



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 329 OF 2001

PETER KARANJA.....1st PLAINTIFF

PAUL MWANIKI WACHIRA.....2nd PLAINTIFF

JAMES NJUGUNA3rd PLAINTIFF

**(Suing in their capacity as the officials of the
Parents**

Teachers Association Moto Primary School)

VERSUS

SAMUEL KINYANJUI MUNGAI.....1ST DEFENDANT

IBRAHIM NGUGI KARIUKI.....2ND DEFENDANT

NJOROGE MUCHAMI.....3RD DEFENDANT

MOTO FARMERS CO-OPERATIVE

SOCIETY LIMITED.....4TH DEFENDANT

RULING

The Defendants herein have made an application under the provisions of **Order VI Rule 13(a) (b) (c) (d) and Rule 16 of the Civil Procedure Rules** seeking the orders of this Court to strike out the Plaint filed by the Plaintiffs. The grounds in support of the Application is that the Plaintiffs lacked *locus standi* to sue or be sued on behalf of Moto Primary School. The Applicants have further stated that the Plaintiffs did not have the authority from the School Committee of Moto Primary School to file this suit on behalf of the school. The Applicants have further stated that the pleadings as filed would embarrass and prejudice the due process of the law. The Application is supported by the annexed affidavit of Samuel Kinyanjui Mungai, the 1st Defendant. In the said affidavit the 1st Defendant has deponed that the Plaintiffs having stated in the Plaint that they were filing the suit in their capacity as the officials of the Parent Teachers Association of Moto Primary School they did not have legal capacity to sue or be sued on behalf of the said Moto Primary School. The 1st Defendant averred that the proper party to sue on behalf of Moto Primary School was the School's Committee and not its Parents Teachers Association. The 1st Defendant further deponed that the Plaintiffs did not have any authority to sue the Defendants as no resolution had been passed by the said school authorising them to file the suit. It was his averment that

the Plaintiffs' suit was therefore fatally defective and ought to be struck out.

The Application is opposed. The Plaintiffs have filed grounds of opposition. The 1st Plaintiff, Peter Karanja, has sworn a replying affidavit in opposition to the Defendant's application. In the grounds of opposition the Plaintiffs have stated that they have *locus standi* to sue the Defendants in their capacity as the Parents Teachers Association of Moto Primary School. The Plaintiffs further state that they did not sue the Defendants on behalf of the school and therefore did not require the authority of the School Committee to institute the suit against the Defendants. In the replying affidavit, the 1st Plaintiff has deponed that the suit was filed by the Plaintiffs in their capacity as the Parents Teachers Association and not as the School Committee of Moto Primary School. The 1st Plaintiff reiterated the contents of the grounds of opposition and averred that they did not require the sanction or authority of the school committee to enable them file the suit.

In their submissions before Court, Mr Ogolla learned Counsel for the Defendants/Applicants and Mr Mbeche, learned Counsel for the Plaintiffs/Respondents more or less argued their respective positions in accordance with the pleadings filed in Court. Mr Ogolla submitted that under the provisions of **Section 9 and 10 of the Education Act (Cap 211 Laws of Kenya)** a school that is managed by a local authority must have a school committee which shall be responsible for the management of the school. In the event that a school is not managed by a local authority then the Minister shall appoint a School Board of Governors who shall manage the school. Mr Ogolla further submitted that the **Education Act** does not contemplate the existence of a Parents Teachers Association. According to Mr Ogolla, a Parents Teachers Association is a society under the **Societies Act** and therefore was not capable of filing any suit or being sued. Mr Ogolla further submitted that the 1st, 2nd and 3rd Defendants, who are the officials of the 4th Defendant, could not be sued in their personal capacity. The Defendants therefore prayed that the application to strike out the Plaintiff's suit be allowed with costs.

In reply, Mr Mbeche learned counsel for the Plaintiffs has submitted that the Application filed by the Defendants was defective. Learned Counsel submitted that the Applicants ought to have chosen under which specific provision of **Order VI Rule 13 of the Civil Procedure Rules** they ought to have brought the application. Mr Mbeche submitted that the 1st, 2nd and the 3rd Defendant were sued in their personal capacity and not as the officials of the 4th Defendants. Mr Mbeche further submitted that the said three Defendants had been sued because they had acted ultra vires their mandate as the officials of the 4th Defendant. He further submitted that the Plaintiffs had capacity to file this suit. He prayed that the application filed by the Defendants be dismissed with costs.

I have considered the rival arguments made by Counsel for the Defendants and Counsel for the Plaintiffs. I have also read the respective pleadings filed by the parties to this application. I have also perused the file in its entirety. The Plaintiffs filed suit against the Defendants as they were apprehensive that the Defendants, having obtained the title deeds of the parcels of land belonging to the school, would dispose the said parcels of land.

Since the filing of this suit, this case has not been heard. I see from the record of the Court that this case has been listed for hearing on the 18th of October 2004. The issue for determination by this Court is whether or not the Plaintiffs had locus standi to file this suit. According to the Defendants the Plaintiffs having filed this suit in their capacity as the Parents Teachers Association they could not purport to act on behalf of Moto Primary School. The Defendants have argued that Moto Primary School, being a public school, could only be managed and file suit in accordance with the provisions of **Education Act**.

According to the Defendants, the concept of Parents Teachers Association does not exist in the **Education Act**, neither is it recognised in the said Act. Following this argument, the Defendants therefore submitted that the Plaintiffs could not have capacity to file suit on behalf of Moto Primary School. I have considered the argument advanced by the Defendants. **Section 9 and 10 of the Education Act (Cap 211)** provides that public schools can only be managed by school committees or Board of Governors. In the instant case, the Plaintiffs are not saying that they have brought this suit on behalf of Moto Primary School or on behalf of its school committee or its Board of Governors.

What the Plaintiffs are saying is that they have brought the suit on behalf of the Parents Teachers Association – Moto Primary School. As conceded by the Defendants, a Parents Teachers Association exists independent of the Management of the School. In some instances Parents Teachers Association and the school committee are one and the same. In the case of Moto Primary School, the Parents Teachers Association appears to exist independent of the school committee. The Defendant has further conceded that the Parents Teachers Association is in essence a society which can only sue through its officials and not by itself. In the instant case, the Plaintiffs have stated that they have filed the suit in their capacity as the officials of the Parents Teachers Association. The Plaintiffs cannot therefore be said to lack capacity to bring this suit on behalf of the Parents Teachers Association of the school.

The Defendants seem to have confused the Parents Teachers Association of Moto Primary School and the School Committee of the said Moto Primary School. The Plaintiffs are clear as to their capacity. They are not purporting to be the School Committee of Moto Primary School. They have stated clearly that they are the officials of the Parents Teachers Association, Moto Primary School. I do therefore find the submissions that the Plaintiffs lacked capacity to bring the suit herein to be without foundation. As the Parents Teachers Association of Moto Primary School, the Plaintiffs have every right to seek the protection of the physical facilities of the school where their children are provided with education. I do therefore find that the Defendants application lacks merit. The Plaintiffs have *locus standi* to institute the suit as officials of the Parents Teachers Association of Moto Primary School. I will not address the other issues which in any event did not touch the merits of the application or influence the Court in arriving at its decision.

Suffices for me to state that the Defendants' application is hereby dismissed with costs.

DATED at NAKURU this 17th day of September, 2004.

L. KIMARU

AG. JUDGE