



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 155 OF 2015**

**JOSEPHINE WAIRIMU CHERONO [Suing as the administrator of the Estate of  
the late CHRONO KIPLAGAT.....PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF UASIN GISHU, MINISTRY OF LANDS,  
HOUSING AND PHYSICAL PLANNING..... DEFENDANT**

**RULING**

The defendant/applicant has come to court praying that proceedings of 31.7.2018 to be set aside and defendant be allowed to re-open its case and call witnesses for purposes of defence. The application is based on grounds that the application has a favourable defence. That the defence witness is the County Land Surveyor and would give clear direction as to the extent of the alleged encroachment. The explanation given by the defence is that they sought for time allocation but when they came to court at 10.00 a.m., they found that their application for time allocation had been disallowed and the matter was to proceed immediately.

The plaintiff replies that the matter came up for hearing on 31.7.2018 and that the defendant had not filed documents nor paid them any costs. When the matter came up for hearing, the defendant did not have witnesses and sought the matter to be heard at 2.00 p.m. the court did not have an obligation to put the matter aside when there were no witnesses.

This court observes that when the matter came for hearing, the defendant's witnesses were not present in court. No explanation was given for their absence. The defendant now explains that he came with his witnesses at 10.00 a.m. and found the defense case had been closed. I do find that there is no explanation why the defendants came to court at 10.00 a.m. when they were supposed to be in court at 8.30 a.m.

However, the defendant being a public body, I would reluctantly allow the application and on condition that the defendant pays the plaintiff thrown away costs of Kshs. 20,000 before the hearing of the suit. Orders accordingly.

**Dated and delivered at Eldoret this 21<sup>st</sup> day of February, 2019.**

**A. OMBWAYO**

**JUDGE**