

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS
Civil Case 90 of 2006

DAVID MUTUKU NZAU PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LT.D..... DEFENDANT

RULING

The application is dated the 19.9.2006 and is brought by the plaintiff who seeks an injunction order against the defendant.

The plaintiff is the registered proprietor of a piece of land known as Plot No. 1056/Iveti/Kololini situated in Kabyani in Machakos District. The Defendant is a limited liability public company which is licensed to generate and supply electricity to Kenyans. The plaintiff's case is that the defendant entered plaintiff's land aforementioned on 15.9.2006 and started to cut down plaintiff's trees, to dig holes for fixing electricity poles and dropping poles on the land ready to be fixed into the holes. The defendant is alleged to have also destroyed part of the fence protecting plaintiff's land to be able to gain entry into the land. Defendant further deposed in his supporting affidavit, that in doing all what is stated above, the defendant had not given any notice to the plaintiff nor obtained any permission or consent to do so from him. The plaintiff also claimed that he had not been approached to negotiate compensation for the said encroachment by the defendant as provided under the law.

On 19.9.2006 the plaintiff approached this court ex-parte and obtained interim injunction orders restraining the defendant from continuing to trespass on the plaintiff's land or continuing to do any act of trespass like digging more electric pole holes or cutting or destroying the fence or doing any other or further damage on the plaintiff's land until the main application would be heard inter-partes on 26.9.2006.

It is further on the record that the defendant was properly served but neither filed a replying affidavit to oppose the application nor attended court for the same reason during the prosecution of this application.

I have considered the material before me. I accept that the land in question L.R. Eveti/Kalolini/1056 is registered in and belongs to the plaintiff. I also accept as true that the defendant on 15.9.2006 trespassed into the plaintiff's said land, destroyed plaintiff's fence, dug holes on it to fix electric poles and deposited electric poles besides destroying other growing trees and plants on the land. Finally, I accept and believe as true that the defendant did the above without first serving the plaintiff with prior notice as required under Section 45 of the Electric Power Act, 1997.

Taking all the above into account in the face of plaintiff's prayers for a temporary injunction to restrain defendant, its servants and/or agents from proceeding with further destruction, or interference with or upon the plaintiff's aforementioned land, I have come to the conclusion that the plaintiff has demonstrated a prima facie case with a probability of success. I also hold that the defendant's actions have done and/or will do irreparable injury to the plaintiff before this case is determined. And finally, the better and more convenient option in the meantime is that the defendant be restrained as prayed until this case is finally decided.

Taking into account also that the defendant did not defend the case, which indicates that they do not mind the injunction orders being issued, it's the view of this court that this application should succeed.

Accordingly, injunction orders are ordered to issue in terms of prayer No. 3 and 5 of this application.

Orders accordingly.

Dated and delivered at Machakos on the 22nd day of November 2006.

D.A.ONYANCHA

JUDGE