



**Prigal Limited & another v Kenya Electricity Transmission Co Ltd (Civil Case 001 of 2023) [2023] KEELC 20079 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20079 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
CIVIL CASE 001 OF 2023  
A OMBWAYO, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**PRIGAL LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**MICHAEL MWANGI MUTURI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KENYA ELECTRICITY TRANSMISSION CO LTD ..... DEFENDANT**

**RULING**

1. The applicants filed the instant application dated July 10, 2023 seeking the following orders:

1. Spent.
2. Spent.
3. Spent.
4. Spent.
5. That pending inter-parties hearing of this suit, the Defendant be restrained from claiming or initiating the process of withdrawing the sum of KES. 6,579,77800 deposited by the Respondents on 26/01/2023 in the the interest earning account opened in the joint names of advocates for parties namely Ac No. xxxx at Kenya Commercial Bank Upperhill Branch, Nairobi towards preservation of the compensation amount for way leave through properties known as LR. No. 5212/16, 5212/17, 5212/18 and LR. No. 5212/19 situate in Naivasha Sub-county in Nakuru County pursuant to orders of this Court given on 28th October 2021 in Nakuru, ELC Petition No. 4/2021.



6. That pending hearing of this suit, an order do hereby issue directing the Respondent to forthwith promptly deposit into the interest earning account opened in the joint names of advocates for parties namely Ac No. xxxx at Kenya Commercial Bank Upperhill Branch, Nairobi a further sum of KES. 59,218,010.00 being the agreed just compensation to the Plaintiffs for way leave through properties known as LR. No. 5212/16, 5212/17, 5212/18 and LR. No. 5212/19 situate in Naivasha Sub-county in Nakuru County.
7. That cost of this Application be in the cause.
2. The application was based on grounds set out and supported by the affidavit of Michael Mwangi Muturi sworn on July 7, 2023.

It was stated that the applicants are the registered proprietors of parcels of land LR No. 5212/16, 5212/17 and LR No. 5212/19 the suit properties herein. That the respondent via letters of offer dated December 18, 2020 offered and the applicants accepted offers for compensation of Kshs. 65,797,788 for way leave through the suit properties.

That subsequently the respondent took possession of the portions of the suit properties and constructed and completed the project Olkaria –Lessos-Kisumu transmission line and to sate has since been utilizing the project since January 2021. That it is not in dispute that the Applicants are the owners of the suit properties who have been in possession save for the way leave portions which the respondent has been utilizing since December, 2020.

3. It was stated that the applicants via a petition sought for way leave compensation against the respondent where the court ordered the respondent to deposit the way leave amount in a joint interest earning account but the same was stuck out on a technicality with the liberty of the applicants to claim the same by way of civil suit. That the applicants have filed a suit for compensation as ordered and unless the interim orders are granted, the said orders in ELC Petition E004/2021 vacated with the struck out petition, the Applicants would be exposed to irreparable loss. Further, that the Respondent deposited Kshs. 6,579,778 in part compliance of the order which ought to be preserved.

The appellants contend that they are not in a financial position to raise the said sum.

In conclusion, the applicants are apprehensive that the respondent would fail to pay the compensation amount despite being allocated by its government monies for the financial year 2023/2024.

## **Response**

4. The respondent filed a notice of preliminary objection dated August 14, 2023 on the following grounds:
  1. This court is divested of jurisdiction to entertain this matter as the Energy And Petroleum Tribunal is the subordinate court vested with the original jurisdiction to hear and determine the Plaintiffs' disputes that arise in respect of way leaves, easements or rights of way in relation to the distribution and supply of electrical energy.
  2. The Plaintiffs have not exhausted the available remedies before electing to file this dispute in the Environment and Land Court.

## **Submissions**

5. The plaintiff filed its submissions dated August 16, 2023 and identified one issue for determination, whether this court has jurisdiction to hear and determine this suit. It relied on section 11 (i) of the



Energy Act No. 1 of 2019 and submitted that the said section donates its powers to the Authority to investigate and determine disputes relating to licenses only.

It submitted that that section 36(3) of the Energy Act does not apply to the dispute herein. The plaintiff relied on the case between *Igal Roni Elfezouty And Makau Nafuu V Kenya Electricity Transmission Company Limited And Epa/E018/2022* Between *Maridadi Flowers Limited V Kenya Electricity Transmission Company Limited*. It submitted that in the said case it was found that the tribunal lacked the jurisdiction to hear and determine issues in respect to way leave.

In conclusion the Plaintiff submitted that this court posses the requisite jurisdiction to hear and determine the suit herein.

### **Analysis and Determination**

6. This court has looked at the application and is of the view that the main issue for determination is whether the application is merited.

I note that the respondent filed a preliminary objection on the issue of jurisdiction. This court will not delve into matters jurisdiction as the same was already determined by this court. I will proceed to make a determination on the application.

It is not in dispute that the suit properties belong to the applicants'. It is also not in dispute that the respondent offered to compensate the applicants for way leave for construction of a transmission line to the tune of Kshs. 65,797,788. There is also an order by this court dated November 17, 2021 directing the respondent to have the agreed amount deposited in a joint fixed interest earning account.

7. It is noteworthy that the respondent has since made a partial deposit of Kshs. 6,579,778 to the joint account being 10% of the total sum due. I find that the applicants allege that he continues to suffer since the transmission line is already completed yet they are yet to be fully compensated.

The applicant alleges that his application remains uncontroverted and from this court's analysis of the evidence, the applicants have clearly a prima facie case. In the upshot the applicants' application dated July 10, 2023 is partly merited and I do grant orders that pending inter-parties hearing of this suit, the defendant be restrained from claiming or initiating the process of withdrawing the sum of KES. 6,579,77800 deposited by the respondents on 26/01/2023 in the the interest earning account opened in the joint names of advocates for parties namely Ac No. xxxx at Kenya Commercial Bank Upperhill Branch, Nairobi towards preservation of the compensation amount for way leave through properties known as LR. No. 5212/16, 5212/17, 5212/18 and LR. No. 5212/19 situate in Naivasha Sub-county in Nakuru County pursuant to orders of this Court given on October 28, 2021 in Nakuru, ELC Petition No. 4/2021. I do decline to grant prayer number 6.

**RULING, DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2023.**

**A.O. OMBWAYO**

**JUDGE**

