

KANYUAMBORA SEC. SCHOOL.....APPELLANT

VERSUS

ANTONY NJIRU MUCHEKE.....RESPONDENT

JUDGMENT

This appeal concerns a ruling by R.M. in ***Senior Resident Magistrate Civil Case No. 189 of 1999 made on 22/9/2004***. The grounds of appeal are listed in the Memorandum of appeal numbering 4. The suit was concerning the dismissal of the Respondent from the appellant's employment.

On 22/9/2004 the Appellant raised a Preliminary Point that the Appellant being a school has no capacity to be sued. In his ruling the Resident Magistrate made a finding that proper Notice to raise a Preliminary Objection was essential giving particulars in support of the Preliminary Objection. As it is the Defendant (Appellant) made a general pleading of intention to raise Preliminary Objection at the hearing. The learned trial Magistrate disallowed the Preliminary Objection and ordered hearing of suit to proceed. The grounds of appeal were argued all together. Appellant submitted that the general pleadings in the defence was sufficient Notice, and it was not proper to state that counsel of Appellant ambushed the counsel for defendant. After the hearing of both parties and because the Trial Magistrate failed to find that the appellant was not a legal body and therefore ought not to have ordered the suit to proceed. Order VI Rule 7 permits a party to raise any point of law in his pleading. Therefore the Resident Magistrate was in error in finding Notice had not been given. Again apart from saying that the issue of capacity is a weighty matter the Trial Magistrate did not deal with the issue of the Appellant being with capacity to be sued. The civil procedure provides for action by firms and persons carrying on business in the name of a firm or in a name that is not theirs Section Order 29 C.P.C. Disclosure of the real legal owners may be made on request. The name of a school is a business name and it falls under this order. In the circumstances, I do not find that the suit against the appellant is defective. Since this suit has been pending since 1999. There is much delay and suits should be brought to an end within a reasonable time. I dismiss the appeal and order the parties to proceed to hearing forthwith. The costs of appeal shall be in the cause.

Dated this 16th January, 2008.

J. N. KHAMINWA

JUDGE

16/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kathungu

Read in open court.

J. N. KHAMINWA

JUDGE