



**MNM v MNJ (Miscellaneous Application 183 of 2015)
[2024] KEHC 7772 (KLR) (Family) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7772 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS APPLICATION 183 OF 2015

MA ODERO, J

JUNE 28, 2024

N THE MATTER OF THE MENTAL HEALTH ACT CAP 284

LAWS OF KENYA

BETWEEN

MNM APPLICANT

AND

MNJ RESPONDENT

RULING

1. Before this court for determination is the Notice of Motion dated 23rd February, 2023 by which the Interested Party FKM seeks the following orders;-

- “(1) That leave be granted to the applicant/interested party to amend the application dated 15th October, 2021.
- (2) That the annexed draft application, supporting affidavits and consents therein be deemed to have been duly filed and served.
- (3) That the Respondent be at liberty to amend their defence and or reply within fourteen (14) days after service of the amended application.
- (4) The costs of the application be in the cause.”

2. The application is brought pursuant to Article 47, 50, 159 of the *Constitution of Kenya* 2010, Order 8 Rule 3 (2) (3) and 5 (1) of the *Civil Procedure Rules* Cap 21 Laws of Kenya and all other enabling provisions of the law and is supported by the affidavit of even date sworn by the Interested party.



3. The application was also supported by an Affidavit dated 23rd February, 2023 sworn by David Wambugu Muikia a court Appointed legal Guardian of the subject.
4. The application was premised on the following grounds;
 - “(a) That leave to amend the application dated 15thOctober, 2021 is necessary to guide the court in determination of the suit herein.
 - (b) That the proposed amendments are necessary to avoid multiplicity of applications and to guide the court in determination of the real issues in the suit.
 - (c) That at the time of filing the application, one of the Applicants David Wambugu Muikiawas self representing.
 - (d) That the proposed amendments will not occasion any prejudice to the Respondent as the hearing of the suit has not closed.
 - (e) That the time allowed under the Civil Procedure Act and Civil Procedure Rules 2010 for amendments of pleadings has since lapsed.
 - (f) That it is in the interest of justice that the applicants pleadings are clearly defined.
 - (g) That it is in the interest of justice that leave be granted to amend the application.”
5. The Respondent Maryanne Nyambura Mundiabjected to the application and filed the following Grounds of objection
 - “(1) That the Notice of Motion dated 23rd February, 2023 is incompetent and incurably defective and ought to be struck out the court records as the said application offends Rules 9 and 10 of the Oaths and Statutory Declarations Rules which requires that annexure to affidavits should be sealed and stamped.
 - (2) That the prayers sought in the Notice of Motion dated 23rd February, 2023 and in particular the draft application, supporting affidavits and consents be deemed as duly filed and served cannot be granted because the attached draft amended application and its supporting documents do not bear exhibit marks on them directly and must be expunged from the court record.
 - (3) That the Notice of Motion dated 23rd February, 2023 has no merits and constitutes an abuse of due process of the court.
 - (4) The applicant’s Notice of Motion dated 23rd February,2023 is fatally defective and ought to be dismissed with costs to the Respondent.”
6. The application was canvassed by way of written submissions. The Interested Party filed the written submissions dated 12th June, 2023 whilst the Respondent relied upon her written submissions dated 12thJune, 2023.



Background

7. The Respondent MaryAnne Nyambura Mundia, one Stephen Nyagahand David Wambugu Mukia were on 31st March, 2016 jointly appointed as the legal Guardians and Managers of the estate of Mary Nyambura Joseph (the subject herein).
8. The Interested Party who is a brother to the subject filed this application seeking to amend his application in order to include the court Appointed Guardian.

Analysis And Determination

9. I have carefully considered this application, the Reply filed thereto as well as the written submissions filed by the parties. The only issue for determination is whether leave to amend the application ought to be granted.
10. Order 8 Rule 5 (1) of the Civil Procedure Rules 2010 which deals with amendments provides as follows;-

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”
11. As a general practice applications for amendment of pleadings are permitted unless it is shown that such application is ‘mala fides’ or that it will prejudice the other party. The courts generally exercise their discretion in favour of allowing an amendment where the application has been made in good faith.
12. Further where an amendment is found to be necessary in order to properly bring out the real issue in controversy it will be allowed. In the case of *Cobboud v GreenwichLBC* [1999] EWCA (iv 207h) it was held that;-

‘Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient management of justice is not significantly harmed.’
12. I find that the present application has been made in good faith. I find nothing to show that to allow the amendments sought will unfairly prejudice the Respondent. In my view the proposed amendments will enable the court determine the real issue in controversy between the parties.
13. Finally I find merits in the application dated 23rd February, 2023. The same is hereby allowed in terms of Prayers (1) (2) and (3). This being a family matter each side will meet their own costs.

DATED IN NYERI THIS 28TH DAY OF JUNE, 2024.

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MAUREEN A. ODERO

JUDGE

