



Nderitu v Kenya Power & Lighting Company Limited (Environment & Land Case 1 of 2019) [2022] KEELC 171 (KLR) (9 June 2022) (Judgment)

Neutral citation: [2022] KEELC 171 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 1 OF 2019**

**JO OLOLA, J
JUNE 9, 2022**

BETWEEN

WASHINGTON NDERITU PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LIMITED DEFENDANT

JUDGMENT

1. By the Plaintiff dated 16th January, 2019 Washington Nderitu (the Plaintiff) prays for:
 1. A declaration that the Defendant has trespassed on the suit premises and an order by way of a mandatory injunction to compel and direct the Defendant to immediately remove the illegal electric supply lines from the suit premises known as Othaya/Ihuririo/1;
 2. A permanent injunction restraining the Defendant, its servants, employees and/or agents from entering into or laying electric supply lines on the suit premises or otherwise interfering with the suit premises;
 3. Damages for trespass and costs of this suit;
 4. Any other or further relief that the Honourable Court could deem appropriate to grant.
2. Those prayers arise from the Plaintiff's contention that in March 2018, the Defendant trespassed onto the suit property and unlawfully erected electricity supply lines in the middle thereof without the Plaintiff's consent. By reason of the said trespass the Plaintiff asserts that he has suffered loss and damage.
3. But in its written Statement of Defence dated and filed herein on 28th January 2019, the Kenya Power & Lighting Company Limited (the Defendant) denies that the Plaintiff is the registered proprietor of the suit property and/or that it did enter thereon and erected power supply lines without the Plaintiff's consent.



4. The Defendant avers that if it erected electricity posts and wires traversing over the suit land as alleged, then it did so pursuant to a grant of a way leave by the lawful owner of the property and/or pursuant to compensating the owner and the Plaintiff is invited to strict proof of any allegations to the contrary.

The Plaintiff's Case

5. The Plaintiff testified as the sole witness in his case. Relying on his recorded statement dated 16th January, 2019 as filed herein on 17th January 2019, the Plaintiff told the Court he purchased the parcel of land known as Othaya/Ihuririo/1 on 30th July, 1979 and has been using the same to plant tea.
6. The Plaintiff told the Court that sometime in March, 2008 he went to the land and found that the Defendant had illegally erected electric power lines right through the middle thereof. The Plaintiff then instructed his Advocates to write to the Defendant to demand the removal of the power lines. The Defendant did not however respond to their letter.
7. The Plaintiff further testified that the electricity supply lines were erected on the land without his consent and that by the said act the Defendant had deprived him of the use and quiet enjoyment of his property.
8. On cross-examination, the Plaintiff told the Court he was unable to recall the name of the person who sold him the land in 1979 and that at the time, there was no electricity in the locality. He told the Court he was unaware that the power lines had been placed in the area in 1987 by the Kenya Tea Development Authority (KTDA).
9. The Plaintiff told the Court he only saw the lines on his land in 2018 and that he does not use the electricity. The land is more than 2 acres and about half of it had been affected as the lines pass on the middle. He told the Court he wants to sub-divide and sell the land. The Plaintiff told the Court he estimated the value of the land to be Kshs.25 million even though he conceded he did not have a valuation report to support that assessment.

Analysis And Determination

10. I have carefully perused and considered the pleadings filed by the parties herein, the sole testimony of the Plaintiff and the evidence adduced by the Plaintiff. I have similarly considered the rival submissions as placed before me by the Learned Advocates representing the parties. The Defendant did not call any oral testimony and did not produce any evidence in support of their case.
11. The Plaintiff herein prays for a declaration that the Defendant has trespassed on his parcel of land known as Othaya/Ihuririo/1 (the suit property) and that a mandatory order of injunction should issue compelling and directing the Defendant to immediately remove the illegal electricity supply lines from the suit property.
12. In addition the Plaintiff prays for a permanent injunction to issue restraining the Defendant, its servants and/or agents from entering into or laying electricity supply lines or otherwise interfering in any manner whatsoever with the suit property. The Plaintiff also prays for damages for trespass.
13. It is the Plaintiff's case that he purchased the suit property way back in 1979 and that he has since been using the same to plant tea. It was his case that sometime in March, 2018, he went to the suit property only to find that the Defendant power utility company had without his consent and/or authority erected poles and electricity supply lines in the middle of the farm.
14. The Plaintiff told the Court that he had intended to sub-divide the land and to sell the same but following the actions of the Defendant he was no longer able to do so. He further told the Court that



- the Defendant had ignored his request to remove the poles and powerlines thereby prompting him to file the present case in Court.
15. The Defendant Company appeared and filed a Statement of Defence on 28th January, 2019 in which it denied having trespassed upon the Plaintiff's property. The Defendant pleaded that if indeed it had erected posts and powerlines over the suit property (which it denied) then the same was done pursuant to a grant of a way leave by the lawful owner of the suit property and/or pursuant to compensation paid to the said lawful owner.
 16. In support of his case, the Plaintiff produced a copy of a Title Deed for the said property Othaya/Ihuririo/1 indicating that the same was registered in his name way back on 30th July, 1979. He also produced photographs of his tea farm showing various poles and electricity power lines on the land.
 17. While the Defendant stated in its Defence that the power lines could only have been erected pursuant to a grant of way leave by the lawful owner and compensation therefore, the Defendant neither called a witness nor did it produce any documents in support of that contention. From the Certificate of Title produced herein it was clear that the Plaintiff was the lawful owner of the suit property.
 18. The Plaintiff having denied that he gave his consent for the erection of the power lines and/or received compensation for the use of his land, it was incumbent upon the Defendant to prove that there was a grant of way leave and/or that it paid compensation for the same. There was otherwise no doubt in my mind that the powerlines were erected by the Defendant as in their own Statement of Defence, they admit that they are a limited liability company charged with transmitting, distributing and retailing electricity to customers in the Republic of Kenya.
 19. Section 3(1) of the *Trespass Act*, Cap. 294 Laws of Kenya provides thus:

“ Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
 20. Arising from the foregoing I was persuaded that the Defendant's entry into and erection of posts and powerlines into the Plaintiff's property amounted to trespass and that the same had interfered with the Plaintiff's rights to occupation and quiet enjoyment of the property.
 21. It is trite law that where trespass is proved as in this case, the affected party need not prove that he suffered any damages or loss as a result so as to be awarded damages. This court is therefore in agreement with the submissions of the Plaintiff that he is entitled to damages. The Plaintiff did not however provide any evidence of the exact value of the land before and after the trespass. For this reason I will exercise my discretion and award damages in the sum of Kshs.500,000/-.
 22. In the circumstances and being persuaded that the Plaintiff has proved his case to the required standard, I hereby enter Judgment for the Plaintiff and make the following orders:
 - (i) A declaration is hereby issued that the Defendant has trespassed upon the suit premises.
 - (ii) A mandatory order of injunction is hereby issued directing the Defendant to remove the offending posts and electric supply lines from the suit property within 60 days from today.
 - (iii) Upon expiry of the said 60 days a permanent order of injunction shall issue restraining the Defendant, its servants and/or agents from entering into or laying electricity supply lines or otherwise interfering in any way with the suit premises.
 - (iv) The Defendant shall pay to the Plaintiff Kshs.500,000/- as damages for trespass.



(v) The Defendant shall also bear the costs of this suit.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 9TH DAY OF JUNE, 2022.

In the presence of:

Mr. Ndichu holding brief for Gatuhi for the Plaintiff

No appearance for the Defendant

Court assistant - Kendi

J. O. OLOLA

JUDGE

