



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

ELC. 1034 OF 2007

KENYA POWER & LIGHTNING CO. LTDPLAINTIFF
V E R S U S
PHILIP A. M. KIMONDIUDEFENDANT

J U D G M E N T

The Defendant is the owner of plot No. 6-106 (original plot No. 10967) and the Plaintiff is a licensee authorized to undertake public supply and distribution of electric energy in the Republic of Kenya. In the process of laying a 220KV power distribution line from Kiambere Dam to Dandora in Nairobi aimed at boosting the energy capacity of the national power grid, the Plaintiff passed the line through various parcels of land including the Defendant's. The Defendant's land acreage is 7.1 acres, out of which 40% is under 2 no. high voltage power lines. In addition the way the lines have traversed the parcel renders it almost useless for any other purpose.

The Defendant's parcel is agricultural. On it he has a main house, foundation for another house, kitchen block, 2 no. granaries, rabbit hatch, toilet block and zero grazing unit. The Defendant was preparing to undertake irrigation farming on the parcel and has materials on site.

The parties agreed that there be judgment for the Defendant against the Plaintiff on liability at 100%. The Defendant had alleged trespass because of this intrusion on his land by the Plaintiff and sought to be compensated for the same.

There is a valuation report by Metrocosmo Valuers Limited dated 28th November 2003 done at the instance of the Plaintiff to advise on it on the fair market value compensation. It was on the basis that the Defendant was going to be compensated to relocate. It gave a figure of KShs. 1,700,000/= as follows:-

- | | |
|---------------------------|-----------------|
| a) improvements | KShs. 550,000/= |
| b) land | KShs. 850,000/= |
| c) cost of movement | KShs. 300,000/= |

The Defendants commissioned Mwaka Musau Consultants who provided a report on 21st August, 2003. It valued the land and development to be worth KShs. 3,404,000/=. The Defendant has calculated that since then the value has doubled to KShs. 6,808,000/=. There was of course no evidence for this doubling of the value. For loss of irrigation project KShs. 4,000,000/= was sought. The Defendant asked for three times the figure to cover 3 years of compensation. He then said he and his family members had suffered stress related illness owing to the trespass and asked for KShs. 4,000,000/= on that limb. The total is KShs. 22,808,000/=.

I have considered these reports and the submissions on record by Mr. Mutiso for the Defendant and Mr. Kibathi for the Plaintiff.

Certainly the value of land has since gone up as has done the price of development. In **John Kilili Kilonzo –Vs- Kenya Power & Lighting Company, HCCC No. 1018/04 (Consolidated) at Nairobi**, the value of land in the same area as the Defendant's was estimated to be about KShs. 130,000/= an acre in 2009. I will allow KShs. 150,000/= for an acre at the present rates. For 7.1 acres, the value is KShs. 1,065,000/=. For the developments, including agriculture and irrigation, I will award KShs. 4,000,000/=. The cost of movement shall be KShs. 500,000/=. The total award shall be KShs. 5,565,000/= which shall be with interest from the date of judgment to date of final payment. Costs shall follow the event.

**DATED, DELIVERED AND SIGNED AT NAIROBI
THIS 28TH DAY OF OCTOBER 2010**

**A. O. MUCHELULE
J U D G E**