

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

Civil Case 718 of 2004

ROSEMARY MUTHONI MBUGUA.....PLAINTIFF

VERSUS

JOHN NJOROGE IRUNGU.....DEFENDANT

RULING

The plaintiff had on 2nd July 2004 obtained an ex parte injunctive orders restraining the defendant by himself, servants, agents, employees from supplanting and/or interfering in any manner whatsoever and howsoever with the plaintiffs' management, running and operation of the **STEPPING STONES PREPARATORY SCHOOL – THIKA** situate on land L.R. NO. THIKA/15/413 and Plot No.192 Makongeni Phase 10 Thika pending the hearing and determination of this suit. There was a further order that the application be heard interpartes on 15th July 2004.

On 15th July 2004 the application was not heard interpartes but it was consented by both parties that the status quo be maintained. On 6th February 2006 the parties appeared before me in Chambers and agreed to put in written submissions in respect of contentious issues in the subject matter thereof.

By 30th March 2006 both parties had put in their submissions which I considered and delivered my ruling on 22nd September 2006. From the submissions, I made a finding that the school was a family venture and each party had contributed directly and indirectly towards the acquisition and development of the school and the facilities for the running of the school and that the plaintiff was the authorized and registered Manager of the school but I declined to issue orders as prayed in the plaintiff's Chamber Summons dated 2nd July 2004.

By Notice of Motion dated 6th October 2006 the plaintiff seeks orders for stay of execution of my said order of 22nd September 2006. The applicants' application is based on the ground that the said ruling of 22nd September 2006 discharged the interim orders that had been hitherto in force and that effectively sanctioned two centers of management power over the school and likely to cause management wrangles which might paralyze the operations of the school.

The application is opposed by the defendant who has filed a replying affidavit. Even without going into the merits and demerits of this application, I would like to state that my said order of 22nd September 2006 did not amount to creating two power centers over the school far from it. The parties must distinguish the difference between administrative management and professional management and the two are distinct.

The Professional Manager of the school must have as a requirement approval of the Minister and be registered as a Manager to run the school and I do not see how the defendant can interfere with the professional running of the school before he applies and obtains the Minister's approval.

The running of schools is different from other institutions. One can own the school but employ a Professional Registered Manager to run the school. That does not mean that that Manager runs the school. All that I said was that both the plaintiff and the defendant had shown sufficient interest in the

ownership of the school but this did not give the defendant a licence to interfere with the professional management of the school. In fact if the defendant supplants the plaintiff before he obtains the Minister's approval to run the school, the school will immediately face closure for being conducted or managed in a manner which is contrary to the provisions of Section 16 of the Education Act.

That being the position and there being no room for interference with the professional management of the school, there is nothing to be stayed and for the above reasons the applicant's Notice of Motion dated 6th October 2006 is dismissed.

I order that costs be costs in the suit.

Dated and delivered at Nairobi this 8th day of November 2006.

J.L.A. OSIEMO

JUDGE