protection of Adults of 2000, and (given that that Convention is not in force and is unlikely to be for some time) establishes rules of the conflict of laws which are applicable even if the Convention has not come into force. In this Chapter, those rules, set out in Sch. 3 to the Act, are examined, with some account of the position obtaining before the Act.

The position before the 2005 Act. The earlier cases indicate that the jurisdiction of the English court is primarily based on the presence of the mentally incapacitated person. It can be exercised even although he has no property in England. In a number of cases it has, further, been held or suggested that the court has jurisdiction if the mentally incapacitated person has property in England although he is not present here. The presence of property does not give jurisdiction over the person of the mentally incapacitated person; but the court may give leave for steps to be taken to have him brought to England. (my emphasis)

The Hague Convention. A Convention on the International Protection of Adults was agreed under the auspices of the Hague Conference on Private International Law in January 2000. It applies to the protection in international situations of adults, who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. It deals with the questions which State has jurisdiction to take measures directed to the protection of the person or property of the adult; which law is to be applied in the exercise of this jurisdiction; which law applies to the representation of the adult; and it provides for the recognition and enforcement of such measures of protection in other Contracting States.

The Convention's rules as to jurisdiction. The principal rule as to jurisdiction is that it lies with the judicial or administrative authorities of the Contracting State of the habitual residence of the adult. The authorities of a Contracting State of which the adult is a national have jurisdiction if they consider that they are in a better position to assess the interests of the adult ...”

[46] It is my view that the only reasonable inference to be drawn from an interpretation of **the Act** and **Rules** is that the jurisdiction of this statute extends to persons who are resident within the jurisdiction of the Court, whatever their domicile. The facts do not support an argument that the Intended Patient is domiciled and/or resident within the jurisdiction of the Barbados Courts. On such finding, it is not necessary to address the question of whether this Court should exercise the discretion vested in it under **Part IV of the Act**.

DISPOSAL

[47] In view of the premises, it is my opinion that the subject application has failed to establish the jurisdiction of this Court to make the order requested under the **Mental Health Act** and **Rules Cap. 45**.

[48] There may be some further authority/power/jurisdiction in which the application can be grounded. In such event, leave is granted to the Applicant to resubmit this application differently grounded.

MARGARET REIFER
Judge of the High Court