



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 5 of 2007

SAMUEL KARANI CHUMA.....APPELLANT

VERSUS

PAUL WANJOHI GACHIRA1ST RESPONDENT
PETERSON KARIUKI.....2ND RESPONDENT
MARY WANJIRU GITHAE.....3RD RESPONDENT

RULING

This Appeal is in respect of the Ruling of the learned trial magistrate Mr. John Onyiego delivered on 15.12.06 in **Civil Suit No. 225/06**.

The said ruling was in respect of an application for substitution of the parties from the plaintiff to the names of 3 persons who were described as the Chairman, Secretary and Treasurer of Ngata Children's home. The Appellant herein who is the defendant in that suit opposed the said substitution which was nonetheless allowed. He therefore sought the leave of the court to appeal against that ruling which leave was granted. According to the Appellant the management committee has no capacity to sue.

In Ground 2 of his Appeal, he states that the magistrate erred in failing to make a finding that Ngata Children Home was registered as a business name and the persons registered thereon are proper persons to institute the suit. He further (Ground 3) states that it is only the Board of Trustee which has capacity to institute suits on behalf of the Children's home. In arriving on his ruling, the learned trial magistrate, applied the Education Act and came to the conclusion that under Education Act, the management committee has capacity to sue.

I must nonetheless disagree with the learned magistrate on that point. I have come across (at page 41 in red) a certificate of registration dated 30.10.2000 showing clearly that the said school was registered with the Ministry of Home Affairs under Cap 142 of the Laws of Kenya (since Repealed). The management of the Children's Home was therefore supposed to be under the Children and Young Persons Act and not under the Education Act. The learned trial magistrate therefore erred in law in applying that Act.

The Children and Young Persons Act has since been repealed and replaced by the Children's Act. Section 59(b) of that Act expressly excludes the definition of a school under the Education Act from being applied to a children's home.

Under Section 61 of the Children's Act, the implied requirement is that a children's school should be ran by 'Trustees' and a list of Trustees has to be supplied to the Director of Children's Services before approval.

The Children's Act does not therefore provide for the running of the children's home by a management committee. The court was not shown any legal instrument that authorizes the members of the management committee to sue and be sued on behalf of the children's home.

I am satisfied therefore that the ruling of the learned trial magistrate was contrary to the established law. He applied the wrong statute and therefore arrived at the wrong conclusion. I find this Appeal meritorious and I allow the same and set aside the orders given in the said ruling with costs in the cause.

I also direct that **SRM Kerugoya Civil Case No. 226 of 2006** be returned to Kerugoya Court for hearing and final disposal.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 7th day of July 2010.

In presence of:- The Appellant in person and Mr. Kahiga for Respondents.