

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 5970 of 1993

E M K (A Minor suing through her next friend and father)

**A K K.....PLAINTIFF/
RESPONDENT**

VERSUS

**JAMES KARANJA.....
.....DEFENDANT/APPLICANT**

RULING

The plaintiff then a Minor was walking along Thika Muranga Road when she was knocked down by a motor vehicle registration NO>KZU 648 belonging to the defendant. She then filed this suit through A K K the next friend be discharged and the applicant be granted leave to conduct her own case and leave was granted on 6th May 2004.

On 11th March 2005 the defendant brought this Notice of Motion seeking orders for review of the said order of 6th May 2004.

The application is also supported by an affidavit sworn by REBECCA OPATI JUMA in which she avers that she has been informed by the advocate on record which information she verily believes to be true that the suit was instituted by the next friend on behalf of the plaintiff with Authority to sue as Next Friend so that the suit ought to have been dismissed. But in paragraph 6 of the said affidavit she admits that the Authority to issue as Next Friend was stapled together with the plaint.

The application is opposed by the plaintiff who has filed a replying affidavit sworn by counsel who has deponed that the suit when filed was accompanied by Authority To Sue As Next Friend which was stapled together with the plaint which fact is admitted by the defendant in paragraph 6 of the affidavit in support of this application sworn by Rebecca Opati Juma.

I have perused the court record and I have confirmed that the Authority To Sue As Next friend was filed and stapled together with the plaint. The submission by the defendant that the said Authority To Sue is not stamped by court stamp is far fetched since the same is stapled together with the plaint and it was an oversight that the same was not stamped by the court registry official which omission cannot be attributed to the plaintiff. The other issue raised by the defendant is that they were never served with the application by the plaintiff for leave to conduct her own suit. this submission is misconceived as order XXXIX Rule 12(5) of the Civil Procedure Rules provides for the application to proceed ex parte.

The defendants Notice of Motion dated 11th March 2005 lacks in merit and the same is dismissed with costs to the plaintiff.

Dated and delivered at Nairobi this 14th day of September 2006.

J.L.A. OSIEMO

JUDGE