



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 13 OF 2019

SALAT JILLO OTUCA

SALAD MOLU DIDA

ABDULLAHI GUYO DIDA

(Suing on behalf of AL-ANSAR GROUP.....PLAINTIFF/APPLICANT

VERSUS

THE CHAIRMAN sued on behalf of

RAMADHAN PRIMARY SCHOOL.....DEFENDANT/RESPONDENT

RULING

1. Defendant has raised a Preliminary Objection dated 10.6.2019 averring that the defendant has no locus to be used and that the court has no jurisdiction to hear the case. Defendant argues that under section 55 & 56 of the basic Education Act no. 14 of 2013, the Board of Management is a body corporate with perpetual succession and a common seal competent to sue and to be sued.

2. It is also averred that under section 18 (2) of the Land Registration Act, the court cannot entertain boundary disputes.

3. The plaintiff has opposed the preliminary objection contending that the defendant has not pointed out the nature of jurisdiction which the court lacks. It is also contended that the Constitution of Kenya has widened the scope of the persons who can institute legal proceedings in accordance with the provisions of Article 22 (2) thereof.

4. I have considered the arguments raised herein. The board of management set up under the Basic Education Act is indeed a body corporate with perpetual succession, has a common seal and is competent to be sued and to sue in its corporate name.

5. The defendant in this matter is described in paragraph 2 of the plaint as follows:

“The defendant is an education institution situated in Isiolo within Isiolo County”.

6. The defendant has not filed its pleadings. I find that there is no sufficient information to determine the category of institution that defendant falls under in so far as the aforementioned statute is concerned. It is up to defendant to avail sufficient material to demonstrate that it falls under the applicable institution stated in section 55 of the Basic Education Act.

7. Likewise, the issue raised by the defence touching on the provisions of Section 18 and 19 of the Land Registration Act is not discernible from the plaint.

8. I find that the preliminary objection is perhaps premature and the defendant ought to file its pleadings in order to lay a basis on the question of jurisdiction. I proceed to dismiss the preliminary objection dated 10.6.2019 with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 10TH DAY OF FEBRUARY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 3.11.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE