



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 14 OF 2015**

**HON. BENARD SHINALI ..... PLAINTIFF**

**VERSUS**

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

**R U L I N G**

1. The applicant is the registered owner of **LR.No. Trans-Nzoia/ Kipsoen/11** which is about **36.6 acres**, (suit land). The respondent is a wholly owned **Government Company (Ketraco)** whose functions include transmission of electricity, planning designing, constructing and operating electrical power transmission lines.

2. **Ketraco** was funded by the **World Bank** and it embarked on laying a **220 KV Turkwel – Ortum – Kitale** transmission line. To achieve this, Ketraco entered into a contract with an Indian company called **KEC international Limited** to put in place the transmission line. The project route was identified and the affected persons were visited and explained about the project and the issue of compensation discussed. One of the parcels through which the transmission line was to pass is the suit land. The contractor moved and started laying bases for the transmission line after negotiations with the applicant.

3. Negotiations on compensation took time as confirmed through correspondence between **Ketraco** and the **Applicant**. Negotiations on compensation slowed down when **Ketraco** discovered that there were other parties laying claim to the suit land and therefore also wanted compensation paid to some of them. It is after this that the applicant moved to court and filed an application seeking injunction orders restraining the Ketraco from going on with the project.

4. The applicant contends that if an injunction is not granted he will suffer substantial loss and that is why he wants an injunction issued restraining the respondent from continuing with its project of laying transmission masts on the suit land.

5. The applicant's application is opposed based on the replying affidavit sworn on **5.6.2015**. The respondent contends that the applicant is not being truthful when he contends that the respondent entered the suit land without permission. The respondent contends that its contractor entered the suit land with permission of the applicant when the process of negotiations on compensation was going on. The respondent has annexed copies of emails between its agents and the applicant to confirm this.

6. The respondent further states that a tentative figure of compensation had been reached at over one million but the process did not go further because the respondent was confronted with other persons who were laying claim to the suit land. Investigations by the respondents revealed that there were at least two suits pending in court touching on the issue of ownership of the suit land. The respondent blames the applicant for not disclosing this to the respondent during the process of negotiating for compensation. The

respondent avers that it is ready and willing to deposit the tentative agreed amount in court or in a joint interest earning account in the names of the advocates of the parties so as to allow the project to proceed.

7. The project is a world Bank funded project whose objective is to bring additional power to the national grid and help ease the problem of power outages in **West Pokot, Trans-nzoia, Uasin Gishu and Kakamega Counties**. The respondent contends that if the project is stopped by injunction, the respondent risks suits for breach of contract. They contend that the project is of great national importance and its benefits outweigh that of an individual who will in any case be compensated in damages.

8. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. There is no contention that the applicant is the registered owner of the suit land. Though there are at least two suits touching on ownership of the suit land, the fact remains that at the moment, it is the applicant who is the registered owner. There is no dispute at the moment that the title held by the applicant was obtained in any fraudulent manner. It is the applicant who is in possession of the suit land. When the respondent went to the ground, they met his farm manager a **Mr. Soita** who connected them to the applicant opening up the channels of compensation negotiations.

9. Contrary to the applicant's contention that the respondent went to the suit land without authority or permission from the applicant, the respondent has demonstrated that indeed there were negotiations between it and the applicant. There were even negotiations to move the transmission line from the middle of the suit land to its edge. There were even negotiations for compensation which culminated in a tentative figure of over one million. The issue of compensation was not completed because third parties came in claiming that they were the owners. This was indeed confirmed through pleadings filed in court in two cases. In one of the cases the ownership dispute is between the applicant and two other persons claiming ownership to the suit land.

10. The issue of compensation would have been settled were it not for the claims by third parties. The respondent is willing to give compensation to the rightful owner of the suit land. The question then which arises for determination is whether an injunction can be granted in the circumstances. The respondent is involved in a project of national importance. The project is meant to increase electricity to the National grid. This will assist the peoples of **West Pokot, Trans-Nzoia, Uasin Gishu and Kakamega Counties**. The increased electricity supply will spur economic growth. The respondent is ready and willing to offer compensation as demonstrated by the negotiations which have even pointed at a tentative figure. The applicant was in Principle agreeable to some compensation only that a final settlement had not been arrived at.

11. The respondent's contracted contractor is already on the ground. The bases for the transmission line have been laid on the ground as per the photographs annexed to the applicant's supporting affidavit. The contract sum between the **Respondent** and **KEC International** is over **Eleven Million Shillings**. This is a project funded by the World Bank to the tune of millions. It will be unfair to grant the injunction whose result will be to stall the project which has immense benefits to the greater public once completed.

12. The applicant will not suffer loss which will not be compensated in damages. The respondent is ready and willing to pay compensation. There is no contention that the respondent will be unable to pay compensation. Even the balance of convenience tilts in favour of the respondent. The respondent's contractor has already started laying bases for the transmission masts. The contractor moved to the ground with permission of the applicant. It will therefore be unfair for the applicant to turn round and claim that the respondent had no consent to move to the suit land. The applicant moved to court when compensation was slowed because of claims by third parties who were claiming ownership of the land. I therefore find that the applicant's application cannot be granted in the circumstances. The same is hereby dismissed with costs to the respondent.

It is so ordered.

**Dated, signed and delivered at Kitale on this 29th day of September 2015.**

**E. OBAGA**

**JUDGE**

**In the presence of M/S Wakoli for Respondent. Court Assistant – Winnie.**

**E. OBAGA**

**JUDGE**

**29.9.2015**