



REPUBLIC OF KENYA
HIGH COURT OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET
ELC APPEAL CASE NO. 96 OF 2021
(FORMERLY ELDORET ELC 4 OF 2021)

KENYA ELECTRICITY TRANSMISSION COMPANY LTD.....APPLICANT/PLAINTIFF

-VERSUS-

KABII ARAP BIEGO.....1ST RESPONDENT/DEFENDANT
EMILY CHEPTOO MELI.....2ND RESPONDENT/DEFENDANT
JOHN KIBIWOT KIPLAGAT.....3RD RESPONDENT/DEFENDANT
PRISCILAH C. SIMOTWO.....4TH RESPONDENT/DEFENDANT
MARK KEMBOI LELEI.....5TH RESPONDENT/DEFENDANT
ASHA NAFULA.....6TH RESPONDENT/DEFENDANT
CHEGUGU STANLEY MAGRAY.....7TH RESPONDENT/DEFENDANT
ELIUD KIPKORIR.....8TH RESPONDENT/DEFENDANT
RPSEMARY CHELAGAT KOSKEI.....9TH RESPONDENT/DEFENDANT
KIPRONO ARAP CHEBARUR AND
ALEX MWARABU AGUI.....10TH RESPONDENT/DEFENDANT
KIBIEGO ARAP TUWEL.....11TH RESPONDENT/DEFENDANT
KIBIWOTT ARAP CHEMUNYWA.....12TH RESPONDENT/DEFENDANT
KIPSUGUT ARAP CHEPSIROR.....13TH RESPONDENT/DEFENDANT
JACKSON KIBET SEREM.....14TH RESPONDENT/DEFENDANT
CHERUTO TABLELEI BIRGEN.....15TH RESPONDENT/DEFENDANT

RULING

1. The Plaintiff/Applicant filed the Notice of Motion application dated 18/1/2021 seeking injunctive orders and an order that kshs

20,521,027/= be deposited in a joint interest earning account in the names of the Advocates for the parties.

2. The injunctive orders were granted initially at the ex parte stage on 19th January 2021 and confirmed on 9th February, 2021.

3. The Court has now the task of deciding the substantive prayer 5 of the motion and the fringe prayers 6 and 7 thereof.

4. The basis for the prayer 5 as set out in the grounds in support thereof, is that the valuation conducted by the National Land Commission as a basis for compensation for the Defendants/Respondents is kshs 20,521, 027, which the Plaintiff/Applicant seeks to have an order for the deposit of the same in a joint interest earning account, in the name of the Advocates for the parties.

5. Some of the Respondents have filed a Replying Affidavit through the 3rd Respondent.

6. In the Replying Affidavit they dispute the offer of kshs 20,521,027 as compensation due to them but have annexed their valuation report valuing the properties at kshs 85,273,700/= and thus they oppose the order for a deposit of kshs 20,521,027/=.

7. In their opposition to the offer made, the Respondents, contend that any offer made to them should entail;

a) The value of the land to pave way for way leave.

b) The value of the structures erected thereon which structures will be demolished.

c) The value of the crops to be uprooted.

8. Having been granted the Injunctive Orders, the Plaintiff/Applicant has proceeded to construct on the Defendant/Respondent parcels of land, the way leave, but the issue of the compensation has not been resolved and can only be resolve at trial, although they are indication that some of the Respondents have accepted the offer.

9. Parties herein were directed to file written submissions on the 5th prayer of the application and an interesting scenario unfolded.

10. Interesting because from the Applicants submission, the Applicant has now abandoned the prayer before Court and submitting that only kshs 3,895,821/= be deposited while the Respondents who initially opposed the deposit of the kshs 20,521,027, now supports the deposit of the same.

11. In essence, the Applicant has abandoned the prayers it made, while the Respondent who was initially opposed is now supporting the said prayers.

12. It follows there from, that this is a clearly abandoned application.

13. The issue of valuation for purposes of the compensation remains at the crux of the matter and as the figures initially suggested by the Applicant for compensation have now been abandoned and as the issue of valuation for the compensation will be determined at trial, it would be premature to order for the deposit of the kshs 20,521,027 as prayed for in prayer 5 of the Application.

14. Consequently the Application having abandoned prayer 5 of its application, prayer No. 5 of the application is hereby denied and the remaining limbs of the application dismissed.

15. Costs in the cause.

DATED AT KAPSABET THIS 21ST DAY OF FEBRUARY, 2022.

Hon. M. N. Mwanyale,

Judge

In the presence of: -

Mrs Lelei holding brief for Ms. Koech for Defendants/Respondents

No appearance for the Plaintiff/Applicant