



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
CIVIL SUIT NO.94 OF 2010

ANNE NANG'UNDA KUKALI.....APPLICANT

~VRS~

MARY A. OGOLA.....1ST RESPONDENT

UNIVERSITY OF NAIROBI.....2ND RESPONDENT

RULING

This is a ruling for an application dated 21/09/2010 brought by the Plaintiff/Applicant Anne Nang'unda Kukali against the Defendants/Respondents Mary A. Ogola and University of Nairobi. It is brought under Order XXXIX of the Civil Procedure Rules and sections 3 and 3A of the Civil Procedure Act. The application seeks for orders of a temporary injunction to issue restraining the 2nd Respondent from including the 1st Respondent's name in the list of graduation for the graduation ceremony of 24/09/2010 or any other forthcoming graduation pending the hearing and determination of this suit. It also seeks for an order to restrain the 2nd Respondent from awarding, conferring on, or issuing to the 1st Defendant a degree certificate for the degree of masters in Arts in Project Planning and Management pending the hearing and determination of the suit.

The facts leading to this application are that sometime in June 2009 the 1st Respondent submitted for research proposal to the 2nd Respondent for the degree of Masters in Arts in Project Planning and Management the same material that the Applicant had presented to Maseno University for the degree of Masters of Education. The Applicant argues that at the time of the presentation, the 1st Respondent knew that the work was a copyright of the Applicant's work which the 1st Respondent obtained through a friend of the Applicant. On presentation, the 1st Respondent made a declaration that the work was her original work and had not been presented for the award of any degree in any other University, a fact she knew to be untrue. Mr. Sifuna for the Applicant argued that the Applicant has a right for protection of

her work from copyright as provided for by intellectual law. The act of copying the work has been expressly admitted in the replying affidavit. It is the Applicant's contention that if the 1st Respondent is allowed to graduate using the copyright work, the Applicant will suffer intellectual loss which can hardly be compensated in monetary terms. The Applicant's case has high chances of success and has satisfied the principles set out in the case of **GIELLA VS CASSMAN BROWN**.

The 1st Respondent opposed the application relying on the grounds set out in the replying affidavit. Mr. Khakula for the 1st Respondent argued that the document annexed to the supporting affidavit is just a draft and cannot prove a prima facie case in favour of the Applicant. The admissions by the Respondent in the replying affidavit are not enough to lay a basis for granting an injunction. The 1st Respondent says that she has now abandoned the work complained of and submitted fresh work on advice of the 2nd Respondent. The parties conducted their researches at different places, were pursuing degrees in different universities. For this reason, the issue of copyright does not arise and the application therefore lacks merit.

The Applicant referred the court to the annexures, the first of which is her original work and the second one is that of the 1st Respondent. On perusal of the two documents, I find that the Applicant who was pursuing a degree of Masters of Education in Educational Administration in Maseno University under registration number PG/MED/062/2006 for her research proposal in partial fulfillment of the degree, the Applicant's topic was "***An Evaluation of the Implementation of Safety Policy in Girls Boarding Secondary Schools in Bungoma East District.***" The declaration that the work which was submitted was her original work and had not been presented in any other university for a degree was signed by the Applicant and her first supervisor on 04/08/08. The Applicant graduated at Maseno University after her research work was approved in partial fulfillment of the masters degree course. Thereafter, the Applicant gave a copy of her work to a friend who is believed to have passed it to the 1st Respondent.

The second annexure is the work of the 1st Respondent which has been complained of herein. The Respondent is currently pursuing a Masters of Art Degree in Project Planning and Management in the University of Nairobi. The topic for research is "***Factors Influencing the Implementation of Health and Safety Policy in Public Boarding Secondary Schools in Kenya: A case for Bungoma South District.***" A declaration that the work is the 2nd Respondent's original work was signed by her on 12/06/2009 and also endorsed by her two supervisors on the same date.

The Literature Review appears on pages 8-18 of the Applicant's work (annexure ANK 1) while that of the 1st Respondent appears on pages 7-21 of her work (annexure ANK 2). On perusal of the said pages, I note that the 1st Respondent has reproduced almost word by word the original work of the Applicant save a few words, phrases and references.

Under the sub-heading "***Abstract***" on page ix of the Applicant's work, the same material content has been reproduced in the 1st Respondent's work under the same sub-heading with only a few changes in some words and rephrasing of sentences. The introductory paragraphs and the objectives of the study are similar focusing on the role of the Ministry of Education in tackling the problems at hand. The research is based on boarding schools with the Applicant giving their number as fourteen

(14) and the 1st Respondents as ten (10). The method of data collection is the same being through questionnaires, interviews, observations and document analysis.

The research methodology for both the Applicant's work and that of the 1st Respondent is contained in Chapter III of the research proposal. The sub-headings and contents under the sub-headings are the same.

Both annexures ANK 1 and 2 are accompanied by properly executed declarations. The authors of the documents have signed and their supervisors endorsed them accordingly. For the work to be submitted, the supervisors must have satisfied themselves that the same is in order and ready for submission. It is not correct to refer to the authentic documents as drafts as argued by the 1st Respondent's counsel.

In the replying affidavit paragraph 4 and 5, the 1st Respondent admits using the Applicant's work to write her research proposal. She deponed that the copy of the Applicant's work was given to her by a friend called Naomi with the assurance that the Plaintiff had not used it and did not require it. The Respondent says that she used the work to do her first research proposal. However, after the Applicant complained, the 1st Respondent on advice of the 2nd Respondent withdrew the draft and did fresh work which she has annexed to her affidavit.

The comparative analysis of the work of the Applicant and that of the 1st Respondent and the express admissions by the 1st Respondent leave this court with no doubt that the intellectual rights of the Applicant were violated by the 1st Respondent. The prayers in the plaint are for damages and for injunctive orders against the Respondents in regard to the copyright. The Respondent says she has done fresh work which she has annexed to the replying affidavit. The draft has not been endorsed by the supervisors to show that it has been submitted for approval. The 1st Respondent did not annex any evidence of withdrawal of the copyright draft she had submitted earlier. It would therefore be assumed that the copyright work is still in the hands of the 2nd Respondent and that it may be used as partial fulfillment of the masters degree course of the Respondent at any future graduation. The second Respondent did not respond to this application and its stand in the matter remains unknown.

I am satisfied that the Applicant has shown that in the event of her original work being used by the 1st Respondent in her degree course approval, the Applicant is likely to suffer substantial loss due to violation of her intellectual rights. A prima facie case has been made by the Applicant which justifies the granting of the orders sought. The application is meritorious and I allow it as prayed with costs to the Applicant.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered on the 9th day of November, 2010 in the presence of Mr. Waweru for Plaintiff/Applicant and Mr. Kakoi for Khakula for the Respondent.

F. N. MUCHEMI

JUDGE



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