

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 77 OF 2011

D M.....APPLICANT

VERSUS

G GRESPONDENT

JUDGEMENT

1. The appeal herein arises from the decision of Ms. Ocharo Principal Magistrate, made on 25th November 2011 in Nairobi Children's Court Children's Case No. 747 of 2011.
2. The said decision dismissed the entire suit, that is to say Nairobi Children's Court Children's Case No. 747 of 2011 on the grounds that it was not brought as a representative sent on behalf of the minor the subject of the proceedings. It was found that Order 32 rule 2(1) of the Civil Procedure Rules was not complied with. This rule is minored in Legal Notice No. 77.
3. I have carefully gone through the said provisions and I agree with the primary court, the provisions are mandatory. The suit in the children's court is about the children. It is a representative suit. The children have no capacity to sue. They sue through adults. It is fundamental that that fact comes out very clearly in the pleadings. Where the pleading do not bring out that fact then the suit would be incompetent, and the paramountary rule cannot cure the incompetence.
4. There is no merit in the appeal before me. I hereby dismiss it. Costs shall go to the respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. M. MUSYOKA

JUDGE