



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 76 OF 2009

SCHOOL OPERATORS LIMITED.....APPELLANT

VERSUS

RICHARD M. KIBATHI.....RESPONDENT

(An appeal from the original judgment and decree of Hon. Mokaya delivered on 27th January, 2009 in Milimani RMCC No. 1331 of 2006)

JUDGMENT

1. This appeal was filed on the following grounds:-

- i. ***That the learned magistrate erred in law and fact in finding that the Appellant's standard school fees and charges form did not constitute an enforceable contract between the Appellant and the Respondent as envisaged by the law of contract Act Cap 23, Laws of Kenya.***
- ii. ***That the learned magistrate erred in law and in fact in failing to find that the Appellants standard school fees and charges form was a standard form contract.***
- iii. ***That the learned magistrate erred in law and in fact in failing to find that the common law treats standard form contract as any other contract***
- iv. ***That the learned magistrate erred in law and fact in failing to find that the Appellant's standard school fees and charges form being a standard contract was binding upon the Respondent once he appended his signature.***

2. The Respondent filed a cross-appeal on grounds that:-

- i. ***The learned magistrate erred in law and in fact in finding that the Respondent did not prove his counter-claim thereby dismissing the same.***
- ii. ***The learned magistrate erred in law and fact in failing to find that the Appellant admitted having owed caution money to the Respondent amounting to KShs. 20,000/=.***
- iii. ***The learned magistrate erred in law and in fact in failing to award costs in favour of the Respondent.***

3. The Appellant sued the Respondent herein seeking recovery of KShs. 293,800/= and interest therein. It was the Appellant's claim that it entered into an agreement with the Respondent on 28th August, 2004 whereby the Respondent covenanted to comply with the conditions regarding payment of school fees and charges. It was claimed that it was an express term of the contract that notice would be issued to the Appellant before removing a pupil from school. That that notice had to be written and reach the headmaster before the opening of the term at the end of which the pupil was to leave the school. It was alleged that failure to so give notice would attract payment of one

- terms fees. The Appellant's claim was that the Respondent removed his daughter from school without giving requisite notice to the Appellant. That for the aforesaid reason, the Respondent owed the Appellant a sum of KShs. 293,300/=.
4. The Respondent filed a statement of defence in which he denied the Appellant's claim and instead counter-claimed that the Appellant owed him a sum of KShs. 20,000/=.
 5. Beth Waititu who was the accountant of Peponi School (PW1) testified that the Respondent was issued with terms and conditions of acceptance at the point of his child's entry to the school and that the Respondent signed the said terms and conditions. She maintained that the Respondent owed the Appellant KShs. 293,300/= and that the Respondent was issued with a credit note for KShs. 20,000/= dated 1st September, 2005. She stated that the Respondent's daughter could not have been admitted to the Appellant's school if the Respondent did not sign the terms and conditions. She also stated that the Respondent raised no compliant regarding the terms and conditions.
 6. In contention to the Appellant's claim, the Respondent stated that he only owed the Appellant KShs. 154,000/= which he cleared but that he later received a demand letter for another term's fees. That he was given another fee structure. He stated that he was not required to give notice of her daughter's departure from the Appellant's schools because she had finished her form 5. He contended that when he signed the conditions it did not occur to him that it was a contract and that they were legally binding.
 7. This being a first appeal, I am called upon to re-evaluate the facts afresh, re-assess this case and make my own independent conclusions. See *Shah v. Aguto (1970) E.A. 263 at p. 265* where it was stated as follows:-

"There are numerous decisions of this Court setting out the principles to be followed by a court on a first appeal and I would quote here from the judgment of Sir Kenneth O'Conner in the well known case of Peters v. Sunday Post (1958) e.a 424 at 429 where he said:-

' It is a strong thing for an appellate court to differ from the finding on a question of fact, of the Judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.' "

8. The question that falls for determination is the effect of the agreement between the parties herein. It is trite law that the essentials of a valid contract are offer, acceptance and consideration. The Respondent's daughter applied for a chance in the Appellant's school, she was admitted to the school at an agreeable fee. Having signed the terms and conditions of school fees and charges, the Respondent was bound by it. The Respondent did not establish that he was not informed of the consequences of signing the terms neither did he establish that he did not sign it. He instead contended that he did not think its implications would be that it was binding. The Respondent's argument that the earlier agreement was invalidated by the increment of school fees does not in my view stand considering that he received communication on intention to increase fees to which he did not protest.
9. Further, he did not contend having been issued with a credit note for KShs. 20,000/=. In the circumstances I find that he ought to comply with the terms of their agreement. I set aside the trial court's judgment and substitute it with an order entering judgment in favour of the Appellant in the sum of KShs. 293,300/= with costs and interest at court rates from the date of judgment until full payment.

Dated, Signed and Delivered in open court this 17th day of July, 2015.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant.

..... for the Respondent.