



**Sarmwei & 3 others v County Government of Uasin Gishu (Environment & Land Case 103 of 2020) [2023] KEELC 20761 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20761 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 103 OF 2020  
EO OBAGA, J  
OCTOBER 19, 2023**

**BETWEEN**

**JANE JEPCHUMBA SARMWEI ..... 1<sup>ST</sup> PLAINTIFF  
HELLEN JESANAI ..... 2<sup>ND</sup> PLAINTIFF  
FRANCIS TOROITICH MAINA ..... 3<sup>RD</sup> PLAINTIFF  
ALBERT KIPTABUT BURER ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF UASIN GISHU ..... DEFENDANT**

**JUDGMENT**

1. By an amended plaint dated 29/12/2020, the Plaintiffs filed this suit against the Defendant seeking the following reliefs: -
  - i. Permanent injunction restraining the Defendant, its servants, employees and or agents from interfering with the Plaintiffs' ownership, occupation and use of Land Parcel No Eldoret Municipality Block 10/2021, 2022, 2023, 2024 and 2025.
  - ii. Compensation for loss occasioned by the Defendant, its employees, servants and or agents in the sum of Kshs 970,071/= being the cost of replacement of the destroyed fence and Kshs 20,000/= being valuation fees.
  - iii. Costs of the suit and interest.
  - iv. Any other relief that this honourable court may deem fit to grant.
2. The Defendant entered appearance filed defence and witness statement but during the hearing, the Defendants' counsel and witnesses were not in court. The hearing therefore proceeded *ex-parte*.



3. The Plaintiffs' case was presented by the 1<sup>st</sup> Plaintiff who testified that Eldoret Municipality Block 10/62 was subdivided into Eldoret Municipality Block 10/2021, 2022, 2023, 2024 and 2025. The subdivision was carried out after obtaining approval from the Defendant.
4. The 1<sup>st</sup> Plaintiff took Eldoret Municipality Block 10/2023 and 2025. The second plaintiff, 3<sup>rd</sup> plaintiff and 4<sup>th</sup> plaintiff took Eldoret municipality Block 10/2022, 2021 and 2024 respectively. The Plaintiffs then applied for approval to fence their plots vide letter of 26/4/2017. The Defendant granted approval vide letter of 22/9/2017.
5. Prior to the approval, the Plaintiffs had paid Kshs 5,000/= being scrutiny fees and Kshs 13,000/= for rates. The Plaintiffs proceeded to fence their plots as per the approval which was granted. On 11/11/2020, the Defendants agents and employees went to the plots and destroyed the fences. There was no notice given.
6. The Plaintiffs caused a valuation to be carried out which ascertained that the cost of replacement of the fence would be in the sum of Kshs 970,071/=
7. The Plaintiffs' evidence is uncontroverted. However, I must be satisfied that they have proved their case on a balance of probabilities. I have considered the evidence of the Plaintiffs as well as the submissions filed. The plaintiffs produced notification of approval to subdivide dated 28/11/2016 (Exhibit 1). They also produced copies of certificate of lease and official searches confirming that they are the registered owners of the five properties (Exhibits 2).
8. The Plaintiffs produced assessment of scrutiny fees and payment receipt for Kshs 5000/= (Exhibit 3 and 4 respectively). They also produced a rates invoice for Kshs 13,000/= and a receipt (Exhibit 5 and 6 respectively). They also produced a letter approving fencing of their plots with barbed wire and round poles (exhibit 7).
9. The Plaintiffs took photographs of the destroyed fence which were produced as Exhibit and valuation report (Exhibit 9) and receipt for valuation fees (Exhibit 10).
10. It is clear that the Plaintiffs followed the right procedures in subdividing and fencing their plots. They have shown that they fenced and the fence was destroyed by the Defendant's agents and employees. The value of replacing the destroyed fence has been established by a valuer. There is no any other valuation report to contradict the one by the Plaintiff. I therefore find that the plaintiffs have proved their case on a balance of probabilities. I enter judgment in their favour as follows: -
  - a. A permanent injunction restraining the Defendant, its servants, employees and or agents from interfering with the Plaintiffs ownership of LR Nos Eldoret Municipality Block 10/2021, 2022, 2023, 2024 and 2025.
  - b. A sum f Kshs 970,071 being the cost of replacing the destroyed fence.
  - c. Sum of Kshs 20,000/= being payment of value for fees.
  - d. Costs of the suit and interest on (b) and (c) above at court rates with effect from this judgment.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

**E. O. OBAGA**

**JUDGE**

