



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO.485 OF 2000

TURF DEVELOPMENTS LIMITED..... PLAINTIFF

VERSUS

**THE BOARD OF GOVERNORS CHANGAMWE SECONDARY SCHOOL 1ST
DEFENDANT**

**THE ATTORNEY GENERAL 2ND
DEFENDANT**

JUDGMENT

In a plaint dated 3rd October 2000 and filed into the court on 12th October 2000, the Plaintiff Turf Development Limited prayed for judgment against the Defendants jointly and severally for:

- “(a) A declaration that the walling off of the Plaintiff’s land by the 1 st Defendant is illegal;*
- (b) A declaration that the 1 st Defendant has no right to enter, occupy and/or to remain on the plaintiff’s land;*
- (c) An injunction restraining the 1 st Defendant, its pupils, students, servants, agents, employees howsoever from entering upon the Plaintiff’s land and to remain thereon or to trespass thereon.*
- (d) An order of mandatory injunction directing the 1 st Defendant to demolish the wall erected around the boundary of the Plaintiff’s land;*
- (e) Vacant possession;*
- (f) Damages against the Defendants jointly and severally for trespass;*
- (g) Costs of and incidental to this suit;*
- (h) Such other or further relief or order which this Honourable Court may deem fit to grant.”*

The First Defendant, The Board of Governors Changamwe Secondary School entered appearance on 31st October 2000 and filed Statement of Defence on 15th November 2000 through its advocate. However, the Plaintiff applied by way of Chamber Summons under Order VI Rule 13 (1)(a) and section 3A of the Civil Procedure Rule and Act respectively for that Defence to be struck out and for interlocutory judgement to be entered for the Plaintiff. That application was dated 11th January 2001 and was filed in the Court on

17th January 2001. On 11th September 2001, Honourable Justice Hayanga allowed the application and that means that the Defence was struck out and interlocutory judgement entered for the Plaintiff. What came up before me was Formal Proof as the second Defendant did not file any appearance and did not file Defence.

One witness was called. He was Ashok Labhshanker Doshi, the Managing Director of the Plaintiff's company. He testified that the suit property plot No. MN/VI/3458 belongs to the Plaintiff's company which acquired it in 1996. He produced the title to the land as exhibit one. Sometimes in the year 2000 a wall was erected in the plot of the First Defendant, leaving no access to the same plot except via the school. The Plaintiff did not consent to the wall being built on its plot, neither did it give any authority for such a wall to be erected on its plot by the Defendant. There is a common boundary between the school plot and the Plaintiff's plot but the wall is built on the Plaintiff's plot and not on the common boundary.

The wall is built in such a way that the Plaintiff's property is now on the side of the school and the pupils and teachers are using the plot but they have no permission to use the plot. The Plaintiff wants possession of the plot and hence to that end made several demands upon the first Defendant but then without any success. He produced an exhibit 2(a) a letter of demand and exhibit 2(b) an Affidavit of service. The Plaintiff is not able to develop the plot and to enter it. Although it wants to develop it. In answer to the Defence counsel, he admitted that he did not have survey plans and map for the property and he insisted the wall is there although he did not have anything like a photograph to show the wall is there.

He said he was allocated the plot by direct allocation by the Government. The land is open and bushy but it is now being used by the First Defendant as a play ground. The plot is about 2 acres. The wall runs along the main road. He is seeking damages for denial of access to the land. The wall is on the sides of the plot, with the open side being adjacent to the school. Earlier the Plaintiff had no plans for developing the plot but when the Plaintiff was ready there was a wall on the land. I have considered the case. There is no defence to the suit and I am on my own assessment of the evidence before me satisfied first that the suit land belongs to the Plaintiff. It has title documents to it in its names – exhibit 1.

Secondly, I am satisfied that a wall has been built on the plot which in effect annexes the plot to the school compound whereas the plot is not part of the school compound and lastly that the teachers and students are using the same property as play grounds. The first Defendant had no permission, authority or consent of the plaintiff to erect the same wall on the plaintiff's property. It had not been licenced to be on the same property. I do find that the orders prayed for are merited. I do declare that the walling off of the Plaintiff's land by 1st Defendant is illegal. I also declare that the first Defendant has no right to enter, occupy and/or remain in the Plaintiff's property known as L.R. Number MN/VI/3458. Injunction orders will issue in accordance with prayer (e) of the plaint and vacant possession of the plot to be taken by the Plaintiff.

I order that the First Defendant do demolish the wall within thirty days of this judgment failing which the Plaintiff shall be at liberty to apply for court's orders directing the Plaintiff to demolish the same wall. On the question of general damages, against the Defendants, the Plaintiff has not proved that he was indeed making use of the property in question. He has not shown that he was stopped from developing the property. He has not produced any plans to that effect. In fact his evidence that he realised that the wall was being built on its plot long after the wall had been completed and the witness's evidence that he did not know the exact time in the year 2000 when the wall was constructed only go to show that the Plaintiff acquired the property and did nothing about it.

Further even though he says that for the four years after acquiring the plot it had no plans to develop it but now it wants to develop it, he never produced any tangible evidence of the same. I do feel that no proper evidence has been adduced to prove that any damages and losses were suffered beyond the fact of trespass. I will award nominal damages of KSh.1,000/- (One Thousand) to take care of trespass. I want to make it clear here that if the Defendant fails to demolish the wall within the time given the court may on application allow the plaintiff to demolish it but the defendant may very well be called upon to meet the cost of the same demolition. I have only refrained from directing the Plaintiff to demolish it at this juncture as that was not prayed for in the Plaint. The Plaintiff will have cost of this suit.

Dated and delivered at Mombasa this 10th day of December 2002.

J.W. ONYANGO OTIENO

JUDGE