



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 469 of 2009

CHANDRAKANT GOR T/A PREMIER COLLEGE.....PLAINTIFF

VERSUS

PREMIER COLLEGE OF PROFESSIONAL STUDIES LTD.....DEFENDANT

RULING

The Plaintiff/Applicant filed Chamber Summons dated 2/7/2009 seeking various orders as stated in the Application. The Defendant/Respondent was described in the Plaint of the same date as “**Premier College of Professional Studies**”.

The orders sought to restrain the Defendant under Order 39 2A (1), 3 (1) and 9 and O. XXIX rule 10 restraining the Defendant from using business name “**Premier College**”. And that the Defendant do furnish to the Plaintiff and the court on oath a statement of names and address of all persons who are at all material time partners or proprietors of the Defendant firm. Exparte order was granted on 3/7/09.

On 24/7/09 the Plaintiff filed an Amended Plaint changing the description of the Defendant drastically in that where the Defendant was a “**firm**” it has now become a “**limited liability company**”.

The parties have filed their pleadings and the affidavits in support and in opposition of the application. In addition long lists of authorities.

Another point to be cleared is that the Defendant on 10/7/09 filed Notice of Motion seeking to discharge orders granted by the court in favour of the Plaintiff on 3/7/09. This application is grounded on several grounds and on the affidavit of Chandara Kant Gor who has exhibited certificate of a change of particulars under the Registration of Business Names Act carrying on business as Premier College since 21/3/1990. His business was also registered under the said name “**Premier College**” in the Ministry of Education Science and Technology.

On 21/6/2009 an advertisement was placed on page 20 (Business Page) “**Premier College of Professional Studies July 2009 Intake**” a similar advertisement was placed on Daily Nation of June 29, 2009. Thereafter Demand letter was issued to the Principal.

Thereafter this suit was filed by the Plaintiff and the application was served. In replying affidavit the Defendant disclosed that they are a registered limited liability company registered on 16/3/2009. It is also sworn that the Defendant commenced business at Khalsa Centre where it has taken lease of premises.

The Defendant has also applied for the logo by the Kenya Industrial Property Institute. The logo shows the name of college and

moto "**Labore Omnia Vincit**" which moto is also claimed by the Applicant. It is not clear if the Registration was granted.

This is only an interim application but it is quite clear that the Respondent proposed use of Premier College Professional Studies is likely to confuse the members of public who are interested in the services of the Premier College hitherto offered by the Plaintiff.

The Applicant has shown that he has been using name "**Premier College**" since 1968. The name and the logo are placed in such a way that the word "**Premier College**" are larger print than the words of "**Professional Studies**" clearly calculated to represent the name Premier College of the Plaintiff.

It is obvious there was no correct and careful search in the Registrars office to see that there was the Plaintiff's name which has been on record for a long time. The Plaintiff has no doubt gained goodwill and he stands to lose if the Respondent who has lifted the business name and the logo hitherto used by the Plaintiff in his business. Let it be noticed that it is the use of the name that is a problem. The Respondent may use another name for his College other than "**Premier College**".

In the circumstances the application is allowed. The orders are granted as prayed. The Defendant shall pay the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of June 2010.

J. N. KHAMINWA
JUDGE