

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 GUARDIAN**

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. This ruling is in respect of a Notice of Preliminary Objection and Notice to Cross-Examine Deponent both dated 26th June 2015 and filed herein by the respondent.
2. The two notices arise from the application filed herein by the petitioners dated 23rd April 2015. .
3. The application dated 26th June 2015 essentially seeks amendment of the petition. The point raised by the respondent, if I understood it well, dwells on the fact that the affidavit in support was sworn by the advocate for the applicants rather than by the applicants themselves.
4. I have carefully perused through the offending affidavit. The deponent has stated in several paragraphs that he was deposing to matters of fact on information from the petitioners, which is permissible in law.
5. I do not think there is any merit in the objection raised and the notice. Both are intended, in my view, to delay the hearing and final determination of the matter. Let the matter be determined on its merits,
6. The objection and the notice are accordingly overruled. The petitioners are at liberty to proceed and prosecute their application dated 23rd April 2015.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF SEPTEMBER, 2016.

W. MUSYOKA

JUDGE