

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2893 OF 199

JOSLINE MUMO (A minor suing through her mother and next friend)

MARIA GAKIRU KARIMBA PLAINTIFF

VERSUS

GIDEON MUTHAMIA DEFENDANT

RULING

The advocate for the plaintiff filed suit in the Subordinate Courts at Nairobi, Sheria House (later known as the Commercial Courts). The plaintiff changed advocates whom in 1997 filed an application seeking for transfer to the High Court on the grounds that the plaintiffs award may exceed the jurisdiction of the said Subordinate Court. Thus, if the case is transferred to the High Court it may give a higher award. The application stated that the then advocate having filed the matter in the Subordinate Court did so erroneously (implied) as he believed that the court had jurisdiction to make an award to adequately compensate. The advocates on both sides addressed me on the point of whether this court had jurisdiction to hear the current suit in the light of the case of:- Kagenyi Vs Musirammo & Another 1968 EA 43

This case stated that if the Subordinate Court has no jurisdiction to hear a case in the first instance then the High Court may also not have jurisdiction. The advocate for the plaintiff said that the injuries sustained got worse and came only in light after filing suit. The advocate for the defendant said the affidavit with the medical report attached clearly showed that the information of the medical report was with the plaintiffs before the suit was filed and not after the suit was filed. There was therefore no mistake in the filing of the plaint.

I find that the plaintiff contention that the subordinate had no jurisdiction to hear the case most certainly means that the High Court too did not have jurisdiction to hear this suit . I hereby find that the suit cannot be heard at the High Court due to lack of jurisdiction and hereby struck it out. I award costs to the respondent.

Dated this 20th day of March 2002 at Nairobi.

M.A. ANG'AWA

JUDGE