



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NUMBER 112 OF 2013

P N N. (*Suing as guardian*

***ad litem of F R N N*).....PLAINTIFF**

VERSUS

CHARLES JOHN MUSEE. DEFENDANT

R U L I N G

The suit herein came up for hearing on the 16th day of September, 2015. On the material day Mr. Arimi Kimathi the advocate on record for the Plaintiff indicated to the court that he was ready to proceed and had two witnesses in court who are the Plaintiff and Doctor Kiboi who prepared the medical report for F R N N on whose behalf the suit has been brought by the Plaintiff.

Appearing for the defendant was M/s Khisa who indicated to the court that she was ready to proceed with two witnesses but told the court that one of her witnesses was out of the country, however, she was ready to proceed with the Plaintiff's case on the material day.

Dr. Kiboi gave his evidence as PW 1, but when it came to the Plaintiffs turn and before he could finalize with his evidence in Chief, Mr. Arimi Kimathi Advocate made an application for leave to file a supplementary list of documents and sought to stand down the Plaintiff for that reason. In his application which was orally made in court, he submitted that it is in the interest of justice for the court to allow his application. The documents he is seeking to file are for medical expenses for medical treatment which he told the court is ongoing and that the same are pertinent and central to the matter before the court. He said he received the documents late and he could not file without the leave of the court.

On her part M/s Khisa Advocate for the Defendant opposed the application and urged the court to take notice that Pleadings had closed and pre-trial directions had been given in which the parties had filed and agreed on the documents to be produced at the trial. In her submissions she argued that bringing in a new set of documents would be pre-judicial to the Defendant as he had already prepared his case on the basis of the documents already availed to them. She further submitted that the Plaintiff has pleaded for further medical expenses and any such expenses a the Plaintiff seeks to claim at this point ought to have been filed. The Plaintiff was thus stood down pending the ruling on the said application.

The case herein was filed on 10th April, 2013 by the Plaintiff P N N suing as a guardian ad litem of F R N N who is his son. An order was given to that effect on 20th day of December, 2012.

The court has considered the submissions made by both counsels and has also perused the documents in the Plaintiff's list of documents filed on the 10th April, 2013 and more particularly the treatment records and the medical report. I note that the injuries sustained by the Plaintiff were very severe and he needs 24 hour nursing care and continuous physiotherapy. He will also need long term medications for epilepsy and clot prevention.

The Plaintiff's advocate in his plaint, has pleaded future medical expenses. The court notes that the documents for the medical expenses filed in court are for the period before the filing of the suit. The counsel for the Plaintiff has explained why he had not filed the documents earlier in that they were given to him late.

The court agrees with the counsel for the Defendant that pleadings have already closed and pre-trial directions given. The matter was certified ready for hearing on the 20th March, 2014. However, the court guided by the provisions of Sections 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and by the provisions of the Constitution under Article 159 (d) which provides that justice should be administered without undue regard to the procedural technicalities.

Though the matter is already part heard, the Plaintiff has not closed his case and the Defendant will have a chance to cross-examine the Plaintiff and his witnesses on any new matters that may arise from the new set of documents that the Plaintiff seeks to file, and for that reason, the Defendant shall not suffer any prejudice if the documents are filed.

For those reasons and in the interest of justice the Plaintiff is hereby allowed to file a further list of documents. The same to be filed and served upon the Defendants within seven (7) days of the date hereof.

Dated and Delivered at Nairobi this 1st day of October, 2015

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LUCY NJUGUNA

JUDGE

In the Presence of

Mr. Arimi Kimathi for the Plaintiff

Miss Khisa for the Defendant