



Mombasa Auto Spares Limited v Kenya Power & Lighting Company Limited (Environment & Land Case 162 of 2015) [2025] KEELC 3238 (KLR) (7 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3238 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 162 OF 2015
FM NJOROGE, J
APRIL 7, 2025**

BETWEEN

MOMBASA AUTO SPARES LIMITED PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LIMITED DEFENDANT

JUDGMENT

1. The plaintiffs filed this suit by a way of a plaint dated 29th July 2015 in which they sought the following orders:
 - a. A mandatory injunction do issue compelling the defendant by itself, servant, agent, employees and or any other person acting on its behalf be restrained from trespassing and crouching and or in any manner erecting electric poles in plot number LR 123 in Mtangani and to remove or uproot all the poles that have been erected illegally and without the consent of the plaintiff;
 - b. A permanent in junction do issue compelling the defendant by itself servant agent employees and or any other person acting on its behalf be restrained from trespassing, encroaching, and or in any manner erecting electric poles in plot number LR 123 Mtangani;
 - c. A declaration that the defendant's actions are illegal and uncalled for and amounts to trespassing on the plaintiff's suit premises;
 - d. Costs of this suit.
2. The plaintiff's case is that it is the registered proprietor of all that parcel of land known as LR Number 123 Mtangani measuring 96.01 acres registered as LT 37 Folio 26 File 3531 at the Coastal Registry Mombasa.
3. The defendant's employees encroached onto that plot and started digging holes in order to erect electric poles without seeking the consent of the plaintiff and or without any legal right at all continued to do



so despite the protestations of the plaintiff. It is not pleaded that the defendants action will infringe on the plaintiff's right to property and occasion it repairable loss and damage. Also that the defendant has failed to comply with the law by applying for a way leave from the plaintiff.

4. The defendant filed its defense on 20th August 2015 denying the plaintiff's claim that its servants have trespassed on the suit property. They stated that the lion being erected on the suit property is an illegal line and the first denies that the suit raises any reasonable cause of action against it.
5. An amended plaint was filed on 1st February 2024 the defendant's servants had already erected electric poles and subsequently invited and aided squatters who have encroached on the property by applying them with electricity without seeking the plaintiffs consent. It was alleged that the plaintiff continues to suffer loss and damage as it cannot subdivide same or develop the suit property and that it had been incapacitated fully by the defendants' trespass.
6. The prayers in the plaint were amended to reflect a prayer seeking removal of all electricity poles or any other power price structures that have been erected illegally and without consent of the plaintiff on the premises and that the defendant should desist from further supplying electricity to any person within all that parcel of land known as plot number LR 123 Mtangani.
7. An order of injunction restraining the defendant from erecting any other power surprise structures or in any other manner supplying electricity to the suit plot was also sought.

Defence

8. The defendant relied on its amended defendants defense dated 3rd May 2024 and added that the suit property has always had squatters since the inception of the suit and maintained that the electricity line is illegal and most of the electrical power lines on the suit property are illegal and were not erected by the defendant. It also denied having invited and aided squatters to encroach the said property.

Evidence of the Parties.

Plaintiff's Evidence

9. The plaintiff called one witness Salim Ali Mohamed Juma who adopted his witness statement and produced documents filed on 11th March 2024. His evidence is that the suit property is made up of subplots each measuring 40 by 80 feet. In the year 2015 the defendant erected electric poles on the property despite protestation by the plaintiff and despite an injunction order issued by this court. The defendants have thus attracted more than 800 squatters who have unlawfully encroached and set up structures on the suit property.
10. The defendant continues to enable their unlawful entry and habitation by illegally connecting and supplying them with electricity despite the plaintiff's complaint. In 2008 and started erecting concrete posts. As they were trying to fence the land the squatter invasion began. It was invaded by people who lived around it. He did not have any photograph showing KPLC staff on the ground installing the lines. He did not have any evidence that the defendant had supplied power to 800 plus squatters on the suit land. Some of his evidence shows that he has sued 8 squatters and obtained eviction orders against them. He stated most of the structures erected by the squatters are of permanent nature. He also admitted that a case of forcible detainer was commenced against the squatters and that KPLC has not been made party to that case. He stated that had electric power not been supplied squatters would not have invaded the property.

Upon cross-examination by Ms Kabole, PW1 stated the property was acquired in 2008 when it was open land with no occupation by any person; that it is 96.01 acres. subdivision had however been done



by the previous owner. It was thus purchased with those subdivisions. There are beacons all over the property. It was not fenced. The plaintiff took possession in

Defendants Evidence

11. DW1 Emmanuel Ochieng Omar testified and adopted his witness statement dated 22nd October 2024 as his evidence-in-chief and was cross-examined. His evidence that he is a Wayleaves Officer working with the defendant. That upon receiving the plaintiff's complaint the defendants' officers visited the suit land to establish its location. In August 25 they located the parcel of land. They established that several houses or structures had been erected on the land. They also established that the defendant or its agents had not constructed the electricity lines connecting the property to the main grid as alleged by the plaintiff. The defendant does not own the said posts.
12. Upon cross-examination by Miss Barasa, PW1 admitted that the plaintiff lodged a complaint and the site was visited, but he did not have a site report with him; that he is not able to supply information regarding the persons on the ground due to the fact that it was not the defendant who constructed the line serving the site.

Submissions

13. Both parties filed submissions which I have considered in preparing this judgment.

Analysis and Determination

14. In this case the issue arise for determination is whether or not the defendant has supplied the suit land with electricity without the consent of the owner who is the plaintiff.
15. It is the plaintiffs case that the defendant did so in 2015 but the defendant denies the claim. The defendant has stated that the power lines supplying electricity to the premises we are not erected by its staff, but by strangers who are unknown to the defendant.
16. It is trite that supply of electricity to the suit premises requires to be sanctioned by the plaintiff who is the owner. However, though the plaintiff asserted that it is the defendant who supplied the power to his land, the plaintiff never produced any evidence to show that it is the defendants' officers who supplied electricity to the premises.
17. Section 107 of the *Evidence Act* provides as follows:
 - “ 107. Burden of proof.
 - (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
18. Thus, whoever alleges proves.
19. No identities of the persons who dug the holes were provided, yet the defendant had an opportunity to obtain that data and supply it to the police and the defendant. It is at that point that the defendant missed his golden opportunity to obtain evidence that would have proved his case on balance of probabilities. No data regarding the vehicles they used, or the uniform they were wearing at the time



of carrying out those tasks was provided to court. No photographs of those persons or their vehicles and equipment were provided.

20. This Court is well aware of the habit of some miscreants of siphoning power from the grid to sell it to some unsuspecting citizens especially to informal settlements. It is however the duty of the defendant to identify both miscreants get them apprehended by the police and arranged before court of law to face justice for their illegal acts. This has not happened despite its holding that the lines erected on the suit land are illegal.
21. This suit was filed in the year 2015. The plaintiffs claim is that the holes for the purpose of erecting the electric posts were dug in the same year. The court is inclined to be lenient to the defendant in the circumstances for not removing those posts and dismantling all the illegal connections during the period between 2015 and the date of this judgment as this case has been pending. However, this should all change with this court's agreement in the present judgment with the defence raised by the defendant that the connections are illegal. Their origins being evidently against the law and not sanctioned by the plaintiff who owns the suit land and not having been effected by the defendant, they should not be allowed to exist anymore. It is indeed improper to allow an illegality to continue after this judgment, and appropriate orders must therefore be issued to curb the same.
22. Therefore, without any evidence from the plaintiff that it was the defendant's staff who connected its premises with power, its claim against the defendant cannot succeed. I therefore dismiss the Plaintiff's case with no orders as to costs but I also order as follows:
 - a. The plaintiff shall lodge his complaint formally with the defendant afresh within 7 Days of this judgment regarding the illegal connection of power to his premises effected without his consent and he shall formally request for data regarding those connections including the persons connected, their respective electricity meter numbers, contacts and identity numbers;
 - b. Upon receipt of the complaint and request, the defendant shall appropriately document the same and immediately assign a team that will verify and document the extent of and number of illegal connections on the suit property within 30 days from the date of receipt of that complaint and supply the plaintiff with the said data;
 - c. The defendant shall supply to the Criminal Investigation Directorate the names and particulars of all the persons who have been illegally connected to the power grid for further investigation and prosecution of both the illegal consumers and the illegal contractors who connected them;
 - d. The defendant shall disconnect all power illegally supplied to the suit premises from its grid from the date of this judgment and the defendant shall ensure henceforth that no illegal connection is effected on the suit premises without the authority of the plaintiff.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 7TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

