

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 2233 OF 1998

O-U-ALOZIE PLAINTIFF

VERSUS

MONTESSORI LEARNING CENTRE LTD. & ANOTHER DEFENDANTS

RULING

The hearing of this suit commenced on 18th February, 1999 when the plaintiff started giving his evidence. The plaintiff's case was formally closed on 6th July, 1999. Then on 4th October, 1999, Lydia Nduku Kimenyi (DW1) commenced her evidence on behalf of the 1st defendant. She finished giving her evidence in chief and then Mr. Adere for the plaintiff cross-examined her when the hearing was adjourned to 26th October, 1999. Come that day (26th October, 1999) and instead of Mr. Adere continuing with his cross-examination he informed the court that there was an application which he wanted to argue before proceeding with cross-examination. That application by Mr. Adere was then fixed for hearing on 25th November, 1999 but on that date, Mr. Mungai for 2nd defendant made a formal application to the effect that Mr. Adere's application be stayed so that the court could deal with 2nd defendant's application for leave to amend its defence. I heard arguments from counsel appearing and in the end on 1st December 1999, I made a ruling which was to the effect that I would deal with Mr. Adere's application before entertaining Mr. Mungai's application for leave to amend 2nd defendant's defence.

After a very long delay caused by numerous applications for adjournments, Mr. Adere's application was at last listed for hearing on 7th March, 2001. Did the court hear that application? No. There was yet a preliminary objection raised by Mr. Githinji for 2nd defendant. The preliminary objection was to the effect that the application was seeking judgment for reliefs that were not pleaded in the plaint.

Mr. Adere, naturally, objected to the preliminary objection. He referred to the plaint and pointed out that what is being sought in his application had been pleaded in the plaint. He asked me to dismiss this preliminary objection. I attempted to give a very brief background to this dispute and what strikes a casual observer is that the suit has been moving at a snail's pace. At this rate, it is difficult to guess when the final judgment will be delivered. But I am determined to see that the matter is brought to an end very soon. I have looked at the pleadings and what has been raised in the preliminary objection and without saying much lest I prejudice future hearings in this dispute I would say that there is no basis for the preliminary objection to Mr. Adere's application since in that application, the plaintiff/applicant will be attempting to show there has been admission of part of his claim.

In view of the foregoing, the preliminary objection is dismissed with costs to the plaintiff. The court will proceed to hear the notice of motion application dated 15th October, 1999.

Delivered and dated at Nairobi this 14th day of March, 2001.

E. O. O'KUBASU

JUDGE OF APPEAL