



Njenga & 2 others v Kenya Electricity Transmission Company Limited (Environment and Land Appeal 1 of 2024) [2025] KEELC 3319 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3319 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL 1 OF 2024**

JM KAMAU, J

APRIL 3, 2025

BETWEEN

ALEX NGARACHU NJENGA 1ST APPELLANT

STANLEY NGANGA NJENGA 2ND APPELLANT

JOHN KINYI KIMANI 3RD APPELLANT

AND

**KENYA ELECTRICITY TRANSMISSION COMPANY
LIMITED RESPONDENT**

*(Appeal against the Judgment and Decree of Hon. Charles Obulutsa
CPM in Nyahururu CMC ELC No. 34 of 2019 delivered on 21/3/2019)*

JUDGMENT

1. In the Chief Magistrate's Court Nyahururu ELC Case No. 34 of 2019, the Appellants herein filed a case dated 21/3/2019 asking for:
 - a. An Order directing the Respondent to compensate the Appellants for the loss of one of their parcels of land at the current market price or any other adequate amount.
 - b. A permanent injunction do issue restraining the Respondent from entering, clearing buses, cutting trees, digging, erecting, commencing construction, laying transmission mast and lines and/or trespassing onto L.R. No. Nyahururu/Malewa/4624, 4625, 4626, 4627, 4628, 4631, 4632, 4633, 4634, 4635, 4636, 4637, 4579 – 4583, 4586 – 4590, 4593 – 4597, 4600 – 4604, 4606 – 4622 and 2440 until the Appellants are adequately compensated for this.
 - c. Costs of the suit plus interest.
 - d. Any other or further reliefs that the Honourable Court would deem fit and just to grant.



2. The grounds upon which the suit was predicated are that the Appellants were the absolute registered proprietors of the aforementioned properties over which they held Title Deeds. The Respondents, are mandated to construct and maintain the National Electricity Transmission Grid embarked on laying transmission lines traversing the Appellants' parcels of land mentioned above. The Respondent had in a meeting held on 19/3/2019 informed the public of the said trespass and promised them compensation to be agreed upon and that the Appellants were now entitled to compensation. The Respondent in a statement of Defence dated 27/3/2019 the claim but admitted that she has the mandate of laying down transmission lines and that the Appellants were entitled to compensation for the limited loss of use of their parcels of land and that she had made offers to compensate them but which offers they declined. But she denied every other averment contained in the Plaint save the description of the parties and the above admission. The Appellants later on 28/5/2019 amended the Plaint to quantify the value of the demanded compensation in the body of the Plaint as:Kshs.18,046,490/= for the 1st AppellantKshs.22,669,000/= for the 2nd AppellantKshs.12,247,231/65 for the 3rd Appellant
3. But the same was not in the prayers. The only amendment in the prayers was that the compensation was for the loss of use of their parcels of land, trees, boreholes, dams and beehives as particularized in the body of the Plaint. From the record of the Court the hearing commences on 16/7/2020 by way of cross-examination and re-examination of an unknown person. Then PW3, John Kanyi Kamau enters the witness box and states that he is the owner of Plot No. 2440. 4 Acres were allocated for trees and that he was paid for the loss of use of the land. a Report was prepared for 5100 trees valued at Kshs.12,247,731/65. On cross-examination, the witness said that he had already been compensated for the 4 Acres trees affected, by instalments. But that he could not remember how much he was paid. PW4 Eliud Ngunyi Ndungu, an Environmentalist said he prepared a hire resource value Assessment Report dated 8/10/2019 for Nyandarua/Malewa/2440 after meeting the owner of the land for the eucalyptus trees, 5100 trees which they had anticipated to sell as poles for transmission but that they were not yet mature. The total value was Kshs.12,247,731.65. On cross-examination, Mr. Ndungu said that the value of the trees depended on the state of the trees and that they had not matured. On re-examination the witness said that there are 3 formulae for assessing the loss – value of trees, formula of the fallen trees and land expectation for immature trees. He used the 2nd formula and one way of assessing their value is to consider the land preparation, ploughing, seedling purchase, planting, spot weeding, and fertilizer. For a tree more than 20cms a value of Kshs.2,500/= was adequate compensation. PW5 Forest Officer, Kiambu, Mr. Boniface Wambugu Mbeto testified that he visited the scene of the felled trees where he found felled trees and other eucalyptus trees. The trees were spaced by 2 metres for a 60 by 60 metres. The number of trees were 900 stems. He gave them a value of Kshs.4.5 Million and vegetation valued at Kshs.7.2 Million. The seedlings were valued at Kshs.7.2 Million. The total loss was Kshs.15,469,000/= . On cross-examination, the forest officer said he not was qualified to give an opinion on the dams and bee hives. He also said that he did a physical head count of the trees.
4. PW6 – Samuel Kinyua Wanjohi, a Livestock Protection Officer in Kipipiri gave evidence on the 53 beehives each worth Kshs.4,500/= and each producing 16 Kilos per season. In a year there were 2 seasons. He gave the value of the compensation of the honey as Kshs.146,400/=.
5. On cross-examination he said that he doesn't know whether the beehives were damaged or transferred. He didn't visit any other beehive.
6. After the close of the Appellants' case, the Respondent's Senior Manager, Wayleaves, Mr. Johnson Paul Mwangi took to the witness box and relied on his statement dated 29/3/2019 which is in the name of Johnson Muthoka to the effect that the Defendant offered compensation to the Appellants but which offers were declined. The said offers had been based on a valuation conducted by the National Land



Commission dated 2/3/2016 and which had also been used to compensate other land owners in the area. He said that the total compensation due to all the Appellants came to Kshs.1,277,409/85. He said that there is a cutoff date for valuation to be conducted for each Government Project and that the Appellants were not entitled to a court valuation. He finally said the Respondent was ready to deposit the Kshs.1,277,409/85 to an undisclosed place. He did produce:

- a. Letters of Offer.
 - b. Resettlement Policy.
 - c. Schedule stating summary of payments.
 - d. Valuation Report.
7. On cross-examination, Mr. Mwangi said that the 2nd Appellant had Plots affected at 100% and that the offers made were in 2018 after sub-division and initial offers before the sub-division in 2017 when no way leave had been placed. He admitted that the Appellants had not been paid. This closed the Respondent's case and Judgment followed.
8. The learned trial magistrate analyzed the evidence and concluded that it was not in dispute that the Respondent was in the process of carrying out power lines over several plots at Nyandarua/Malewa Settlement Scheme. The Appellants' parcels of land were to be affected and they were informed of the intention. The learned trial magistrate gave the value of the trees at Kshs.1,975/= since the eucalyptus trees were immature, a diameter of 20cm. Under the Legal Notice No. 104 of 2012 (Kenya Forest Service General Services Orders, 2012) – Current forest fees and charges. No evidence was tendered on the availability of honey or how much was harvested. On the cypress trees, the assessor did not take the diameter of the trees but just assigned them a value of Kshs.5,000/= per tree. From the photographs, the same were not mentioned. The court gave them a value of Kshs.3,108/= for trees with a diameter of 100cm and Kshs.2,532/= for trees with a diameter of 23cm. At the end of the day, the court awarded the
9. Appellants the following:
1. 1st Appellant – Kshs.2,524,800/=.
 2. 2nd Appellant – Kshs.4,557,600/=.
 3. 3rd Appellant – Kshs.4,937,500/=.
10. The Appellants were not satisfied with the above Judgment and appealed with the following grounds of Appeal:
1. That the learned trial magistrate erred in law and in fact in failing to make an award on payment of loss of use of land in favour of the 1st and 2nd Appellants despite the respondent having made an offer of payment.
 2. That the learned trial magistrate erred in law and in fact in dismissing the Appellants' claim on loss of use of land on grounds that the mother title to the suit properties was subdivided deliberately to get more compensation contrary to the evince on record.
 3. That the learned trial magistrate erred in law and in fact in disregarding the valuation reports produced on behalf of the Appellants in support of the claim for loss of trees, loss of income from beehives and dams.
 4. That the learned trial magistrate erred in law and in fact in applying the wrong method and formula in assessing the award payable for loss of trees and income.



5. That the learned trial magistrate erred in law and in fact in failing to find that the Appellants' valuation reports were uncontested and that the respondent did not produce reports to dispute the Appellants' valuation on the numbers of trees to be compensated for and on the figures to be applied and in failing to award compensation as per the Appellants' valuation.
 6. That the learned trial magistrate erred in law and in fact in disregarding the written submissions and case laws cited by the Appellants and in applying the wrong principles while determining the case.
11. I find that the figures given as Special Damages are not too low and I believe the Trial Magistrate cannot be faulted. I disallow the Appeal with no Orders as to costs.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 3RD DAY OF APRIL 2025.

MUGO KAMAU

JUDGE

In the presence of:

..... for the Appellants

..... for the Respondent

C/A – Eric

