

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. 142 OF 2014

IN THE MATTER OF AN APPLICATION FOR CUSTODY MANAGEMENT AND APPOINTMENT OF A GURADIAN

AND

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248

AND

IN THE MATTER OF W H (A PERSON SUFFERING FROM MENTAL DISORDER)

S W.....1ST PETITIONER

J H.....2ND PETITIONER

VERSUS

C H.....RESPONDENT

RULING

1. The Motion dated 23rd April 2015 seeks amendment of the petition herein dated 31st July 2014. A challenge to that application was mounted vide a preliminary objection and a notice to cross-examine. I dismissed the two challenges by my ruling of 23rd September 2016.
2. Parties have filed detailed written submissions and filed bundles of authorities. They also addressed me orally on 1st February 2018. I have gone through all the records before me and I have noted the arguments articulated.
3. Amendment of pleadings is usually a straight forward matter, intended to either correct errors or update the information on the record. Courts tend to allow the same as a matter of course, as the courts are vested with wide discretion with regard thereto.
4. The objective of pleadings is to place material before the court by way of stating the party's case. The pleadings form the foundation of the party's claim, and it is upon the same that the court bases its decisions. Where pleadings are wanting or inadequate for whatever reason, the law allows for amendment. A party should not be locked out just because their pleadings have problems, so long as the difficulties are identified at the earliest.
5. I do not think the respondents herein would be prejudiced in the least should the pleadings herein be amended. The proceedings are yet to begin. Amendment would not in any way alter the course of the proceedings for they have not begun nor affect the respondent's defence.
6. I need not say more, I shall grant the application as prayed. The applicant shall lodge their amended pleadings in the next fourteen (14) days from the date of this ruling.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JUNE, 2018.

W. MUSYOKA

JUDGE