



Kipkoech v County Government of Uasin Gishu (Environment and Land Case 2 of 2020) [2025] KEELC 6772 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6772 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 2 OF 2020**

CK YANO, J

OCTOBER 9, 2025

BETWEEN

JOSEPH KIPKOECH PLAINTIFF

AND

COUNTY GOVERNMENT OF UASIN GISHU DEFENDANT

JUDGMENT

1. The Plaintiff instituted the instant suit vide a Plaint dated 27.01.2020 and Amended on 15th September, 2020, against the Defendant, seeking the following orders: -
 - i. A Declaration that the plaintiff is the bonafide and legitimate owner of parcels of land No. Eldoret Municipality Block 10/140 and a permanent injunction do issue restraining the defendant, its employees, servants and/or agents from interfering with the said plaintiff's ownership and occupation of the said parcel of land No. Eldoret Municipality/ Block 10/140.
 - ii. Compensation for loss of property by payment of Kshs. 5,956,000/= tabulated in the valuation report dated 24th June, 2020 to the plaintiff.
 - iii. Costs of the suit and interest.
 - iv. Any other relief that this honourable court may deem fit to grant.

Plaintiff's Case:

2. The Plaintiff states that he is the registered owner of the parcel of land known as L.R. No. Eldoret Municipality/ Block 10/140, situated within Kamukunji area within Eldoret Town in Uasin Gishu county, hereinafter referred to as the suit land.
3. It is his claim that on or about 20th January, 2020, the defendant without any notice or justification, either of any wrongdoing or a claim over the suit land, caused its employees, servants and/or agents to



trespass into the suit land and with the use of a wheel loader reg. No. KBZ 991D, proceeded to cause destruction on the suit land by demolishing the plaintiff's structures thereon. He further claims that he was never issued with any eviction order.

4. That as a consequence of the defendant's illegal actions, the plaintiff has suffered tremendous loss as a result of the demolition of his property and provided valuation report dated 24.06.2020, which valued the demolished properties and assessed the substantial loss suffered by the plaintiff at Kshs. 5,956,000/=.
5. The plaintiff further contends that he has been paying rates to the defendant and other dues to the government agencies when required and added that before developing the said property he had obtained the requisite approval from the defendant.
6. He maintained that there was no justification for the defendant's actions of demolishing his properties through its employees, servants and/or agents, without notice and thus urged the court to allow his claim and grant the orders sought.
7. In response to the Statement of Defence dated 25.06.2020, the plaintiff filed a Reply to Defence dated 15.09.2020, wherein he joined issues with the defendant and reiterated the averments in his plaint.
8. He maintained that he is the bonafide and registered owner of the suit land and that before making any development on the suit land, he applied and was granted the necessary approvals by the defendant.
9. He denied the allegations by the defendant that he flouted any building, lands and physical planning regulations and put the defendant to strict proof thereof.

Defendant's Case;

10. The plaintiff's case was opposed. The Defendant filed a Statement of Defence dated 25th June, 2020 in response to the averments made in the plaint.
11. The Defendant denied all the allegations levelled against it and put the plaintiff to strict proof thereof. The allegations made in the plaint of demolishing the structures on the suit land without notice and causing loss to the plaintiff as a result were denied.
12. The defendant further averred that if any demolition took place, then the same was as a result of the plaintiff flaunting building, lands and physical planning regulations.
13. The defendant also denied the ownership claims made by the plaintiff over the suit land and put him to strict proof thereof. The allegations of paying rates and obtaining the requisite approvals were also denied.
14. In conclusion, the defendant urged the court to dismiss the plaintiff's case with costs.

Trial:

15. The Plaintiff's case proceeded for hearing on 26.09.2022. He testified as PW1 and called 1 witness to testify in support of his case.
16. The plaintiff testified and adopted his witness statement dated 15.09.2020 as his evidence in chief. It was his testimony that he is the owner of the suit land No. Eldoret Municipality/Block 10/140.
17. He also stated that the defendant demolished his three houses that were on the suit land without giving any reason for the demolition.



18. He maintained that he had been given the requisite approval letter to construct the houses on the suit land. That after the demolition by the defendant, he went to a valuer, who assessed the damages he had incurred and valued the same at Kshs. 5, 956,000/=
19. He also produced the following documents as exhibits in support of his case; copy of the certificate of lease as Pexhibit 1, copy of the approval letter as Pexhibit 2, copy of the demand letter as P.exhibit 3 and copy of the valuation report as MFI 4.
20. In conclusion, he urged the court to allow his claim and grant the prayers sought.
21. On cross-examination, it was his testimony that he had not produced any photographs of the houses on the suit land prior to the demolition. He also stated that the approvals were done on 20.01.2020.
22. He conceded that he did not get approval from NEMA, or from National Construction Authority.
23. When referred to the copy of the certificate of lease attached to the defendant's documents, he confirmed that the registered owner indicated therein was one Josephat Kipkoech Yego but maintained that he was given his title document from the lands office.
24. On re-examination, he clarified that his certificate of lease was issued on 10.03.2000 whereas the certificate of lease by the defendant was given on 07.12.2019.
25. Michael Otieno testified as PW2. He stated that he is a valuer and a lecturer at Moi University. He explained that he was approached by the plaintiff to value his parcel of land which had been destroyed by the defendant.
26. That he went to the site and found the buildings that had been demolished; two permanent houses and one mud-walled house. He quantified the loss at Kshs. 5,596,000/= and thereafter prepared the valuation report, which he produced as Pexhibit4.
27. On cross-examination, it was his testimony that he went to the ground with his colleague. He however conceded that he had not attached his Practicing Certificate for the year 2020.
28. He explained that he took rubbles at the site and used the same as the basis for his valuation.
29. On re-examination, he explained that the figures arrived at was based on the area and not speculation and reiterated that he had not gone to the suit property prior to the day he went for valuation.
30. The plaintiff thereafter closed his case.
31. The Defence case proceeded for hearing on 24/4/2024. The defendant called one witness in support of its case, Daniel Kibet Koech, a Physical Planner, who testified as DW1.
32. He explained that demolition of property may occur where one proceeds to build without approvals. It was his testimony that the plaintiff did not obtain any building approval and therefore the demolition was justified.
33. On cross-examination, it was his testimony that he was appointed as a Physical Planner of the defendant after the demolition of the plaintiff's properties.
34. He stated that both old and new buildings were demolished but conceded that there was no notice given to the owners of the buildings before demolition. He further admitted that the *Physical and Land Use Planning Act* of 2019, required that notice be given before demolition is done.



35. He denied the allegations that the plaintiff's buildings were demolished because there was a dispute between the plaintiff and one Dr. Josephat Kipkoech Yego but maintained that the plaintiff did not have any building approvals.
36. On re-examination, he explained that one has to prove that he is the owner of the land before building approvals are granted. That the application for the approval must be accompanied by technical drawings which have to be approved.
37. After several adjournments by the defence to enable them call the Land Registrar as Defence witness and who failed to attend court as scheduled, the defence closed their case on 28.04.2025.
38. Upon close of the defence case, this court issued directions on the filing of final written submissions within 14 days by each party. However, at the time of writing this judgment, only the plaintiff had filed his submissions, which I have read and considered.

Analysis and Determination:

39. I have critically considered and reviewed, pleadings, the evidence adduced, the exhibits produced and the submissions in totality and in my view the following issues arise for determination: -
 - i. Whether the Plaintiff is the bonafide and legal owner of the suit land.
 - ii. Whether the defendant's acts of demolishing the plaintiff's buildings and properties was lawful, justified and procedural.
 - iii. Whether the Plaintiff is entitled to the reliefs sought in the Amended Plaintiff
 - iv. Who shall bear the costs of the suit

i. Whether the Plaintiff is the bonafide and legal owner of the suit land;

40. The plaintiff has urged this court to make a declaration that he is the registered proprietor of the suit land. It is his contention that he is the registered owner of the suit land and holds a certificate of lease issued on 10.03.2000. He disputed the certificate of lease relied on by the defendant on cross-examination and which showed that one Josephat Kipkoech Yego is holder of a certificate of lease issued on 07.12.2019.
41. In their statement of defence, defendant's raised an issue that the proprietorship of the suit land was contested and that the plaintiff was neither the bonafide nor the registered proprietor thereof. However, no evidence was presented to demonstrate that the ownership of the suit land is disputed or that the plaintiff is not the registered proprietor of the suit land.
42. Thus, for purposes of this litigation, I have no material that contests the ownership of the suit land. The plaintiff produced Pexhibit 1, which showed that he is the registered proprietor of the suit land. Although it was alleged that there was a dispute between the plaintiff and one Dr. Josphat Kipkoech Yego over the suit land, that dispute is not before this court and the said Dr. Josphat Kipkoech Yego is not a party to this case.

ii. Whether the defendant's acts of demolishing the plaintiff's buildings and properties was lawful, justified and procedural;

43. The second issue and which is at the center of the dispute herein is touching on the demolition of the plaintiff's buildings and properties. This court has been called upon to determine whether the said demolition was lawful, justified and procedural as per the statutory provisions.



44. The plaintiff contends that sometimes around 20th January, 2020, the defendant, without any notice or justification, caused its servants and/or agents to trespass into the suit land and proceed to cause destruction and demolition of his properties and structures on the suit land.
45. He maintained that he had obtained the requisite approval letters from the defendant to construct the houses on the suit land, which he produced as Pexh. 2. He averred that no notice, hearing nor eviction notice was issued to him before the demolition of his properties.
46. The defendant in its statement of defence averred that if any destruction occurred, then the same was as a result of the plaintiff flouting building, lands and physical planning regulations.
47. DW1, during cross-examination stated that the plaintiff did not obtain any building approval and thus the demolition was justified. He however conceded that the requisite notice was not issued prior to the demolition as statutorily mandated.
48. The statutory framework governing the demolition of any structures on a parcel of land by the defendant is found at sections 57 and 72 of the [Physical and Land Use Planning Act](#).
49. Section 57 of the said Act provides as follows: -

“ 57. Development permission

- (1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.
- (2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.
- (3) A county executive committee member shall require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.
- (4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the relevant county executive committee member may undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.
- (5) A county executive committee member may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.



- (6) A county executive committee member may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

50. Section 72 on the other hand addresses the issue of notices and provides as follows:-

72. Enforcement notice

- (1) A county executive committee member shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that county executive committee member that—
 - (a) a developer commences development on any land after the commencement of this Act without the required development permission having been obtained; or
 - (b) any condition of a development permission granted under this Act has not been complied with.
- (2) An enforcement notice shall—
 - (a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened;
 - (b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied; and
 - (c) require within a specified period the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.
- (3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land Use Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.
- (4) Any party aggrieved with the determination of the county physical and land use planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.
- (5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

51. Munyao J. in the case of *Bamaftah -v- County Government of Kilifi* (Environment & Land Case 26 of 2021) [2023] KEELC 15865 (KLR) (1 March 2023) (Judgment) while addressing the applicability of section 57 and 72 of the Physical Planning and Land Use Act at paragraph 22 and 25 held as follows: -

- “ 22. Section 57 and Section 72 need to be read together. Section 57 addresses itself to a situation where the County is of opinion that one is developing without the requisite development permission. Section 57 (3) thereof is explicit, that



the notice to the developer should allow him to restore the land within 90 days. It goes without saying, that the only legal notice for restoration of a challenged development cannot be less than 90 days. Any notice that does not give the developer 90 days cannot be considered to be a notice in conformity with Section 57 (3) of the Act, and would be an illegal notice. In essence, the County Government is not to move in and restore the land before lapse of the 90 days. Section 72 is titled enforcement notice. This enforcement notice is the notice issued pursuant to Section 57, and as we have seen above, it cannot be a notice that is of less than 90 days. Under Section 72 (3) a person is at liberty to appeal the notice within 14 days to the Liaison Committee. Now, the 90 days and the 14 days should not be confused. The 90 days is the period for which one needs to be given to restore the land and the County Executive is not permitted by law to take an enforcement measure before lapse of 90 days. The 14 days is the period within which one is at liberty to appeal the enforcement notice to the Liaison Committee. It will thus be useful for the enforcement notice issued to also advise the developer that he can appeal that notice within 14 days to the Liaison Committee. Again, a notice that informs the developer that his right to appeal is one that is of less than 14 days would be an illegal notice for failure to conform to the period set out in Section 72 (3) of the Act.

25. In any event, by law, the defendant ought not to have moved to restore the premises within the 90 days that I have already demonstrated above. There is a reason why the law has given these periods of time. The County Government may think that a development is illegal, but the developer may very well demonstrate that the development is legal, or may take steps to regularize the development, and obviate the need for any enforcement measures being undertaken. When proper notice is not issued, then in essence, the developer is being condemned unheard. Even in our case, it could be that after hearing from the developer, and taking into account his explanation that he was only replacing a wall that previously existed, the defendant would have had no issue with the development. But what happened is that the defendant rushed in and pulled down the development without giving the plaintiff an opportunity of presenting his case. It can only be contended that opportunity to be heard was given if the notices were legal, that is, if they provided for the correct time frames for enforcement and for lodging an appeal to the Liaison Committee. I have already demonstrated that they did not, and I have no hesitation to conclude that, not only were the notices illegal, but the act of the defendant moving in and demolishing the plaintiff's development was also illegal. Even where a county government has powers to issue notices, seeking to force persons who may be carrying out development without permission to stop such developments and restore the land to its original condition, such notices must obey the statutory timelines."

52. Persuaded by the above decision and a clear reading of sections 57 and 72 of the Act, from the evidence and pleadings filed herein, it is clear that the defendant did not comply with the statutory provision of issuing a notice before proceeding to demolish the plaintiff's properties. This fact was further confirmed by DW1 during cross-examination.

53. It is therefore the finding of this court that the demolition was not lawful and procedural for failing to comply with the strict statutory provisions.



iii. Whether the Plaintiff is entitled to the reliefs sought in the Amended Plaintiff;

54. The plaintiff in his Amended Plaintiff sought for compensation of Kshs. 5,956,000/- being the value of the demolished buildings and structures. PW2 produced a copy of the Valuation Report dated 24.06.2020 as Pexh. 4, which gave the value of the demolished buildings as Kshs. 5,956,000/=. In his testimony, he gave an explanation on how he arrived at the said figure.
55. There was no contrary valuation report adduced by the defendant showing a different figure. In the absence of any contrary evidence as to the value of the plaintiff's demolished buildings, I find that the amount contained in Pexh.4 as produced by PW2 is the correct value of the demolished buildings and properties.
56. In conclusion therefore, it is the finding of this court that the plaintiff having satisfactorily proved his case on the unlawful and unprocedural demolition of his properties, he is entitled to the reliefs sought in the Amended Plaintiff.

iv. Who shall bear the costs of the suit?

57. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.
58. In this case, having held that the Plaintiff has proved his case against the Defendant, I find that he is entitled to costs of the suit.

Conclusion:

59. The upshot of the above is that the Plaintiff has proved his claim against the defendant. Accordingly, Judgment is hereby entered for the plaintiff on the following terms:-
- a. An award of Kshs. 5,956,000/= as tabulated in the valuation report dated 24th June, 2020, be and is hereby issued as compensation to the Plaintiff.
 - b. Interest on (a) to be charged at Court's rate from the date of this judgment until payment in full.
 - c. Costs of the suit to be borne by the Defendant.

DATED, SIGNED and DELIVERED virtually at ELDORET on 9TH day of OCTOBER, 2025.

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of:-

Mr. Kariuki Mwaniki for the Plaintiff.

Ms. Njiru for the Defendant.

Court Assistant – Laban

