



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISCELLANEOUS APPLICATION NO. 45 OF 2016 (OS)

KENYA ELECTRICITY TRANSMISSION

COMPANY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

JAMES KINOTI M'TWERANDU...DEFENDANT/RESPONDENT

JUDGMENT

1. The Applicant herein is a state corporation with a mandate of building electricity transmission lines and associated activities. The Applicant's claim is for easements rights over Defendants Land parcel No, Kibirichia/Ntumburi/179 (the suit land) in Meru in order to construct the Nanyuki –Isiolo – Meru 132 KV Power Transmission line. Defendant avers that the applicant has not been reasonable on the issue of compensation hence this suit.
2. The entire suit land is 12.8 hectares equivalent to 31.63 acres.
3. The suit was filed by way of an Originating summons on 24/5/2016. One Mary Wanjohi has identified herself as the land economist of the plaintiff and to that effect, she has sworn a supporting and supplementary affidavits of 18th May 2016 and 13th September 2016 respectively. It is contended that the plaintiff is in the process of constructing the Nanyuki-Isiolo –Meru 132kV Power Transmission Line that transverses various parcels of land including Title Number Kibirichia/Ntumburi/179 measuring 12.3 Ha or 31.63 Acres.
4. The applicant negotiated with the land owners affected by the transmission line for purposes of acquiring easements over their land in consideration of payment of 30% of the market value of the land as compensation for the partial loss of use of their land. The project is at a crucial point and nearing completion, hence the applicant is ready to offer the respondent adequate compensation to the tune of Kshs. 364,285.90/- for the easement to be created over the Suit Land. The affected area according to the plaintiff is approximately 2.024 Acres of the Suit Land translating to an impact of approximately 6.4%.
5. Plaintiff contends that defendant is demanding Kshs. 4,048,000/- at a rate of Kshs. 2,000,000/- per acre being 100% which is exaggerated and does not reflect the true market value of the land. Plaintiff further states that it does not seek to acquire the respondent's land nor is there a transfer of land involved but rather a partial loss of use of the land. The construction has now stalled and the contractor on site is charging the applicant a daily contract fee of Kshs. 250,000/-.. Plaintiff is ready and willing to pay just and adequate compensation to the respondent in exchange of acquiring an easement over the Suit Land as required by law.
6. The suit is opposed vide a replying affidavit sworn by James Kinoti M'Twerandu on 5th July 2016, (defendant). He is disputing the valuation pegged by the plaintiff at shs.600 000 per acre. Defendant is computing the value of the land at Sh 2 million per acre. He also claims that the affected portion of the land is 3.05 acres and not 2.024 acres as alleged by the plaintiff.
7. A valuation report by GIMCO LTD was prepared on 8/11/2013 under instructions of the plaintiff. It assessed the value of one acre of land in the area (not on the suit land) at shs.600 000 per acre. Defendant came up with his own valuation report prepared by NI-LIGHT CONSULTANTS LTD dated 18.6.2016. This report indicated that the affected area was 2.024 acres while one acre was valued at shs.2 000 000.
8. On 28.11.2016, the parties through their advocate made a consent in court for the Meru county surveyor to establish the acreage affected by the transmission lines and for the county valuer to indicate the current value of the suit land. The surveyors report was filed in court on 2/6/2017. It indicated the affected portion as 0.94 ha. The county valuer's report was filed in court on 26.7.2017. It indicated the value of one acre of land to be 1 million.
9. On 9/7/2018, the parties again through their advocates made another consent to the effect that the matter was to be heard by way of written submissions whereby the parties were to submit on the three valuation reports.

10. The plaintiff/applicant submitted that the Meru County Valuer misapprehended his assignment by stating the compensation payable to the defendant as Kshs. 2,670,000/-and that the county valuer did not state the value of the suit land as at the time of the letter of offer in November 2013.

11. He also avers that Valuation done by the plaintiff back in 2013 through Gimco Limited set aside funds for compensation for Kshs. 600,000/- per acre, which valuation is higher than the defendant's Ni-Light consultants limited which stated that the value of the land in 2013 was Kshs. 500,000/ per acre-. It urges the court to note that the project cut-off date was in 2013 meaning that funds to compensate affected land owners were set aside in 2013. The plaintiff relied on the cases of Meru ELC Miscellaneous Application No. 40, 43 and 44 of 2016 and Sylvia Wambui Kuria v Kenetraco [2016] eKLR. He urges the court to peg the value of the land at sh.600 000 per acre.

12. The defendant urges the court to base valuation on the current market value of the land. He avers that the issue of capping compensation at 30% of the value of the land is a great injustice and the court ought not to allow it. He asserted that he has planted trees on the Suit Land which are growing on the affected area which will be cleared and which he ought to be compensated of. He relied on the case of Kenya Power & Lighting Company v Josephat P.Kingara [2013] eKLR. Defendant is seeking compensation at the sum of Kshs. 3,335,000/-.

13. Having taken into consideration the affidavits, submissions and record in its entirety, the issue of determination before this court is; ***what is the adequate compensation to be given to the defendant for the affected area in the Suit Land.***

14. An individual's right to property is one that is protected by the Constitution. However, there are instances where this right will be superseded by public interest so as to promote public purpose.

15. **Article 40 (3) (b) of the Constitution** states as follows:

“(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament”

21. The defendant does not refute that part of his land needs to be taken up for the installation of the transmission line but what he is challenging is the amount of compensation that he ought to be paid.

22. **Section. 149 of the land act** provides that ;

“In determining any question or dispute concerning the existence or effect of a public right of way, a court may make an order on any condition, which it thinks fit on all or any of the following matters—

(c) the extent of the use of the easement...”

23. In the case of **KETRACO Vs. James Kinoti M’Twerandu Meru ELC NO. 40 of 2016** , I stated that ;

“The easement right does not imply that there will be transfer of Defendants’ land to Plaintiff. The right will only enable the Plaintiff to carry out its mandate in line with the provisions of law. I am therefore inclined to believe that the compensation policy of the Plaintiff which is pegged at the rate of 30% of the value of affected land is grounded on sound principles of law”.

I made a similar holding in the series of files ELC numbers 43 and 44 all of 2016.

16. **Article 201 of the Constitution** expresses the principles that shall guide all aspects of public finance. **Sub section (d)** stipulates that :

“public money shall be used in a prudent and responsible way. ”

17. I find no good reason to deviate from the findings in the aforementioned cases in respect of the 30 % compensation policy. The same is in line with prudent use of public funds.

18. Taking into account the three filed valuation reports, I peg the value of one acre of land at sh. 1,000 000. The affected acreage is 2.024 acres, which gives a sum of shs.2,024 000. 30% there of gives a sum of shs.607 200.

19. **Final Orders;**

a. A right of way (an easement) is to be registered in favour of the plaintiff over Title Number Kibirichia/Ntumburi/179 Meru to cover 2.024 Acres of the Suit Land.

b. Plaintiff is granted right of entry into all that Title Number Kibirichia/Ntumburi/179 Meru for purposes of carrying on its work.

c. Plaintiff is to compensate the defendant a sum of Kshs. 607,200/- within 30 days from the date of registration of the easement failure to which interest will start accruing at Court's rate.

d. Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 28TH NOVEMBER, 2018 IN THE PRESENCE OF:-

C/A: Kananu

Ojiambo holding brief for Kipkenda for plaintiff

Muriithi holding brief for Kariuki M. for defendant

HON. LUCY. N. MBUGUA

ELC JUDGE