



Kenya Electricity Transmission Company Limited v Mugige (Suing as the Administratrix of Samwel Mogire Orwoba – Deceased) (Environment and Land Appeal E027 of 2024) [2025] KEELC 3140 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E027 OF 2024**

M SILA, J

APRIL 3, 2025

BETWEEN

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED ... APPELLANT

AND

YUNES KWAMBOKA MUGIGE RESPONDENT

**SUING AS THE ADMINISTRATRIX OF SAMWEL MOGIRE ORWOBA –
DECEASED**

(Being an appeal against the judgment of Hon. P.C Biwott, Senior Principal Magistrate, delivered on 8 July 2014 in the suit Ogembo CMCC No. 45 of 2019)

JUDGMENT

1. The respondent had filed suit against the appellant seeking compensation for a wayleave. Judgment was entered for the respondent in the sum of 3,669,120/=. The appellant contests that award hence this appeal.
2. By way of background, the suit was commenced by the respondent through a plaint filed on 15 March 2019, which plaint was subsequently amended. She sued as the administratrix of the estate of Samwel Mogire Orwoba (deceased). In her plaint, she pleaded that the land parcel Bassi/Bogetaorio II/2185 (the suit land) was registered in the name of the deceased. She averred that in the year 2016 or thereabouts, the appellant proposed to compensate the plaintiff with the sum of Kshs. 200,000/= for a wayleave corridor ‘traversing approximately 0.20 acres of the suit land more precisely on the portion measuring 0.305 acres inheritable by the plaintiff as the same forms part of the estate of the deceased’. She pleaded that the appellant subsequently constructed an electricity transmission line through the suit land despite the proposed compensation being rejected as being too minimal. In the plaint she asked the following orders :



- a. Adequate compensation;
 - b. General damages for non-user;
 - c. In alternative there be issued an order for relocation of the transmission line as affects the land parcel Bassi/Bogetaorio II/2185.
 - d. Interest on (a) and (b) above.
3. The appellant filed defence wherein she elaborated that the suit property is affected by the Kisii-Awendo TL Project. It pleaded that it proposed to compensate Mugire Orwoba the registered proprietor, vide a letter dated 1 February 2016 and made an offer to pay Kshs. 154190.40/= for loss of approximately 0.2 acres of the land. She pleaded that where a proprietor is deceased, they require letters of administration, death certificate and a letter from the chief indicating the beneficiaries of the deceased, to enable them process compensation. She pleaded that the only reason that the respondent had not been paid was because of failure to provide these documents. She denied that there was any objection to the construction of the power line by the respondent. She pleaded that the value of the land was Kshs. 2,000,000/= per acre which she agreed to improve to Kshs. 2,600,000/= per acre for all affected lands at Bogetaorio. It was averred that :
- a. Compensation for the grant of the right of way is computed at the rate of 30% where the impact of the transmission line on the land falls below the impact rate of 30%. In this instance the impact of the project on the land is at 5%.
 - b. That the portion of the suit land affected by the wayleave trace is 0.20 acres out of the approximate total of 3.71 acres.
4. The appellant pleaded that the offer of Kshs. 154,190.40/= in its letter of offer dated 1st February 2016 is a just and equitable compensation for the affected portion being 0.20 acres (i.e 2,600,000 x 0.20 x 30%). She prayed for orders for an easement to be registered in the title of the suit land in exchange for compensation of Kshs. 154,190.40/=.
5. At the hearing, the respondent relied on a witness statement wherein she averred that she is one of the beneficiaries to an inheritable interest measuring 125 by 95 feet of the suit land. She averred that in 2016, the appellant proposed to compensate her with the sum of Kshs. 200,000/= for a wayleave traversing approximately 0.2 acres of the suit land. She contended that despite declining the offer as too minimal the appellant went on to construct the line and that the appellant has failed to make a proper proposal since December 2017. She stated that her efforts to have the defendant make a viable proposal for compensation has been in vain hence the suit. She stated in court that she wants Kshs. 8,000,000/= as compensation and that her land was not valued.
6. On the other hand, the appellant offered Matilda Mwamburi as her witness. She is a Senior Land Economist working with the appellant. She averred that the appellant was given the responsibility of constructing a 132KV transmission line from Kisii to Awendo. Among the parcels affected was the suit land. She averred that the appellant carried out a valuation. She explained that they do not value each parcel of land but conduct valuation per location so as to utilise public funds in a prudent manner. She elaborated that the suit land was thus valued at Kshs. 2,000,000/= per acre but following negotiations it was raised to Kshs. 2,600,000/= per acre. She explained that “the defendant’s compensation policy is that for impact less than Thirty (30%) per centum of the value of the parcel of land is subjected to a compensation of a minimum of thirty (30%) per centum of the affected portion (sic).” She elaborated that it is because the appellant does not acquire the land but the proprietor is compensated for the limited loss of use i.e the owner cannot construct a structure or plant trees or crops exceeding 12 feet



on the wayleave trace for safety reasons. The land would still be used as agricultural land and can be cultivated subject to the restrictions. She went on to state that the affected portion of the suit land was 0.2 acres out of a total acreage of 3.71 acres which translates to an impact of 5% thus the rate of 30% applied. She reiterated the formula “2,600,000 x 0.2 acres x 30% = Kshs. 154, 190.40/=” (sic).

7. In court she testified that the land of the respondent was not valued but neighbouring plots were valued. She stated that the respondent’s land measured 14.5 ha and they used the formula to calculate compensation. She added that the Kshs. 8,000,000/= demanded by the respondent was not viable and that it was not possible to move the line elsewhere. She also referred to the advertisement for acquisition of land and stated that they received no objection.
8. Counsel were invited to file their submissions which they did culminating into the impugned judgment.
9. The judgment of the trial court is a difficult read, but this is what trial court recorded as the basis for its judgment which I copy verbatim :

“The defendant offered plaintiff Kshs. 154,190. The defendant undervalued plaintiff’s land. This was not fair even if taxation is involved. This assessment is in 2014 what would it have been now or when plaintiff came to court. The court will put interest on the amount due. Thus, I would subject the Kshs. 520,000 less 10% being that due stamp-duty had she coded the land to the defendant.

$$10/100 \text{ of } 520,000 = 52,000$$

$$520,000 \text{ less } 52,000 = 468,000$$

The 468,000 would have been fair to plaintiff from 2017 when line was constructed on her land. The defendant has been on the land for now 7 years. The amount will attract interest at court rates of 12%. Thus $468,000 * 112/100 * 7 = 3,669,120$

I will award the plaintiff Kshs. 3,669,120

The defendants will pay costs of this suit. The award shall attract interest at court rates from date of this judgment till prayer is full. Ordered accordingly.”

10. Aggrieved, the appellant has preferred this appeal. There are 13 grounds listed inter alia that the trial court erred in finding that the appellant undervalued the property yet there was no other valuation report other than the appellant’s; that the trial court erred in failing to consider that the Kshs. 154,000/= offered was calculated based on a compensation policy which not only affected the plaintiff but other 551 project affected persons; that the trial court erred in not appreciating that this was not an outright purchase but was compensation for limited loss of land; that the trial court erred in computing interest at 112% instead of the court rate of 12%; that the trial court erred in finding for the plaintiff as she led no evidence of having supplied the requisite documents for purposes of payment of compensation; that the trial court erred in awarding costs yet it was not pleaded and a demand letter was never served; that the trial court erred in failing to cite any legal provision and or authority to support its findings.
11. The appeal was canvassed by way of written submissions and I have seen the submissions of counsel for the appellant and counsel for the respondent. In his submissions, Mr. Sagwe, learned counsel for the respondent, asserted that the court did not use a percentage of 112% as claimed but the court rate of 12%. He thought that if 112% was used, then the total would have been Kshs. 36,429,120/=. He invited the court to enhance the lower court judgment to Kshs. 8,000,000/= as demanded by the respondent.
12. I have to allow the appeal.



13. It will be observed that it was the respondent who came to court claiming that the appellant had refused to compensate her despite constructing the power transmission line on her land. It turns out that the appellant was actually all along ready to offer compensation and all that she needed was to be supplied with the requisite documents of ownership of land, and where the owner was deceased, the grant of letters of administration and the beneficiaries. The respondent never did this. She simply ought to have presented the required documents for purposes of being compensated.
14. It is however apparent that the respondent would still not have been satisfied with the amount that the appellant wished to compensate, i.e Kshs. 154,190.40/=, for she believes that she ought to have been awarded Kshs. 8,000,000/= as compensation. Well, if this is what the respondent wished for, then she needed to provide a basis for this amount. The best evidence would of course have been evidence from a valuer, but the respondent offered no valuer as a witness, and no valuation report to support her claim for compensation at Kshs. 8,000,000/=. You cannot claim a particular amount of money as compensation without providing a basis for it. Indeed, this is essential in issues of compensation as outlined in Section 148 (1) of the Land Act, which provides as follows :

Compensation in respect of public right of way.

148. (1) compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer (emphasis mine).

15. It will be seen from the above, that the law requires that compensation in cases of private land be based on the value of the land as determined by a qualified valuer. It is not by the whim and caprice of the land owner and you do not just pluck a figure from the air. The respondent brought no valuer to support her allegation that compensation ought to be at Kshs. 8,000,000/- and it follows that there was no basis for the claim.
16. On the other hand, the appellant did in fact avail a valuation report from a qualified valuer. The valuer explained how the compensation award of Kshs. 154, 190.40/= came about (though as will shortly be seen I have a bit of an issue with her math). She indeed elaborated that the appellant was not acquiring the land by way of purchase but was only compensating the land owner for the loss of use of the land. In other words, the land owner remained with title to the land but was being compensated for the wayleave. The land could still be used to grow crops save for various limitations. Therefore, compensation was not for the full value of the land, but was payable at the rate of 30% of the value. It was explained that the valuation for the suit land was Kshs. 2,600,000/= per acre. What was going to be affected was only 0.2 of an acre thus Kshs. 520,000/= as the gross value of the land being affected. But it will be recalled that it was not being exclusively acquired thus compensation would be at 30% of this amount. My calculation following this explanation is as follows : Kshs. 520,000/= x 30% = Kshs. 156,000/=.
17. That is why I say that the valuer lost her math somewhere (which is not a good thing for such a professional) for I do not see how Kshs. 2,600,000/= x 0.2 x 30% comes to Kshs. 154,190.40/=. Without a doubt, the correct math is Kshs. 156,000/= and this is what the respondent ought to have been compensated with subject to supply of the required documents.
18. In his judgment, the trial court opined that this amount was too low. In absence of a contrary valuation report, there was no basis for holding this opinion. The court is not a valuer and must depend on



professionals. Neither should a court make an award based on its own whims and prejudices; it must be based on solid evidence.

19. I earlier said that it was difficult to decipher the reasoning of the court. But it would appear that the trial court thought of awarding the respondent the full value compensation of Kshs. 520,000/= (i.e the full value of the 0.2 acres) but this would have been erroneous as the compensation was for a wayleave only which was rated at 30% of the value. But even then, the court went on another terrible path. The court, for reasons I am unable to comprehend, then proceeded to reduce this amount by 10% allegedly for stamp duty. No reason was given for this. The court then used the amount of Kshs. 468,000/= (i.e Kshs. 520,000/= reduced by 10%) then purportedly multiplied it by the court rate of 12% for the 7 years that the matter was in court. Again there was absolutely no basis for this. Even assuming that the respondent would have been entitled to interest, the interest would only have been from the time that the matter was filed, i.e 2019 to the date of judgment i.e 2024, which is five years. That aside, even the math of calculating Kshs. 468,000/= at 12% interest for 7 years was all convoluted. $Kshs. 468,000 \times 12\% \times 7 \text{ years}$ will only give you Kshs. 393,120/= as interest so that if you add it to the principal of Kshs. 468,000/= what you would get is a total of Kshs. 861,120/= not Kshs. 3,669,120/=. It looks like not many of us are that decent in math. However, even if the math was passable, there would still be no basis to award interest. Interest would have been awardable if it had been shown that the appellant had refused to pay, which was not the case. It will be recalled that the appellant stated that she has all along been ready and willing to pay subject to being supplied with the requisite documentation. She could not be penalised to pay interest when it was not her fault that payment had not been made.
20. Neither could she be penalised to pay costs. It was the respondent who failed to provide the necessary documentation so that she can be paid. Within the suit, the respondent also failed to provide an alternative valuation formula. That being the position she really had no case against the appellant and in those circumstances, there was no basis for awarding her costs.
21. It is clear to me that the trial court erred. I allow the appeal and set aside the judgment of the court. I will substitute that judgment with an award in favour of the respondent for the sum of Kshs. 156,000/= subject to her supplying the appellant with the necessary documentation required for compensation.
22. The last issue is costs. There was no need to sue the appellant. Within the course of the case before the lower court, given that the appellant was not disputing the need to pay, the respondent ought to have settled the matter by taking the award. She simply put the appellant to needless cost in defending a case that was one for settlement. She has also put the appellant through the need to file an appeal which again she has vehemently contested but devoid of any basis at all. But the appellant got his math wrong in pushing for an award of Kshs. 154, 490.90/= which was erroneous. In those circumstances, each party to bear his/her own costs.
23. Judgment accordingly.

DATED AND DELIVERED THIS 3RD DAY OF APRIL 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Kichwen for the appellant

Mr. Sagwe for the respondent



