



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL SUIT 8 OF 2009

BLUE HILLS FARMERS CO. LTDPLAINTIFF

VERSUS

THE SCHOOL COMMITTEE BLUE HILLS

PRIMARY SCHOOL..... 1ST DEFENDAN

THE ATTORNEY GENERAL 2ND DEFENDANT

RULING

NO. 2

On contempt proceeding

I: Background

1. On the 4th of February, 2009, M/S Blue Hills Farmers Company Ltd filed a plaint dated 3rd February, 2009 seeking an injunction from their school. The school committee Blue Hills Primary School restraining them from trespassing, constructing and or erecting any building on land parcel **Kericho/Kipkelion North/Block /Blue Hills/18.**
2. The Attorney General was named as the 2nd respondent.
3. An application under certificate of urgency was also filed by the said advocate for the applicant on 4th February, 2009. This court directed that the said matter be heard inter parties on 11th February, 2009. The said respondents failed to enter appearance or attend the inter parties hearing after being served.
4. This Court on hearing the advocate for the applicants granted orders of injunction against the respondents but not upon the Attorney General as no orders of injunction may issue against the Attorney General.
5. The respondent were served with the orders and penal notice. The applicants had been requested in the court order to file an undertaking in the event the orders sought was irregularly obtained.

6. The applicant returned to court with the application of 23rd April, 2009 seeking contempt proceedings.

II: Contempt proceedings

7. The applicant stated that the respondent was served with the application of contempt but not the Attorney General. That the respondent have continued to disobey the courts order duly served upon them together with a penal notice. They prayed that the applicant be committed to six (6) months civil jail.

III: Opinion

8. I have perused this file and noted that there is no letter of undertaking as to damages by the applicant in the event that the orders sought may be erroneously given.

9. This alone would warrant that the applicants should not be granted. In the event that they may have given such undertaking, in the contempt proceeding service is effected personally upon the contemtor. The Attorney General though had entered appearance on 27th February, 2009 but appearance is dated 17th February, 2009. Service upon them was never effected.

10. On the merits of the application non compliance of court orders by the advocate leaves no option to the court but to decline the application and duly dismissed the same.

DATED this 14th day of May, 2009 at **KERICHO**

M.A.ANG'AWA

JUDGE

Advocates

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

N/A for the Defendants/Respondents.