



**Njoroge v Kenya Electricity Transmission Co.Ltd (Constitutional  
Petition 2 of 2022) [2025] KEELC 4892 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4892 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
CONSTITUTIONAL PETITION 2 OF 2022**

**MAO ODENY, J**

**JULY 1, 2025**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 2 (2), 10,  
20 (2), 21, 22 (1), 27 (1) (2), 40 (3) & (4) AND 258 OF THE CONSTITUTION OF  
KENYA 2010**

**AND**

**IN THE MATTER OF VIOLATION AND INFRINGEMENT OF THE RIGHTS TO  
PROPERTY, EQUAL TREATMENT & PROTECTION OF THE LAW & FAIR  
TRIAL OF THE PETITIONER**

**AND**

**IN THE MATTER OF PART VIII OF THE LAND ACT & VII OF THE ENERGY  
ACT**

**AND**

**IN THE MATTER OF COMPENSATION FOR WAYLEAVE IN RESPECT OF  
LR NO 425/64 NAIVASHA MUNICIPALITY**

**BETWEEN**

**ROSE EMMA MUTHONI NJOROGE ..... PETITIONER**

**AND**

**KENYA ELECTRICITY TRANSMISSION CO.LTD ..... RESPONDENT**

**JUDGMENT**

1. By a Petition dated 12<sup>th</sup> April, 2022, the Petitioner sought the following orders:



- a. A declaration that the Petitioner's rights enshrined in 27 (1) and (2) and 40 of the Constitution of Kenya have been grossly violated and/or infringed by the Respondents entry and construction of its 400/220/132KV Olkaria-Lessos-Kisumu transmission line to strengthen its geothermal plants in Olkaria and link between the eastern and western parts of its national grid through the Petitioner's property known LR No. 425/87 and situate in Naivasha consequently rendering the entire property unsuitable for use by the Petitioner without just, prompt payment of compensation in full to the Petitioner as per the Constitution of Kenya, Energy Act and the Land Act. (sic)
  - b. An Order directing the Respondents to forthwith promptly and justly pay full compensation of KES 68,296,000.00 to the Petitioner for way leave and consequential damages for the said way leave through the Petitioners property known as LR No. 425/87 situate in Naivasha.
  - c. General damages for loss of user and future profits.
  - d. Interest on (ii) above at the prevailing base lending rate published by the Central Bank of Kenya as at 04/12/2020 until payment in full.
  - e. Costs of the Petition.
  - f. Any other relief that the Court may deem fit to grant in the circumstances of the Petition.
2. The Petition is supported by the annexed Affidavit of Rose Emma Muthoni Njoroge, the Petitioner, sworn on 12<sup>th</sup> April, 2022 where she deponed that she is the lawful, bonafide and beneficial owner of a property known as LR No. 425/87 measuring about 6.071 hectares situate in Naivasha Sub County within Nakuru County.
  3. The Petitioner stated that on or about 4<sup>th</sup> December 2020, the Respondent visited the suit property and the surrounding properties and met the Petitioner and other owners where the Respondent sought wayleave through the suit property for construction of its 400/220/132kv Olkaria- Lessos-Kisumu transmission line to strengthen its geothermal plants in Olkaria and link between the eastern and western parts of its national grid. She further deponed that the Respondent requested them to allow their Valuer into their properties to carry out a valuation.
  4. The Petitioner further deponed that the Respondent completed the project on or about January 2021 and has since refused to engage the Petitioner on just, fair and full compensation. Further that the Respondent's project has rendered the suit property unsuitable for human habitation. The Petitioner therefore claimed a total of KES 68,296,000.00 being fair and just and full compensation and interest thereon at the Central Bank Base lending rate prevailing on 4<sup>th</sup> December, 2020 until payment in full against the Respondent for wayleave and consequential losses on the suit property.
  5. Johnson Muthoka, the Respondent's Senior Manager for Wayleave Acquisition filed a Replying Affidavit and deponed that during the pendency of this Petition, the parties recorded a partial consent dated 16<sup>th</sup> September, 2024 which was adopted as Court Order on the same date. That the consent settled the issue of compensation for the limited loss of use of the land parcel known as Land Reference No. 425/87 (Original Number 425/84/4) as consideration for the Grant of Easement leaving the remainder of the claim being general damages (for alleged loss of user and future profits) and costs.
  6. Mr. Muthoka further deponed the Petitioner admitted that by the time she filed the instant Petition, she was awaiting the title deed to the suit land from the Land Registrar and that there is no evidence that the Petitioner ever sought and obtained a change of user or the statutory approvals to permit her put up a Boutique Hotel on the suit property. He deponed that the Petitioner has produced neither an



Environmental Impact Assessment (EIA) license from the National Environment Authority (NEMA) nor any license from the National Construction Authority (NCA) permitting her to put up the said Hotel.

7. The Petitioner filed a Further Supporting Affidavit sworn on 21<sup>st</sup> May, 2025 and deponed that the suit property was rendered unfit for the purpose as she had intended when the Respondent constructed the power lines. It was her deposition that she could not proceed to obtain the necessary licenses and permits when the Impact Assessment report dated 20<sup>th</sup> March, 2022 clearly assessed and determined that the project would not be viable. The Petitioner asked the Court to grant her the prayer for damages for loss of use and future profits as sought.

### **Petitioner's Submissions**

8. Counsel for the Petitioner filed submissions dated 2<sup>nd</sup> November 2024 and supplementary submissions dated 21<sup>st</sup> May, 2025 and identified the following issues for determination:
  - a. Whether the Petitioner is entitled to general damages for loss of user and future profits?
  - b. Whether the Petitioner is entitled to costs?
9. On the first issue, counsel submitted that the Petitioner's claim for damages is premised on the denial of use of her property by the Respondent which she had acquired for KES 25,500,000/= in order to develop thirty-five residential houses with a twenty rooms boutique hotel and restaurant. Counsel submitted that the petitioner has produced a Project Investment Cost Report dated 31<sup>st</sup> August, 2020 showing the projected profits after sale of the thirty-five residential houses was two hundred and twenty million Kenya Shillings (KES 220,000,000/=) together with a projected yearly profit of one hundred million Kenya Shillings (KES 100,000,000/=) from the hotel.
10. It was counsel's further submission that the Petitioner has demonstrated the entitlement to the damages for loss of user and future profits and relied on Article 40 (3) & (4) of the *Constitution* of Kenya, 2010, Sections 173 and 175 of the *Energy Act* and Sections 106-107 of the *Evidence Act*. Counsel also relied on the cases of *Hellen Chelel Mulama vs Kenya Electricity Transmission Company Limited (KETRACO)* [2018] eKLR, *Kenya Power and Lighting Company Limited vs Philip A M Kimondiu* [2018] eKLR and *Mubei vs Kenya Electricity Transmission Co. Limited & 2 others* [2023] KEELC 18832 (KLR).
11. On the second issue, counsel prayed for costs and relied on the case of *Orix Oil (Kenya) Limited vs Paul Kabeu & 2 others* [2014] eKLR.

### **Respondent's Submissions**

12. Counsel for the Respondent filed submissions dated 26<sup>th</sup> February, 2025 and identified the following issues for determination:
  - a. Whether the Petitioner is entitled to general damages for alleged loss of user and future profits?
  - b. Whether the Petitioner is entitled to costs?
13. On the first issue, counsel submitted that the Petitioner has failed to prove ownership of the suit property or her occupation thereof as there was no link between the Petitioner and the suit properties. Counsel submitted that a valid claim for infringement of their constitutional rights cannot stand.
14. Counsel further submitted that the consent recorded by the parties on 16<sup>th</sup> September 2024 required the Petitioner to produce her Certificate of Title to the suit property which has not been done and thus



the Petitioner cannot claim any beneficial or legal rights over the suit property. Counsel also stated that the public interest will be served if the electricity transmission line is allowed to pass through the suit properties which outweighs the Petitioners private interest in the said properties.

15. The Respondent's counsel went on to submit that the Deed of Release and Discharge and the unregistered transfer annexed to the Petition are not proof of ownership. It was counsel's contention that the Petitioner did not produce or annex any bills of quantities as well as approved architectural and/or structural drawings for the hotel project. Similarly that the Petitioner did not lead any evidence of her financial ability and capacity to undertake such a capital-intensive hotel project.
16. Counsel relied on Articles 27 (1 &2), Article 40 and 47 of the Constitution of Kenya, Section 170 of the Energy Act, Section 143 (4), 149 of the Land Act, 2012 and Section 26 (1) of the Land Registration Act.
17. Counsel also relied on the cases of KETRACO vs David Kithinji Mbijiwe Meru ELC No 42 of 2016, KETRACO vs James Kinoti M'Twerandu Meru ELC No 45 of 2016, Anarita Karimi Njeru vs Republic and Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others, Veronica Njeri Waweru & 4 others vs City Council of Nairobi & 2 others [2012] eKLR, Igal Roni Elfezouaty & Another vs KETRACO Limited Nakuru ELC Petition No E006 of 2022, Maridadi Flowers Limited vs KETRACO Limited Nakuru ELC Petition No E005 of 2022 and Richard Nchapi Leiyagu vs KETRACO Nyahururu ELC Cae No 15 of 2020.
18. On the second issue, counsel submitted that the Respondent should not be condemned to bear the costs of this Petition as it is the Petitioner who failed to abide by the terms of the offer letter of 18<sup>th</sup> December, 2020. Counsel urged the court to find that general damages cannot be awarded in the circumstances of this case and proceed to dismiss the remaining limbs of the Petition that do not form part of the consent of the parties of 16<sup>th</sup> September 2024 with costs to the Respondent. Counsel relied on the case of Hussein Janmohamed & Sons vs Twentsche Overseas Trading Co. Ltd [1967] EA 287 and urged the court to dismiss the prayer for general damages and costs.

### **Analysis and Determination**

19. This Petition is partially settled vide a consent dated 16<sup>th</sup> September 2024 which was adopted as an order of the court in the following terms:
  1. That there shall be created and remain in existence an easement measuring 60 meters wide in favour of the Respondent over all that parcel of land known as Land Reference No. 425/87 (Original Number 425/84/4) situated in Nakuru County to cover approximately 3.77 acres.
  2. That the Respondent shall pay the Petitioners a sum of Kenya Shillings Thirteen Million, Five Hundred and eighty Three Thousand, Five Hundred and Eighty- One and Twenty Cents(Kshs. 13,583,851.20)only as the compensation for the limited loss of use of the land parcel known as Land Reference No. 425/87 (Original Numbr 425/84/4) and as consideration for the Grant of Easement.
  3. That upon allocation and disbursements of the funds for the Olkaria-Lessos- Kisumu transmission line, the Respondent shall pay the agreed compensation in full to the petitioner on or before 30.09.2024.
  4. That purpose of registration of the easement in favour of the Respondent and in consideration of the aforesaid compensation and processing of payment, the Petitioner shall furnish the Respondent with her original certificate of Title as well as other accompanying documents such as certified copies of her ID, KRA PIN and her Bank details.



5. That the remainder of the Petitioner's claim for general damages as well as the issue of costs of the Petition shall be set down for hearing and determination by the Honourable Court.
20. The remaining issues for determination as set out in the consent by the parties dated 16<sup>th</sup> September 2024 are whether the Petitioner is entitled to general damages for loss of user and future profit and who is to bear the costs of the Petition.
21. Counsel agreed to canvass the remaining two issues by way of written submissions. The parties also filed supporting, supplementary and replying affidavits together with submissions on the issue of whether the Petitioner is entitled to general damages and costs.
22. The Petitioner particularized the claim for general damages and loss of user and future profits and produced a Project Investment Cost Report dated 31<sup>st</sup> August, 2020 showing the projected profits after sale of proposed thirty-five residential houses at Kshs. 220,000,000/= together with a projected yearly profit of Kshs. 100,000,000/= from 20 rooms from the proposed Boutique Hotel and restaurant which the Petitioner stated that she was denied the use as the project was rendered untenable by the Respondent's construction of the transmission line with high voltage. This was fortified by a letter dated 20<sup>th</sup> March 2023 by Mercantile Fintech Limited which advised on why the development would not be tenable with the High Voltage Power lines.
23. The Respondent's case was that there was a delay in compensation as the Petitioner failed to prove ownership of the suit property, as she had not produced a Certificate of Title to the suit property. The Respondent submitted that the Petitioner did not produce or annex any bills of quantities as well as the approved architectural and/or structural drawings for the hotel project.
24. From the responses, submissions and the partial consent filed by the parties, it is not in doubt that the Petitioner owns the suit land, which the Respondent has acquired an easement to build high voltage transmission power lines. The Respondent would not have engaged the Petitioner in the negotiation and a long running battle for the compensation of the suit land.
25. The Respondent on one hand acknowledges that the Petitioner is the owner of the suit land and on the other hand it alleges that the Petitioner has not shown any proof of ownership. This is blowing hot and cold and this might be the reason why the matter was slated for mention severally for the parties to come up with a consent to settle the matter fully. When you go into negotiation without good faith, where a party has something up their sleeve, the outcome is not always in the interest of both parties.
26. The Petitioner's assertion that the Respondent's project has diminished the Petitioner's use of the suit land and occasioned her loss of future earnings has not been countered by any evidence by the Respondent.
27. In the case of Kenya Power and Lighting Company Limited v Phillip A M Kimondiu [2018] eKLR, the Court of Appeal held as follows:

“ At this juncture that it will be observed that the case of U.Y B. Ltd v British Railways Board (2001) 81 P. and C.R. DG19 CA, confirmed that loss of user profits can also be claimed. There, the claim involved the tort of nuisance where water had seeped from the lessor's property into the lessee's premises making it impossible for use for the latter's projected business. They were awarded lost profits for a limited period, as they did not seek to relocate their business to alternative premises.

The respondent's claim is for loss of user profits for an intended irrigation project which he was precluded from undertaking by reason of the trespass of the appellant's extant



overhead power lines. Support for this was to be found in the valuation report of Mwaka Musau Consultants undertaken immediately after the appellant's intrusion that indicated that, "There is an excavated foundation for a further extension of the main house a project which has been stalled together with irrigation project for the last four years." It therefore follows that the inability to undertake the project was as a direct and natural consequence of interference in the Plot, which was attributed to the appellant, and would as a consequence entitle the respondent to damages for loss of use of the Plot."

28. When parties are unable to agree on the amount or method of payment of the compensation or if a person entitled to compensation is dissatisfied, the time taken to pay compensation can negotiate or apply to court to determine the same.
29. Section 148 (1) of the *Land Act, Act No. 6 of 2012* provides:
  - S.148. Compensation shall be payable to any person for the use of land, of which the  
(1) person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer."
  - S.  
148  
(5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation."
30. The Petitioner and the Respondent applied the above Section, negotiated and came up with a partial consent. However, they were not able to agree on the general damages and costs payable hence they approached the court to determine the dispute.
31. The Petitioner produced a Project Investment Report and the projected income that she would get from the investment. It should be noted that this is not compulsory acquisition of the suit parcel of land but an easement whereby the Petitioner will suffer limited loss of use of the land.
32. The Parties had already agreed on compensation of Kshs. 13,583,851.20, which is yet to be paid. To balance the rights of the Petitioner and the public good that the transmission Power line will benefit both the Petitioner and the community
33. I have considered the pleadings, the submission by counsel and the relevant authorities and find that Kenya Shillings Thirty Million only (Kshs 30,000,000/) would be sufficient compensation as general damages for loss of future use of the land due to the high voltage transmission power line and taking into consideration that the parties had partially agreed on the compensation.
34. The Petitioner is also entitled to the costs of the Petition.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 1<sup>ST</sup> DAY OF JULY 2025.**

**M. A. ODENY**

**JUDGE**

