



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO.2 OF 2012

W R M (a minor suing through her mother and Next of kin) MWK ...PLAINTIFF

VERSUS

SR. MAGDALENE M. MUNDE 1ST DEFENDANT

THE BOG BAHATI GIRLS HIGH SCHOOL 2ND DEFENDANT

RULING

Having discussed with all the parties involved, I have established that R does have certain issues of discipline at the school and certain opinions have been formed about her character. I have considered the proposals made by the school – the school does not object to her going back to study but suggests that she attends school as a day scholar. Although Mr. Orege states that the school is registered as a DAY school, in practice it is a boarding school and there is no day schooling student.

The minor is in Form IV, her mother lives in K, she says she has an aunt who lives at KITI in Nakuru, which is about 8km from Bahati. If she were to become a day scholar would this be in her best interest? If she were to go back as a boarder would this be in her best interest? I have considered the implications in both scenario – I think the negative risks and impact both on her and the other students (given that she will now have an opportunity to be more exposed and unmonitored) amounts to defeating the principle of best interest of the child. R needs a lot of counseling and guidance, she also needs to be disciplined, her mother cannot leave the issue of discipline to the school alone, she too has a role to play. This is the spirit recognized even under the **United Nations Convention on the Rights of the Child Article 18(1)** which provides that efforts must be made to ensure recognition of the principle that parents have responsibilities for upbringing and development of the child. The best interest of the child shall be the basic concern.

Closer home, The Children Act No.8 of 2001 Section 4(2) provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislature bodies, the best interest of the child shall be a primary consideration.”

Further **Section 4(3)** contemplates a situation where the first and paramount consideration is the extent

that is consistent with adopting a course of action calculated to:

- a. Safeguard and promote the rights and welfare of the child.
- b. Conserve and promote the welfare of the child.
- c. Secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.

From the foregoing, my view is that ordering the minor to be a day scholar exposes her to such predatory risks and denies her an opportunity to benefit from the close supervisory environment that the boarding school environment offers. Secondly it opens avenues for her to then pick questionable and unchecked conduct and material which she can then pass on to the other girls – so that her being a day scholar would not even benefit the interest of her fellow students.

I acknowledge however that she needs to be disciplined and she must recognize the place of rules, regulations and authority at school.

I therefore direct that:

- a. The school shall take the necessary measures addressed at dealing with the minor's last incident of indiscipline.
- b. The minor must attend counseling and guidance mistress at the school.
- c. The minor's conduct shall be regularly monitored and evaluated and the Principal to file a report in court every two months. The first report shall be filed on 26th March 2012, and thereafter on every 26th day of every two months until further directions by the court.
- d. Mention on 26/03/2010.

H.A. OMONDI

JUDGE

24/01/2012