



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**

**Civil Suit 18 of 2005**

**BOIYOT SIGILAI ..... PLAINTIFF**

**VERSUS**

**KENYA POWER LIGHTING CO. LTD. .... DEFENDANT**

**RULING**

The plaintiff/applicant filed an application dated 8th February, 2005 seeking an order of injunction to restrain the respondent by itself, servants or agents from interfering with the applicants' quiet enjoyment of his personal electricity supply transformer located at Land Parcel Number **KERICHO/CHEPSIR/27** pending the hearing and determination of this suit. The application was made on the grounds that the applicant was the registered owner of the said parcel of land and the applicant was likely to suffer irreparable loss and damage unless the orders sought were granted. It was also stated that the said transformer belonged to the applicant. The respondent's agents and/or servants trespassed upon his parcel of land and caused annoyance to him and his family, however, the applicant did not state exactly what the said people did. He deposed that the said transformer was his property and sought to rely on a letter dated 01/02/2005 addressed to his advocates by a Mr. Michael Oluoch, a way leave officer employed by the respondent. The applicant urged the court to make orders restraining the respondent from supplying electricity to third parties using his transformer and a further order to restrain the respondent from trespassing upon his parcel of land.

The respondent, through one of its engineers, one Mr. Solomon Kilonzo, filed a replying affidavit and stated that it had supplied electricity to the applicant but denied that he owned the transformer that the stood on his parcel of land. He stated that the transformer was property of the respondent. He further deposed that the installation of the transformer and supply of electricity to the applicant was through the rural electrification project which was a subsidized facility meant to benefit the general members of the public and not a particular individual. Mr. Kilonzo further stated that the applicant, having granted the respondent a way leave over his land, the respondent had a right to enter upon the same and transact business connected with electricity supply. The respondent was therefore entitled to supply other consumers with electricity by use of the transformer. It was also stated that the letter of 1/2/2005 did not confer any ownership rights over the said transformer, it was merely descriptive of the same.

I have considered all the submissions that were made before this court by both counsel and the authorities that were cited by the applicant's counsel.

It is not in dispute that the applicant is the registered proprietor of the parcel of land known as **KERICHO/CHEPSIR/27**. It is also not in dispute that the applicant granted way leave to the respondent sometimes in 1998.

The applicant's complaint as against the respondent is that it is trespassing into his parcel of land and supplying third parties with power through a transformer standing on his parcel of land which he claims belongs to him. The basis of his claim of ownership of the said transformer is his letter dated 9th August, 2000 which he addressed to the respondent's Managing Director requesting for a personal transformer. He also sought to rely on a letter dated 01/02/2005 which was written by the respondent to his advocate. That letter was in response to an allegation of trespass that had been made by the applicant through his advocate. The applicant seemed to over rely on a part of that letter which read as follows:

**3. *“That Mr. David Langat applied for electricity in the year 2004 and was to be supplied by Mr. Sigilai’s transformer and to run a low voltage line under existing way leave.”***

Can that quotation be taken to have conferred ownership rights over the transformer to the applicant in the absence of any other evidence to suggest so? My answer is NO! The contents of the entire letter must be read and understood in their proper context. There was no express admission at any one time by the respondent that the transformer was private property owned by the applicant and was therefore entitled to its exclusive use. Further, there was no evidence by the applicant that he ever purchased the transformer. The payments that the applicant made to the respondent was for a single phase overhead power supply and that is what P. Exhibit B A.S 3(a) shows.

I am therefore not persuaded that the applicant has shown that he has a prima facie as against the respondent to warrant the grant of the orders sought.

The applicant has also not shown that he stands to suffer irreparable loss in the even that the orders sought are not granted. If the applicant were to succeed in his claim, the respondent is well able to pay such damages as the applicant may be awarded.

In the circumstances, I dismiss the applicant’s application with costs.

**DATED, SIGNED & DELIVERED at Nakuru this 29th Day of July, 2005.**

**D. MUSINGA**

**JUDGE**

**29/7/2005**