



**Lewangiro Camel Farms Limited v Kenya Electricity Transmission Company (Environment & Land Case 432 of 2017) [2023] KEELC 16937 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16937 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 432 OF 2017**

**YM ANGIMA, J**

**APRIL 27, 2023**

**BETWEEN**

**LEWANGIRO CAMEL FARMS LIMITED ..... PLAINTIFF**

**AND**

**KENYA ELECTRICITY TRANSMISSION COMPANY ..... DEFENDANT**

**JUDGMENT**

**A. The Plaintiff's Claim**

1. By a plaint dated May 26, 2017 and filed on May 29, 2017 the plaintiff sought the following reliefs against the defendant:
  - a. A permanent injunction to restrain the defendant by themselves, their servants and/or employees, agents and tenants from trespassing, occupying, carrying out any and all activities that would cause damage to the pasture, trees or any other structure thereon in any manner whatsoever interfering with or dealing with all that parcel of land (amounting to 11,000 acres) in the expansive Mutara Ranch in S.E Rumuruti Township, Laikipia (LR No 10069 comprising approximately 63,220 acres) which is the subject of the lease agreement dated August 1, 2010 and the addendum to the lease dated December 3, 2015 between the plaintiff and ADC.
  - b. A permanent injunction to restrain the defendant by themselves, their servants and/or employees, agents and tenants from harassing, threatening and intimidating the plaintiff through notices, correspondence, phone calls or otherwise relating to the leased property in the Mutara Ranch.
  - c. An order compelling the defendant to comply with the provisions of the Land Act No 6 of 2015, relating to just compensation for damage resulting from



entry for inspection and during the compulsory acquisition of interests in land for public purposes.

- d. Costs of the suit.
  - e. Any other or further relief as this honourable court may deem appropriate.
2. The plaintiff pleaded that it was a leasee from the Agricultural Development Corporation (ADC) of 11,000 acres of LR No 10069 (the suit property) located in Mutara Ranch in the South East of Rumuruti Township in Laikipia county for a term of 15 years with effect from August 1, 2000. The plaintiff pleaded that the suit property was leased for livestock rearing and that it was keeping 3000 heads of cattle, 1000 goats and 500 camels thereon.
  3. The plaintiff further pleaded that in or about January, 2017 the defendant wrongfully entered parts of suit property for the purpose of constructing the 400 KVA – Loiyangalani – Suswa power transmission line in consequence of which it occasioned severe damage to the pasture and trees thereon. It was contended that defendant’s activities had negatively affected its livestock business thereby causing it economic loss for which the defendant was liable.
  4. It was the plaintiff’s case that although the defendant had in early 2017 agreed to compensate it for the damage and loss suffered as a result of the project, it had reneged on the commitment afterwards hence necessitating the filing of the suit. It was also the plaintiff’s case that the defendant was in violation of the provisions of sections 107 – 119 of the Land Act, 2012 in failing to pay just compensation for compulsory acquisition of an interest in the suit property.

#### **B. The Defendant’s Defence**

5. The defendant filed a statement of defence dated June 27, 2017 denying liability for the plaintiff’s claim. The defendant admitted to the construction of the high voltage power transmission line (the project) passing through the suit property but contended that it obtained permission of the proprietor (ADC) to do so.
6. The defendant pleaded that since the suit property was owned by a government body section 148(2) of the Land Act, 2012 did not provide for compensation for wayleaves or communal right of way unless there was demonstrable interference with the use of the land by the public body. It was further contended that ADC was not using the land at the material time since it had already leased it out for grazing livestock.
7. It was the defendant’s further pleading that the plaintiff’s claim was untenable due to the absence of a valuation report and proof of damage or loss to its business. The court was consequently urged to dismiss the suit with costs.

#### **C. The Plaintiff’s Reply**

8. There is no indication on record of the plaintiff having filed any reply to the defendant’s defence. By dint of order 2 rule 12 of the Civil Procedure Rules, 2010 there is a joinder of issue upon the defence in the absence of a reply thereto.

#### **D. The Trial and Directions on Submissions**

9. At the trial hereof, the plaintiff called 2 witnesses and closed its case. The 1<sup>st</sup> witness was the plaintiff’s director whereas the second was a registered valuer who produced a valuation report in support of the



plaintiff's claim. On the other hand, the defendant called one witness, a senior land economist working for it as the sole witness.

10. Upon conclusion of the trial, the parties were granted timelines within which they were to file and exchange their respective submissions. The record shows that the plaintiff's submissions were filed on November 21, 2022 whereas the defendant's submissions were filed on December 14, 2022.

#### **E. The issues for Determination**

11. The court has noted that the parties did not file an agreed statement of issues for determination. The record shows that the plaintiff filed a list of 5 issues dated July 19, 2019 whereas the defendant filed a list of 8 issues dated February 16, 2021. In the premises, the court shall proceed to frame the issues for determination as stipulated under the Civil Procedure Rules.
12. Under order 15 rule 2 of the Civil Procedure Rules, the court may frame issues from any of the following:
  - a. The allegations made in the pleadings.
  - b. The allegations made on oath by or on behalf of the parties.
  - c. The contents of documents produced by the parties.
13. The court has considered the pleadings, evidence and documents on record in this matter. The court is of the opinion that the following issues arise for determination herein:
  - a. Whether the plaintiff has a cause of action directly against the defendant.
  - b. Whether the plaintiff has proved his claim for damages or compensation against the defendant.
  - c. Whether the plaintiff is entitled to the reliefs sought in the suit.
  - d. Who shall bear costs of the suit.

#### **F. Analysis and Determination**

##### **(a) Whether the plaintiff has a cause of action directly against the defendant**

14. The court has considered the material and submissions on record on this issue. Whereas the plaintiff submitted that it had a cause of action against the defendant directly as the wrongdoer, the defendant submitted that it had no dealings with the plaintiff and that the lease for the suit property was between the plaintiff and ADC only. The basic facts of the case were not really in dispute in this matter. There was no dispute that ADC was the owner of the suit property and that it had leased 11,000 or 12,000 acres to the plaintiff for ranching. There was no dispute that ADC allowed the defendant to undertake the project through the suit property during the subsistence of the lease. There was also no doubt that ADC required the defendant to compensate the plaintiff for any loss or damage which might be occasioned by the construction works.
15. The point of dispute between the parties was really who as between the defendant and ADC should pay the plaintiff for any proved loss or damage. The plaintiff took the view that the defendant was liable to pay compensation as the tortfeasor responsible for the alleged damage and also on the basis of a letter of commitment dated January 20, 2017 by which the defendant agreed to pay compensation on the basis of its crop compensation policy. The defendant, on the other hand, was of the view that it was



not liable because, firstly, it was not party to the lease agreement between ADC and the plaintiff and, secondly, no compensation was payable to a public body (ADC) for a wayleave under section 148(2) of the Land Act, 2012.

16. The court has noted that in its written submissions, the plaintiff referred to various clauses of the lease agreement between it and ADC. In particular, the plaintiff referred to clause 6(u) on the issue of enjoyment of quiet possession and clause 8(i) on non-interference by the landlord during the term of the lease. It was not clear why the plaintiff made reference to the terms of the lease when it was evident that the defendant was not privy thereto. There was also no evidence on record to demonstrate that the lease was ever registered so as to bind third parties who were not privy thereto. In the absence of evidence of registration, the lease would only operate as a contract only between the parties thereto. See Rogan-Kamper v Grosvenor (No 2) 1977 eKLR and Souza Figueiredo v Moorings Hotel Co Ltd [1960] EA 926.
17. Notwithstanding the fact that the defendant was not privy to the lease agreement between the plaintiff and ADC there is documentary evidence on record to demonstrate that the defendant gave an undertaking to pay compensation to the plaintiff as a result of any loss or damage which might be occasioned by the project. The defendant's letter dated January 20, 2017 created an independent obligation to make compensation subject to its crop compensation policy and the law. It was not, however, a blanket commitment to pay any amount of money, however ridiculous, which may be claimed by the plaintiff.
18. The court does not accept the defendant's contention that the author of the letter dated January 20, 2017 did not have any authority to bind the defendant. The said letter was signed Dr (Eng) Joseph Siror PhD, who described himself as the General Manager – Technical Services. At the trial hereof, the defendant's witness confirmed that he was still working for the defendant in the same capacity. He was not called to testify on why he could possibly have no authority to bind his employer. The court is thus satisfied that the defendant was rightfully sued as a defendant and it cannot successfully shift blame to ADC.

**b. Whether the plaintiff has proved his claim for damages or compensation against the defendant**

19. It is not very clear from the pleadings and material on record whether the plaintiff was claiming compensation for the economic loss to its livestock business as a result of the defendant's project or whether it was seeking just compensation for the alleged compulsory acquisition of parts of the suit property. The plaintiff contended that it had a legal "interest" in the leased property which was capable of compulsory acquisition under sections 107 – 119 of the Land Act, 2012.
20. The court shall first consider the claim for damages for the economic loss allegedly suffered by the plaintiff's business. Although it was pleaded in paragraph 6 of the plaint that the defendant's activities had adversely affected the plaintiff's business and resulted in economic loss, the plaintiff did not plead particulars of the alleged loss. The court is of the opinion that such economic loss must be pleaded specifically as special damages and a breakdown and particulars thereof must be pleaded in the statement of claim. It is not permissible for a claimant to make a general claim for economic loss in his pleading and then spring up a valuation report at the trial in a bid to prove the alleged loss.
21. In the case of Ouma v Nairobi City Council [1976] eKLR Chesoni J (as he then was) held, *inter alia*, that:

“ Thus for a plaintiff to succeed on a claim for special damages he must plead it with sufficient particularity and must also prove it by evidence. as to the particularity necessary for pleading and the evidence in proof of special damage the court's view is as laid down in the English



leading case on pleading and proof of damage, *Ratcliffe v Evans* (1892) 2 QB 524 where Bowen LJ said at pages 532, 533:

“The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

22. A perusal of the plaint merely shows that the plaintiff pleaded that the defendant’s project resulted in damage to pasture and trees which were crucial to its ranching business. No particulars of the nature and extent of the damage were pleaded. The monetary value of the loss or the damage to the trees and pasture was not pleaded in the plaint either. No particulars of any drop in production or economic value of livestock in the suit property was pleaded or proved at the trial.
23. Since the plaintiff’s claim for economic loss was not pleaded and particularized as required by law, the plaintiff’s valuation report is not admissible to prove the alleged loss. In the premises, the court is not satisfied that the plaintiff has proved its claim for alleged economic loss of Kshs 10,506,055/= hence the same is not awardable.
24. The court has considered the plaintiff’s claim for just compensation for alleged compulsory acquisition of an ‘interest’ in suit property under part viii of the *Land Act*, 2012. There is no contest that no request for compulsory acquisition was presented to the National Land Commission (NLC) for compulsory acquisition of the suit property. There is no doubt that no notice of acquisition was published by the NLC under section 110 of the *Land Act* and no inquiry as to compensation was initiated or undertaken by NLC for purposes of compulsory acquisition of the suit property.
25. Section 2 of the *Land Act* defines compulsory acquisition as follows:

“Compulsory acquisition means the power of the state to deprive or acquire title or other interest in land for a public purpose subject to prompt payment of compensation.”
26. There is no evidence on record to demonstrate that the state intended to deprive the plaintiff of suit land, or to acquire a title, lease, or other interest over the suit property for a public purpose. The evidence on record simply shows that what was created by the project was a wayleave. The evidence further reveals that the consent of the owner (ADC) was obtained by the defendant for the construction works.
27. The plaintiff is not entitled to compensation for compulsory acquisition of the suit property, its lease or any interest thereon for there was no compulsory acquisition in the first place. The only loss and damage which the plaintiff may have suffered was destruction of pasture and trees which did not require the initiation of the compulsory acquisition process set out in part viii of the *Land Act*. All the plaintiff was required to do was to quantify and plead its claim for economic loss with particularity and proceed to prove it at the trial. Accordingly, the court finds that the plaintiff’s prayer compensation for alleged compulsory acquisition of the suit property or an interest therein is untenable and the same is hereby rejected.



**c. Whether the plaintiff is entitled to the reliefs sought in the suit**

28. The court has found and held that although the plaintiff had a cause of action against the defendant, its claim for damages was not proved as required by law. The court has also found that the plaintiff's claim for compensation for compulsory acquisition of the suit property or its leasehold interest is not tenable. It is also obvious from the material on record that the two permanent injunctions sought in the plaint have since been overtaken by events because the construction of the transmission line was completed in 2018. In the premises, the plaintiff is not entitled to the reliefs sought in the suit, or any one of them.

**d. Who shall bear costs of the suit**

29. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to section 27 of the *Civil Procedure Act* (cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co Ltd* [1967] EA 287. Although the defendant is the successful party in this litigation, the court is not inclined to award it costs of the suit. The evidence at the trial revealed that the defendant dealt with the plaintiff's claim in a very casual manner. Apart from blowing cold and hot on the issue of compensation, it failed to verify the property damage report for pasture and trees which it had assessed at Kshs 1,092,250/=. Accordingly, the court shall direct that each party shall bear its own costs.

**G. Conclusion and Disposal Order**

30. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to prove its claim against the defendant to the required standard. Consequently, the plaintiff's suit is hereby dismissed in its entirety. Each party shall bear its own costs of the suit.

31 It is so decided.

**JUDGMENT DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Mr. Wanjohi for the Plaintiff

Ms. Ann Thungu for the Defendant

C/A - Carol

