REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
Civil Appeal 9 of 2001

THE HEADMISTRESS MENENGAI PRIMARY SCHOOL……..1ST APPELLANT

THE PARENTS TEACHERS ASSOCIATION

OF MENENGAI PRIMARY SCHOOL…….……...2ND APPELLANT

VERSUS

JAMILA ANYONA…….……...DEFENDANT

JUDGMENT

The Respondent, Jamila Anyona filed suit against the appellants, the Headmistress Menengai Primary School and the Parents Teachers Asscociation of Menengai Primary School seeking to be paid certain sums that she claimed were due to her when she was terminated from employment by the appellants. The respondent claimed the following amounts;

(a) Ksh.1,160/= being the October salary.

(b) One month's salary in lieu of notice of termination of employment.

(c) ***Damages for wrongful dismissal***.

(d) Arrears of salary in the period of March, 1992 to October, 1993 being the difference between the statutory minimum monthly salary of Ksh.1,160/= and unpaid sum of Ksh.600/=.

(e) Unpaid House allowance in the period March, 1992 to October, 1993.

(f) Leave pay.

(g) ***Costs of the suit***.

The appellants filed a defence denying that they had employed the respondent. They averred that they lacked capacity to employ anyone to work for Menengai Primary School which is a school owned by the Municipal Council of Nakuru and which was managed by the Municipal Education Committee. They denied that they had breached any employment laws or that owed any money to the respondent. The resident magistrate heard the case in the subordinate Court after which she found that the respondent had proved her case on a balance of probabilities on the fact that she was owed money by the appellants. She

awarded the respondent a sum of Ksh.10,000/= being a consolidated figure for the respondent's October salary, arrears of salary and leave. She however held that the respondent had been employed as a casual and not as a permanent employee. She awarded costs of the suit to the respondent. The appellants were aggrieved by the said decision of the trial magistrate and have appealed to this court.

In their amended memorandum of appeal, the appellants raised six grounds of appeal challenging the decision of the trial magistrate finding in favour of the respondent. They were aggrieved that the trial magistrate had found that there existed a contract recognizable in law between the appellants and the respondents. They faulted the trial magistrate for finding that the appellants had capacity to be sued. They were aggrieved that the trial magistrate had not applied the required principles of the law in arriving at the decision awarding the respondent the sum of Ksh.10,000/=. They were aggrieved by the trial magistrate had not considered the totality of the evidence adduced before arriving at the said decision, which in their opinion was erroneous.

At the hearing of the appeal, Mr Gatumu learned counsel for the appellants submitted that the respondent's suit was incompetent in that she had filed a suit against persons who had no capacity to be sued. He submitted that the 1st appellant could not be held liable in her personal capacity for the acts of Menengai Primary School, which was a school managed by the Municipal Council of Nakuru. He submitted that all the employees at the school were employed by the Municipal Council. He argued that the respondent therefore ought to have sued the school committee of the school and not the appellants. He submitted that there was no evidence that the respondent had been employed or had been an employee of Menengai Primary School. He submitted that the evidence on record revealed that respondent had some arrangements with some teachers and parents where she was casually employed to prepare lunch for those who had paid money on a half day payment of Ksh.30/=. He submitted that the claim of underpayment by the respondent could not therefore be sustained as she had agreed to be paid Ksh.600/= per month. He submitted that although the trial magistrate found that the respondent was a casual employee, she still went ahead and awarded the respondent Ksh.10,000/= which was unjustified the circumstances. It was his argument that there was no legal basis upon which the trial magistrate could have made the said award. He submitted that the claim of the respondent being in the nature of special damages ought to have been specifically pleaded and specifically proved. He urged this court to allow the appeal with costs.

Mrs Omwenyo, learned counsel for the respondent opposed the appeal. She submitted that the respondent had established that she was employed by the appellants. Her evidence had even been confirmed by the evidence of the appellants' witnesses who testified that the respondent had been employed to cook lunch for some teachers and students. She submitted that the 1st appellant had authority to employ casual employees in the school and could not therefore state that she lacked capacity to employ anyone. She submitted that the respondent had properly sued the appellants who had legal capacity to be sued. She submitted that the respondent had proved her claim and was therefore entitled to be paid under the employment laws. She submitted that the respondent had produced regulations made under **The Regulation of Wages and Conditions of Employment Act (Cap 229 of the Laws of Kenya)** without any objection on the part of the appellants. She therefore submitted that the appellants could not turn around and argue that the trial magistrate had no basis upon which to make the said award in favour of the respondent. She urged this court to dismiss the appeal with costs.

This being a first appeal, this court is required to hear the appeal by way of re-trial and reconsideration of the evidence adduced before the trial magistrate. This court is not bound to follow the findings of facts of the trial magistrate if it appears either that he failed to take into account of particular circumstances or probabilities or if the impression of the demenour of a witness is inconsistent with the evidence generally. In reaching its determination, this court is mandated to put in mind the fact that it neither saw nor heard the witnesses as they testified (*See* **Selle & Another vs Associated Motor Boat Company Limited & Others [1968] E.A 123).** The issues for determination by this court are twofold; The first issue is whether the appellants had capacity to be sued on behalf of Menengai Primary School. The second issue to be determined is whether the respondent proved to the required standard that she had been employed by the appellants and therefore was entitled to the prayers sought in her plaint.

I have considered the submissions made on this appeal. I have also carefully read the pleadings filed by the parties to this appeal and the proceedings of the subordinate court. Certain facts are not in dispute in this case. It is not disputed that the teachers of Menengai Primary School requested the 1st appellant to allow them to start a scheme where they would be providing lunch for those teachers and students who came from far. The 1st appellant granted the teachers permission to undertake the said school lunch programme. She provided premises where the said lunch was to be cooked. It is clear from the evidence which was adduced by the 1st appellant that the role of the school was limited to providing a room where the food would be cooked. The organization for the provision of lunch was left to the teachers who had requested to organize the said lunch feeding programme.

In this regard, DW2 Magdaline Muthoni Waweru and DW3, Elizabeth Wangare Muya, Teachers in the school who are managing the programme, testified that the school was not involved in the said lunch programme. They testified that the programme was run by the teachers and the students who paid a certain fee to be provided with lunch. What is however clear from the evidence adduced by the said witnesses is that the respondent was employed on a casual basis to assist the teachers in preparing the said lunch. She was employed for half a day and was paid Ksh.30/= by the members of the lunch feeding programme. She was not issued with a letter of appointment by the school neither was she employed by the Municipal Council of Nakuru, the owners and the managers of the school. From the evidence adduced it is clear that the work that the respondent undertook at the school was a private arrangement between herself and the teachers of the school who were running the said lunch programme. The school administration was not involved. That is the reason why the respondent was not issued with a letter of employment like DW4 Irine Chelangat who was employed as a cleaner and a cook at the school.

As stated earlier in this judgment, the issue for determination by this court is whether the respondent properly sued the appellants. It is clear from the evidence that the respondent was neither employed by the 1st appellant nor the 2nd appellant. In any event, the respondent would not have sued the headmistress of Menengai Primary School because she had no capacity in law to be sued. Under **Section 9** of the **Education Act** and **The Education (School committees) Regulations** made thereunder, it is only a school committee of a primary school which is mandated with authority of managing the said primary school. It is the school committee of the primary school which can sue and be sued. The headmistress of a primary school cannot therefore be sued in respect of any action that she undertakes in the school on behalf of the school. Secondly, The Parents Teachers Association cannot be sued because it is not a body which is recognized in law. The **Education Act** does not recognise the existence of a Parents-Teachers Association. In the circumstances of this case therefore, it is clear that the respondent sued the appellants wrongfully. The appellants lacked capacity to be sued on behalf of Menengai Primary School. I therefore find merit with the ground of appeal by the appellants that they had been sued when they lacked the requisite capacity to be sued.

Further, upon re-evaluation of the evidence adduced before the trial magistrate, it is clear that the respondent had been employed by the teachers of Menengai Primary School on a casual basis. She worked for half a day. She was paid daily. The school administration was not involved in the work that the respondent was undertaking. In the circumstances of this case therefore, even if this court were to find that the respondent worked for the appellants, the respondent has not proved to the required standard the nexus between work she was undertaking and Menengai Primary School.

The upshot of the above reasons is that the appeal filed by the appellants must be allowed. The judgment and decree of the subordinate court entered on the 8th of December, 2000 in favour of the respondent is hereby set aside and substituted by a judgment of this court dismissing the respondent's suit with costs.

The appellants shall have the costs of this appeal.

DATED at NAKURU this 18th day of July 2006.

L. KIMARU

JUDGE