



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KERICHO**

**Civil Suit 8 of 2009**

**BLUE HILLS FARMERS CO. LTD ..... PLAINTIFF**

**VERSUS**

**THE SCHOOL COMMITTEE BLUE HILLS**

**PRIMARY SCHOOL ..... 1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup>**

**DEFENDANT**

**RULING**

**NO. 1**

**I: Background**

1. The plaintiff herein is a limited liability company. They are the registered owner of LR Kericho/Kipkelion North/Block 1Blue Hills/18 which they alleged to have purchased for their members.
2. They found on the said land an existing primary school. From the pleadings before me, I see no indication of consultation on the acreage of land that was to be allocated to the school but the said plaintiff allocated three (3) acres by their resolution in the year 1991.
3. The area in question is said to be a total of ten (10) acres that the said plaintiff agreed to sub-divide to various persons.
4. There is therefore an eminent danger that the school is now in the process of attempt to build and encroach on the land. That they interfered with the plaintiff's quiet possession by destroying the beacons.
5. The above background would be a subject of trial.
6. By an application of 3<sup>rd</sup> February, 2009 the plaintiff sought an injunction.

**II: Application for injunction**

**3<sup>rd</sup> February, 2009**

7. The plaintiff sought order that an injunction do issue forthwith restraining the defendants either by

themselves or their servant, agents, assigns representatives or nominees from constructing any structure or evicting any buildings or destroying any buildings or property, destroying,/removing beacons digging, cultivating, farming, delivery building material or in any other way interfering with the suit land and in particular the portion that is reserved for designated public utilities until {the} suit is heard and determined.

8. The application was certified urgent by this court which further directed that the application be served on 4<sup>th</sup> February, 2009. The respondents were duly served but they failed to attend court on 11<sup>th</sup> February, 2009. The hearing proceeded under **Order Ixb r 3(a)** Civil Procedure Rules the court being satisfied that the respondents were served.

9. In brief the applicants stated that they purchased the property. They wish to develop the same for public utilities on the portion of ten (10) acres that would include the existing school on the land.

10. Agreements put forward by the advocate for the applicant is that the ten(10) acres was set aside for public utilities as such they should not be restrained by the defendants/respondent from developing the same. The advocates relied on the case law of

**Mohammed v Commissioner of Lands & 4 others**

**(Environment and Land Law case) 2006 KLR 217 Waki J**

in which the Kenyan Government compulsorily acquired land that belonged to a private person. The government then attempted to allocate the land with the knowledge of the Municipality Council of Mombasa, created a new lease for other purpose than that of the intended purpose of a road resolve.

11. In this case having similar facts the defendant cannot therefore use the land other than the intended purpose.

12. Other case referred to is that of **Gitau v Savage & 4 others**

**Environment and Land Law case 2006 KLR 463** where an injunction was issued to restrain the appellant from constructing a petrol station in a residential area. On appeal the appellant was of the opinion that the injunction was draconian.

13. The principles found in the case law of **Giella V Cassman Brown & Co. Ltd (1973) EA 358**

was accordingly relied on, which principles being that there must be a prima facie case with a probability of success injunction would not normally be granted unless the applicant might suffer irreparable injury and where the court is in doubt the decision would be on the balance of convenience.

**III: Opinion**

14. The applicants herein are in fear that the defendant/respondents would deny them access to develop their land concerning the public utilities. They now pray that an injunction do issue in this matter.

15. I would on the balance of convenience, and having no response from the respondent grant the application for an injunction. I would therefore order that in the event these orders were wrongly obtained, the applicants are to accordingly file an undertaking that they will bear the damages which may be assessed by this court.

**DATED** this 12<sup>th</sup> day of February, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

J.M. Motanya advocate instructed by M/S Motanya & Co. advocates for Plaintiff/applicant

No appearance for the Defendants 1 and 2.