



**Fadhil v Kenya Power & Lighting Company Limited (Environment & Land
Case 49 of 2017) [2025] KEELC 2971 (KLR) (1 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 2971 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 49 OF 2017**

FM NJOROGE, J

APRIL 1, 2025

BETWEEN

AZIZ OMAR FADHIL PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LIMITED DEFENDANT

JUDGMENT

Plaint.

1. The plaintiff commenced the present suit against the defendant *vide* a plaint dated 6/3/2017, and in that pleading he sought the following orders:
 1. A mandatory injunction compelling the defendant to relocate the electric pole erected on the plaintiff's land Title Number Kilifi /Township Block 3/725 in such a manner as to allow the plaintiff to proceed with his duly approved development plan;
 2. Costs of this suit.
2. The plaintiff gave the facts of his claim as follows: that he is the registered owner of the suit land; that he intends to erect a development on it, for which he has obtained development permission and approvals from various agencies; that in 2014 the defendant erected an electricity pole on the suit land without his knowledge or consent; that despite a complaint and requests lodged with the defendant the defendant has failed to remove the pole. He is unable to develop the land as he wishes due to the presence of the pole.

Defence.

3. The defendant's defence was filed on 10/5/2017. The defendant stated that the electricity pole was erected prior to 1995 after the defendant had sought wayleave consent from the previous owner of the



suit land and that the plaintiff's parcel is still, subject to existing wayleaves. It sought that the present suit be dismissed with costs on that very ground.

Plaintiff's Evidence.

4. The plaintiff testified on 4/3/2021 as PW1. He adopted his witness statement as his evidence-in-chief and the documents he had filed as his P. Exh 1 to P. Exh 8. His evidence tallied with the contents of the plaint. He stated that his development plan had been approved by the County Government of Kilifi. That the defendant erected the said pole in 2013.
5. Upon cross-examination, he admitted that he purchased the suit land and took possession of it in 2003; that he took up the land while it was already developed with semi-permanent houses by the previous owner; that the electric pole was not there by the time he purchased the suit land; that the vendor was issued with a certificate of lease in 2003; that the pole was not erected in 1995 as claimed by the defendant.
6. Magongo Fadhil testified as PW2. His evidence is that he is the caretaker of the land; that initially there were no power lines running over the suit land and that they were installed in 2013. He noticed that the offending pole had been erected beside one of the houses on the suit land and he immediately informed the plaintiff of the development.
7. Upon cross-examination by Ms Kabole he stated that he was a son to Magongo Juma who was the vendor to the plaintiff. He stated that the houses on the suit land were not connected to electric power. He sounded unsure as to when the power lines were installed.

Defendant's Evidence.

8. Emmanuel Ochieng Ouma the defendant's Wayleaves Officer testified as DW1 and adopted his written witness statement. His evidence is that he joined the employ of the defendant in 2009 and worked elsewhere before his transfer to Mombasa in 2017 where he was responsible for wayleaves in Mombasa, Kwale, Kilifi, Lamu, Tana River and Taita Taveta. He was transferred to Nairobi in July 2024. He stated that Gabriel Kashaha was the wayleaves officer based at Kilifi at the time the plaintiff lodged his complaint in August 2016. Gabriel made a visit to the suit land and established that indeed there was a power pole next to a house located within the suit land., it supplied power to several customers within the neighbourhood; that the pole was in place by the time the plaintiff assumed possession of the suit land. He stated that Mtaani is right at the heart of Kilifi and was one of the areas to be supplied with electricity even before land was demarcated. That upon demarcation, the electricity lines were found to be traversing the newly created parcels. However, the electricity pole was repositioned by the defendant around October 2021 and the present suit is overtaken by events.
9. Upon cross-examination by Mr Kinaro, the witness stated that the plaintiff's complaint was answered and he was informed that the power pole had been installed before he purchased the property. He stated that he visited the site in 2019 and it was when his predecessor Kashaha was handing over that he confirmed the that pole in question had been moved to the side of the adjacent road.

Submissions

10. Both parties filed written submissions of which I have taken regard in the preparation of this judgment. The plaintiff submitted that the prayer for a mandatory injunction had been overtaken by events. The electricity pole having been relocated in 2021 and therefore the only issue outstanding is who is supposed to meet the costs of this litigation. He stated that the defendant only relocated the electricity pole in 2021 four years after the filing of the present suit and after the plaintiff had testified and closed



his case; by its refusal to relocate the pole the defendant had occasioned the need for the suit to be filed; that the plaintiff has incurred costs and he is thus entitled to costs.

11. The defendant admitted to receiving the plaintiff's complaint in Kilifi in 2016. It drew the attention of the court to the variance in the dates of erection of the pole in the evidence of PW1 and PW2, 2014 for the plaintiff and 2013 for DW2 and urged that the variance showed that the plaintiff did not know when the pole was erected. It was submitted that the defendant had obtained wayleave consent from the previous owner and the plaintiff by the time of purchase of the suit land had full knowledge of the presence of the pole on the land. The plaintiff took possession of the suit land while it was still developed and occupied and so the pole could not have been erected in 2014. It averred that the plaintiff had not proved its case. However, it also agreed with the plaintiff's submission that the pole had been removed from its original position in the suit premises and planted elsewhere and so the order of mandatory injunction can not and should not issue and the matter should be marked as settled with no orders as to costs.

Analysis And Determination.

12. It is agreed between the parties that the electricity pole that was the basis of the plaintiff's complaint to the defendant has been moved away from the plaintiff's property and both parties are of the view that the claim is overtaken by events and ought to be marked as settled, but each has their own different opinion on costs, where the plaintiff avers he ought to be awarded costs and the defendant thinks that parties ought to bear their own costs.
13. On this court's part, it is evident that the present suit was limited to prayers for a mandatory injunction to compel the removal of the electricity pole. However, now that the parties agree that the pole has been removed, there is no issue left for determination save on costs. However, on this issue the court is also of the view that since the parties resolved their dispute out of court amicably and they did not await the determination of this court, then each party ought to bear their own costs of the suit and I therefore make the following orders:
 - a. The entire suit is hereby marked as overtaken by events and the file shall be closed;
 - b. Each party shall bear its own costs of the suit.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 1ST DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

