



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT ELDORET**

**ELC CASE NO.103 OF 2020**

**JANE JEPCHUMBA SARMWEI.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**HELLEN JESANAI.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**FRANCIS TOROITICH MAINA.....3<sup>RD</sup> PLAINTIFF/APPLICANT**

**ALBERT KIPTABUT BURER..... 4<sup>TH</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF UASIN GISHU.....DEFNDANT/RESPONDENT**

**RULING**

This ruling is in respect of an application by the plaintiff/applicant dated 17<sup>th</sup> November 2020 seeking for the following orders:

- a) Spent
- b) An ex parte order of a temporary injunction do issue restraining the defendant/respondent by itself, its servant, or agent and or employees from further trespassing into the plaintiffs' land and destroying the plaintiffs 'fence in parcels of land no. Eldoret Municipality Block 10/2021, 2022, 2023, 2024 and 2025 or in any other way interfering with the plaintiff/applicants' occupation and use of their land pending the hearing of this application inter partes.
- c) An interim order of injunction do issue restraining the defendant/respondent by itself, its servant, or agent and or employees from further trespassing into the plaintiffs' land and destroying the plaintiffs 'fence in parcels of land no. Eldoret Municipality Block 10/2021, 2022, 2023, 2024 and 2025 or in any other way interfering with the plaintiff/applicants' occupation and use of their land pending the hearing and determination of this suit.
- d) Cost of the application be provided for.

Counsel agreed to canvas the application vide written submissions which were duly filed.

**PLAINTIFF/APPLICANTS'SUBMISSION**

Counsel for the applicants relied on the supporting and supplementary affidavits sworn by Jane Jepchumba Sarmwei whereby she deponed that the applicants are the registered owners of all parcels of land known as ELDORET MUNICIPALITY BLOCK 10/2021, 2022, 2023, 2024 and 2025. Further that the applicants annexed copies of their Certificates of leases and photographs of the destruction.

It was counsel's submission that the applicants applied for and were granted approvals to fence their parcels of land, but the defendant through its servants and or agents trespassed on the parcels of land and

destroyed the fence.

Mr. Mwaniki submitted that in the defendant's replying affidavit, the defendant does not deny the destruction of the fence but states that the approval was on a temporary basis hence they ought to have applied for renewal which they never did.

Counsel also stated that the permit has no time limit hence does not expire and there is no proof that the applicants were found re-erecting the fence. That the defendant had no justification to destroy the applicant's fence.

Mr. Mwaniki cited the provisions of section 26(i) of the Land Registration Act 2012 on indefeasibility of title and urged the court to allow the application as prayed as the applicants have established a prima facie case as registered owners of the suit lands

### **RESPONDENT'S SUBMISSIONS.**

Counsel for the respondent submitted that the it is indeed true that approval was issued to the applicants, however they were of a temporary nature and the applicants ought to have applied for renewal which they never did.

Ms. Ruto submitted that section 29 of the Physical Planning Act, local authorities have the mandate to consider and approve all development applications. That after the lapse of the initial permit the plaintiffs failed to obtain a renewal of the approvals hence making their developments illegal and as a result thereof, enforcement officers went to demolish the developments on the Plaintiffs properties for lack of requisite approvals by the County Government. Counsel urged the court to dismiss the application with costs to the defendant.

### **ANALYSIS AND DETERMINATION**

The issues for determination in an application for injunction are well settled as per the **Giella v Cassman Brown Co. Ltd 1973 E.A. 358** where the court held;

*“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”*

If an applicant satisfies the above ingredients, then the court can grant orders to preserve the substratum of the case.

In the current case the applicants have shown that they are the registered proprietors of the suit parcels of land by annexing copies of Certificates of lease which the defendant does not dispute. It is also on record that the defendant has not disputed that the applicants applied and obtained approval for the defendant as required under Section 29 of the Physical Planning Act.

The defendant's stated that the applicant's approval was of a temporary nature but did not elaborate on the issue with any documentary evidence to guide the court. The applicant has taken a step further to produce photographs to show the extent of the destruction by the defendant which the defendant has admitted that it was done by their enforcement officers.

I find that the applicants have established a prima facie case with a probability of success and allow the application as prayed. Parties to comply with Order 11 with 30 days and fix the matter for hearing.

**DATED AND DELIVERED AT ELDORET THIS 19TH DAY OF JULY, 2021**

**M. A. ODENY**

***JUDGE***