



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Civil Misc Cause 120 of 2006

CHARLES MAKWATA

SAMSON OKIYA ASEKA

ELLY OKIYA (Suing for and on Behalf of

**WESTERN SCHOOL FOR THE
HANDICAP INTENDED).....PLAINTIFF/APPLICANT**

VS

**KENYA POWER AND LIGHTING CO.
LTD.....DEFENDANT**

RULING

By an application by way of an ex-parte Chamber Summons, pursuant to the provisions of Order 1 Rule 8 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, the applicant seeks orders:

- (a) That the instant application be certified urgent and the same be heard on priority basis.
- (b) That leave be granted to the intended Plaintiff/Applicant herein to file a representative suit for and on behalf of WESTERN SCHOOL FOR THE HANDICAP and any other person who may be interested in the matter.
- (c) That costs of this application be in the cause.

The application is based on the grounds:

- (i) That all the members of WESTERN SCHOOL FOR THE HANDICAP have the same interest in intended suit against the intended defendant.
- (ii) That the instant application ought to be heard and allowed before the said suit is filed.

The application is predicated upon the annexed affidavit of Elly Okiya sworn on 24th day of May 2006.

For the applicant, it was argued that Elly Okiya the intended plaintiff/applicant has been authorized to swear this affidavit on behalf of the other intended plaintiffs/applicants. Authority in respect thereof is exhibited as "EO 1".

That on diverse dates in the year 1997, pursuant to a contract with the Kenya Power & Lighting Co. Ltd., the applicant and other members of the Western School for the Handicap made considerable payments to the said Kenya Power & Lighting Co. Ltd., for the supply of electric power to the school. To date, the said company has failed to supply the school with electricity or to refund the deposit made towards that end, hence this application.

That the school's constitution empowers the applicants, who are Chairman, Secretary and Treasurer to file suit for and or behalf of the school.

I have scanned through the application and particularly exhibit "EO1." I have equally taken into consideration that the time frame within which the suit must be filed is running out. Accordingly, I grant the application in terms of prayer (b) and (c) only.

In terms of Order 1 Rule 8 (2) I direct that the plaintiff give notice to the institution of suit to the defendant by personal service.

DATED and Delivered at Bungoma this 30th day of May, 2006.

N.R.O. OMBIJA

JUDGE