



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 344 OF 1989**

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**JOHN N. NYOTU.....APPLICANT**

**VERSUS**

**MUKEU ESTATE.....RESPONDENT**

**RULING**

The proceedings herein involve a minor John Ngigi Nyotu whose next friend is his mother Mary Wanjiku.

By an application filed on 31st March, 1998. Counsel sought to compromise the suit. An order to that effect was made on 12th June, 1998. That is the order sought to be set aside by this application. The authority of counsel who compromised the claim is now being challenged.

In the order of 12th June, 1998, the plaintiff was awarded Kshs.1.5 million inclusive of general damages, special damages, costs and interest. However in the application giving rise to the said order, issues of costs and interest were not canvassed.

Order 31 Rule 7(b) of The Civil Procedure Rules is mandatory. Before a compromise can be entered into on behalf of a minor, leave of the court has to be given. In the absence of that leave the court did not waive costs and interest. With respect I agree because that indeed was the effect of the order of 12th June, 1998.

The affidavit in support of the application for approval of settlement was sworn by one Johnson Nyotu Ngigi, the husband of the next friend. The husband was not a party to the proceedings.

It transpired later that, by a letter dated 20th May, 1997, counsel then appearing for the parties had agreed that he suit be marked as settled with no orders as to costs. The letter was not brought to the court's attention when the application for compromise was heard. Indeed the said letter was not filed until 25th February, 2000. Whatever the case, even if the said letter were filed in item and alongside the said application the order proposed would still not hold for lack of leave of the court.

In addition, strict compliance was not enforced as the sum involved was paid directly to counsel for the Plaintiff with adverse consequences. I believe, both parties to a suit are bound by the orders of the court

and contravention herein cannot be attributed to the counsel for the Plaintiff and exonerate that for the defendant. It is clear the interests of the minor were not taken into account.

I note the issues raised by the learned counsel for the defendant and believe the same have been sufficiently answered by the learned counsel for the Plaintiff.

I find that the consent letter dated 20th May, 1997 was null and void ab initio. The order of 12th June, 1998 must also be vacated. I now approve the draft decree annexed to the supplementary affidavit.

On costs of this application the defendants shall pay half the costs while the other half shall be paid by the then counsel for the Plaintiffs.

Orders accordingly.

Dated and delivered at Nairobi this 10th day of March 2003.

**MBOGHOLI MSAGHA**

**JUDGE**