



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 191 OF 2018

JOHARI SCHOOL LIMITED.....PLAINTIFF

-VERSUS-

ROSEMARY WAMBUGU T/A

JOHARI SCHOOL..... DEFENDANT

R U L I N G

1. **Johari School Limited** (the Plaintiff) was incorporated under the Companies Act on 15th July, 2011. The Plaintiff subsequently obtained provisional Certificate of Registration from the Ministry of Education, Science and Technology.

It obtained a full Registration Certificate under the name and style of **JOHARI SCHOOL**, from Ministry of Education, Science and Technology on 4th January 2012. The Plaintiff pleaded in the Complaint that since September 2011, it has carried out the business of Kindergarten and Primary School and has therefore established goodwill and extensive reputation in the education sector.

2. The Plaintiff has sued **Rosemary Wambugu t/a Johari School** the Defendant seeking for: declaration that it has sole authority to use the name of Johari School; a declaration that the Plaintiff has earlier priority in registration of Johari School over the Defendant; a temporary and permanent injunction restraining the Defendant from carrying out business, representing itself, transacting or displaying Johari School; and an order to enquire into the damages or in alternative an account of profit made by the Defendant as result of passing off.

3. The Plaintiff has by a Notice of Motion dated 15th May 2018 sought for temporary interlocutory injunction, pending hearing of this suit, restraining the Defendant from carrying out business, representing itself, transacting or displaying the name of Johari School.

4. In support of that application, the Plaintiff referred to its registration by the Ministry of Education, Science and Technology in January 2012. The Plaintiff deposed through the affidavit of Salome M. Beacon, one of its Directors, that the Defendant's acts of running a school under the name of Johari School was aimed at deceiving the general public. That members of the public have often telephoned the Plaintiff's Directors on the mistaken belief that the Defendant's school belongs to the Plaintiff.

5. The Defendant opposed the application through the Replying Affidavit of Rosemary Wambugu the sole proprietor of Johari Daycare & Kindergarten.

6. Johari Daycare & Kindergarten was registered on 3rd January 2014 under the registration of business names Act Cap 499. Thereafter, it registered on 28th December 2016, under provisional registration for one year, under the name of Johari School by the Ministry of Education Science & Technology.

Rosemary Wambugu stated in her affidavit that she selected the name Johari which is a common Swahili word meaning "jewel". She further stated that she has, under that institution 235 student, 20 teachers and 16 support staff. That the Defendant has cultivated goodwill and a good reputation as a learning institution amongst parents, teachers, support staff and general community in Kiambu Area. Further that the Plaintiff orders, which are sought through the application, have a far reaching consequence on Defendant's employees and teachers who depend on the Defendant for their livelihood.

ANALYSIS AND DETERMINATION

7. What I am called upon to determine here is an interlocutory injunction pending trial of the suit. In my consideration of the contending issues raised by the parties I will bear in mind the caution stated by the Court of Appeal in the case **MBUTHIA V JIMBA CREDIT**

“The correct approach in dealing with an application for their injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side’s propositions. There is no doubt in my mind that the learned judge went far beyond his proper duties, and has made final findings of fact on disputed affidavits.”

8. I have considered the parties affidavits and their written submissions. Having done so, I find that both the Plaintiff and Defendant allege that they have built a reputation and goodwill of their respective learning institutions. What however is clear is that these are institutions which provide education to young children. That being so, I am mandated to consider the best interest of the child as paramount consideration. With that in mind, it is not acceptable for two different learning institutions to bear the same name. This can lead young children to be confused. The identity of the institution is ambiguous, such ambiguity can confuse young children where schools may be involved in joint activities. That is one but an important consideration.

9. The Plaintiff seeks interlocutory injunction. For the Plaintiff to succeed it must meet the three requirements namely: establish it has a *prima facie* case with probability of success; demonstrate irreparable loss; and where there is doubt show the balance of convenience in its favour.

10. The Plaintiff has shown that it obtained incorporation on 15th July 2011 as Johari Schools Limited. It then obtained first Provisional Certificate of Registration from the Ministry of Education and on 4th January 2012, it obtained full registration from that Ministry under the same name. In obtaining that registration, it was permitted by the Ministry to have both nursery classes and primary school of standard 1 to 8 with a maximum of 290 pupils. It was further permitted by the Ministry to teach 8.4.4. Curriculum.

11. The Defendant on 3rd January 2014 obtained registration of the name Johari Day Care and Kindergarten under the registration of Business Names Act. On 28th December 2016, the Defendant obtained one year provisional registration by the Ministry of Education under the name and style of Johari School. By that provisional registration, the Defendant was permitted to teach Early Child Development Education and to teach 8.4.4 curriculum in the primary school.

12. Bearing the above in mind, I find that the Plaintiff, who obtained a full certificate to operate its school from Ministry of Education in January 2012 has proved on a *prima facie* basis a case with probability of success. The Defendant seems to be operating without certificate from the Ministry since the provisional certificate annexed to the affidavit of Rosemary Wambugu expired December 2017.

13. As stated before, this Court will consider, in addition to the supporting documents presented by the parties the interest of the children. It is because of that I form the view that the damage the Plaintiff is likely to suffer if an injunction is not issued is irreparable.

14. In the two principles of granting of an injunction, I am in no doubt and accordingly I will not consider where the balance of convenience lies.

15. On *prima facie* basis, I do find that the Plaintiff has proved that interlocutory injunction should issue.

16. On costs I will order that they be in the cause because the parties herein have a competing interest in the name of the school and it may be after receiving oval evidence the Court might find in favour of the Defendant.

17. In the end, I grant the following orders:

a. Within three (3) months from today’s date, Rosemary Wambugu t/a JOHARI SCHOOL is hereby restrained, by an interlocutory injunction, whether by herself, her officers, her employees and her servants or agents from carrying out business, representing herself, transacting or displaying the name of JOHARI SCHOOL.

b. The costs of the Notice of Motion dated 15th May 2018 shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH day of MAY, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE DEFENDANT