



**Prigal Limited & another v Kenya Electricity Transmission
Company Limited (Environment and Land Case 96 of 2024)
[2025] KEELC 5137 (KLR) (Environment and Land) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5137 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 96 OF 2024**

MC OUNDO, J

JULY 10, 2025

BETWEEN

PRIGAL LIMITED 1ST PLAINTIFF

MICHAEL MWANGI MUTURI 2ND PLAINTIFF

AND

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED . DEFENDANT

JUDGMENT

1. Vide a Plaint dated 10th July, 2023, the Plaintiffs herein prayed for judgement against the Defendant for the following orders:
 - i. Ksh. 65,797,788/=Payable to the Plaintiffs for way leave through properties known as LR No. 5212/16, 5212/17, 5212/18 and 5212/19 situate in Naivasha sub-county in Nakuru County.
 - ii. Interest on (i) above at commercial rates particularly 14% p.a from 24th December 2020 until payment in full.
 - iii. Costs of the suit.
 - iv. Any other relief that the Court may deem fit to grant in the circumstances of the Petition.
2. Pursuant to service of the Plaintiffs' Plaint, the Defendant filed its Statement of Defence dated 20th December, 2023 denying the contents of the Plaint and putting the Plaintiff to strict proof. Its argument was that the Plaintiff's purchase of the suit lands herein had been challenged by the Ethics and Anti-Corruption Commission (EACC) which was a statutory defender of the public property. That indeed, the ownership of the mother title of the suit properties, being L.R No. 5212 had been



revoked by the National Land Commission vide Gazette Notice No. 1716 of 22nd February 2019, which revocation had been litigated in this court in Nakuru ELC Petition No. 8 of 2019 (Consolidated with ELC No. 24 of 2019) but the judgement was subject of an Appeal and the issues of ownership had not yet been settled in full.

3. That whereas it had offered the stated amounts of compensation for the suit properties, it denied the valuation and offer of compensation for L.R No. 5212/19. That its transaction with the Plaintiffs had been on the assumption that the titles held by the Plaintiffs and other landowners in the same location were authentic and not subject to any impeachment wherein they had entered upon the suit lands and constructed high voltage transmission lines and had been prepared to pay compensation to the Plaintiff upon successful registration of the easements.
4. That further and in the alternative, the Plaintiffs' suit was premature as the Plaintiffs were in breach of their easement agreement as they had failed to provide the original title deeds, identification and other documents necessary for processing of the easement agreements for execution and registration to create an interest on the suit properties.
5. That further, the present suit was an abuse of the process of the court hence it ought to be stayed pending the hearing and determination of an appeal proffered by the Plaintiffs before the Court of Appeal.
6. That indeed, it was willing to pay the Plaintiffs' the compensation that had been proposed provided that the Plaintiffs met their end of bargain. It sought for the Plaintiffs' suit to be struck out and/or be dismissed with costs.
7. In rejoinder, the Plaintiffs reiterated the contents of their Complaint and denied that the Ethics and Anti-Corruption Commission (EACC) had challenged their title to the suit properties as had been alleged. That vide a judgement of 27th September 2023 in Nakuru, ELC Petition No. 8 of 2019 consolidated with ELC Petition No. 24 of 2019 the court had quashed the Gazette Notice No. 1716 of 22nd February 2019, and affirmed ownership of the suit properties LR No. 5212 with finality. There had been no appeal filed against the said judgment as had been alleged.
8. That the claims and allegations brought forth by the Defendants were an afterthought, baseless, frivolous, vexatious and an attempt to re-write contracts between parties, which contract had been breached by the Defendant who had defaulted in payment yet had enjoyed the consideration thereof at the prejudice of the Plaintiffs.
9. That indeed, they had provided requisite copies of the relevant documents as had been set out in the Letters of Offer for wayleave Compensation to the Defendant, together with the duly accepted offers but the Defendant had through deceit, false pretense and breach of contract, obtained possession of the suit properties under false pretense that they would avail easements for execution and pay the Plaintiffs compensation upon registration of the easements. That they were unable to issue the Defendants with original titles since the same were to accompany a duly executed easement for purposes of the Defendant registering the said easement and/or pay wayleave compensation.
10. That indeed, to date, the Defendant had taken possession of the suit properties, laid the transmission lines and were utilizing the wayleaves on the suit properties without submission of the easements for the execution by the Plaintiffs and registration by the Defendant and/or payment of wayleave compensation.
11. That a withdrawal Notice of a pending Notice of Appeal against the decision in ELC Petition No E004 of 2021 had been served upon the Defendants and therefore their title was not under challenge. That



- the Defendant's claim was an afterthought and an attempt to re-write the terms of the offer letter that had duly been accepted by the Plaintiffs.
12. That the Defence was bare denial, frivolous, an afterthought, vexatious, had disclosed no reasonable defense in law against the Plaintiffs and was otherwise an abuse of the court process. They thus prayed that the Defendant's Defence be dismissed and judgement be entered in their favour as prayed in the Plaint.
 13. Upon compliance with the pre-trial directions the matter proceeded for hearing on the 6th November, 2024 wherein PW 1, Michael Mwangi Muturi, the 2nd Plaintiff herein who introduced himself as a Civil Engineer and that his company Bimtech Engineers, was engaged in the business of building roads and civil works. He adopted his witness statement dated 7th July 2023 as his evidence in chief before confirming that he had the authority to testify on behalf of the 1st Plaintiff as per a said Letter of authority to testify dated 7th July 2023 herein produced as Pf exh 1.
 14. He explained that between the year 2019 and December 2020 the Defendant had come into his land Reference No. 5212/18 wherein they had sought to construct their transmission lines therein. That at the time of the negotiations, there had been buildings on the said parcel of land where they used to operate the company's offices which buildings included an office, go downs, storage facility and a water tank. That the land measured about 20 acres that is 8.4 hectares.
 15. That subsequently, they had negotiated for compensation with the Defendant wherein that the buildings on the Land Reference No. 5212/18 had been valued and a compensation paid for them separately after which they had been given a letter for land compensation.
 16. He produced a copy of the title deed, a Certificate of official search and the Deed Plan as Pf exh 2 (a - c) stating that he had been registered as proprietor of the state parcel of land on 11th October 2018.
 17. That the Letter of offer dated 18th December 2020, had been for compensation for the limited loss of property wherein he had accepted the offer and signed the acceptance on 30th December 2020. That there was also a document showing the extent of the wayleave on the land at page where the Defendant had offered them a sum of Ksh. 14,499,828/= as compensation. He produced the letter of offer dated 18th December 2020 as Pf exh 3 (a) and then explained that the letter of acceptance had been part of the letter of offer.
 18. That the Defendant's officers on the ground had been the ones who had delivered the letters of offer to them and after they had given them the copies of their titles, and copies of their identity cards, they had been promised to be contacted to execute the documents for wayleave and to avail the original titles for registration. That they were never contacted because the Defendants alleged that the land had a dispute with Ethics and Anti-Corruption Commission (EACC) and KALRO.
 19. That subsequently, they had approached the court vide Nakuru ELC Petition 8/2019 to clarify on the Defendant's allegation wherein court found in their favour vide a judgement dated 27th September 2022 herein produced as Pf exh 4. That he was not aware whether the judgment has been appealed against.
 20. His evidence was that he had purchased his parcel of land from Prigal Limited the 1st Plaintiff herein. That in a case filed against the Defendant at Nakuru being ELC Petition 4 of 2021 wherein parties were similar to the parties in the present case, the Respondents had been directed to open a Joint fixed Account vide an Order dated 17th November 2021 herein produced as Pf exh 5 (a) wherein they had deposited 10% of the offer money being Kshs. 65,797,788/=. That vide a judgement dated 20th June 2023, the Petition had been struck out with directions that they file an ordinary suit hence, the instant



suit. He produced a copy of the said judgment as Pf exh 5(b), and a copy of the Ruling dated 19th January 2023 where the court had ordered the opening of a Joint Fixed Account as Pf exh 5 (c). He also produced as Pf exh 5(d), a letter dated 1st February 2023 from the Defendant's Advocates to their Advocates notifying them that they had deposited Kshs. 6,579,778/= which was 10% of the sum due, into a Joint Account. That he believed that the said money was still in the Joint Account.

21. He confirmed that he and the 1st Plaintiff had land parcel Nos. LR 5212/60/17/19 situated in Naivasha Sub-County behind the G. K. Prisons which parcels of land had previously been the property of Pritam Singh vide and the mother title of LR No. 5212. He produced a Certificate of titles, Certificate of Search and the Deed Plan to parcel No. LR No. 5212/16, registered to the 1st Plaintiff on 4th September 2012 as Pf exh 6(a-c) stating that the land measured 10.3 hectares and that the wayleave had passed through it.
22. That the 1st Plaintiff had also received a letter of offer for their land dated 18th December 2020 from the Defendant in respect to land parcel No. LR No. 5212/16. That whereas the 1st Plaintiff's Director was out of the country, he had spoken to him wherein he accepted the said letter of offer and he had received the letter of offer which was attached to a map showing the transmission line, on his behalf. That the said letter of offer had stipulated Ksh. 19,340,570/= as compensation. He produced the said letter of offer as Pf exh 6 (d).
23. His evidence was that land parcel No. LR No. 5212/17 which measured 20.83 hectares was registered to the 1st Plaintiff on 4th September 2012 as per the title deed, a Certificate of Search dated 2nd September 2021, and a Deed Plan dated 7th July 2006 herein produced as Pf exh 7 (a-c). He explained that both land parcels Nos. LR 5212/ 16 and 17 were vacant and had been used as a storage for equipment wherein they had parked machinery and things that were not of high security on the said parcels of land. That with regard LR No. 5212/17, the 1st Plaintiff had received an offer dated 18th December 2020 for Kshs. 28, 176,813/= from the Defendant which offer had been accepted. He produced the said Letter of Offer as Pf exh 8.
24. His evidence was that whereas LR No. 5212/19 belonged to the 1st Plaintiff the said land had been donated to the Children Shelter called "Shelter Yetu" for the street children organization. That at the time the wayleave passed over the said parcel of land, the children shelter was on that land but the title was still registered in the name of the 1st Plaintiff. That the letter of offer for this land, dated 18th December 2020, had been addressed to the wrong people wherein the same had been cancelled and countersigned.
25. That further, the number indicated therein as 27368 had been erroneous. That he received the letter and took it to the Children Shelter and whereas he had requested that the land be rectified to read LR No. 5212/19, the Defendant did not comply but had only counter signed. That a sum of Ksh. 3,780,630/= had been given as compensation on the said land. That the Letter of Offer therein had been accepted by Igal, the 1st Plaintiff's Director.
26. That LR No. 5212/19 had classrooms, playground, dormitory, workshop, kitchen, water tank and a perimeter wall. That pursuant to the letters of offer, the Defendant was to utilize an area measuring 1.26 acres.
27. That subsequently the Defendant had passed their transmission lines over the all said pieces of land which lines were present and active to date. He produced the Letter of Offer dated 18th December 2020 in respect of Title No. LR 27368 as Pf exh 9.



28. His evidence was that a KCB payment advisory slip dated 26th January 2023, showed that Lutta & Co. Advocate Joint Account was the beneficiary of Ksh. 6,579,778.8/= which was the partial payment of the 10% of the compensation amount. He produced the said payment advisory slip as Pf exh 10 (b).
29. He testified that he was not aware of a case in the Court of Appeal where the matter that had been struck out and produced a Notice of withdrawal of the Appeal in Petition E004 of 2023 dated 6th July 2023 as Pf exh 11 wherein the Defendant had appended their stamp on the same.
30. He sought from court an order for full compensation for the wayleave as depicted in the Plaintiff.
31. On cross-examination, he confirmed that the organization owning LR No. 5212/19 was called Shelter Yetu but they were not parties to this case. He clarified that he was a Director of the 1st Plaintiff and not its employee. He admitted that they did not have any document showing the existence of the 1st Plaintiff and that he did not have the resolution of the Company authorizing him to file the suit. That whereas the authority to file suit had been signed by the Director, it had no stamp and seal and neither did it show where the meeting had taken place or who had been present when the authority was given.
32. He confirmed that Pf exh 1 was an authority to testify and act and not a resolution that the case be filed against the Defendant. He confirmed that there was no Certificate of Incorporation of the 1st Plaintiff and neither did he have any document of the existence of Igal, the alleged 1st Plaintiff's Director. He confirmed that on the documents that had been filed, he did not have the title to LR No. 5212/19. That whereas he did not have a letter of offer for LR No. 5212/19 they had sought to correct the anomaly in the letter of offer dated 18th December 2020 that had indicated the land as Title No. LR 27368.
33. He testified that he was not constructing public roads and that he did not know the process of payment by the Government. He confirmed that he had been given a copy of the statement that had been made by Mr. Muthoka, the Senior Manager Wayleave acquisition of the Defendant. He further confirmed that the letter of offer had to be signed and returned.
34. When he was referred to Pf exh 3 (a), he confirmed that he had accepted the offer and signed. Upon being referred to Pf exh 6 (d), he confirmed that the same had not been signed. He was referred to Pf exh 8 wherein he confirmed that the same had also not been signed.
35. When he was referred to Pf exh 3 (a) he confirmed that there were procedures for compensation. That he had been asked to submit the items that had been mentioned at paragraph 5 of the said exhibit. That whereas he did not have proof, he had submitted the said documents by himself although he had not submitted the original title deed.
36. His response was that although the wayleave had not been registered on his title he was claiming compensation. He confirmed that an easement of this nature could not be registered without an original title. That Mr. Muthoka's statement had a missing page 2. That whereas he had seen the defence, he did not file a further statement to say that he had submitted the original documents and neither had it indicated in his statement that he had given out the documents. He was categorical however that he had given them his statements and that was why they had processed payments for his buildings.
37. That whereas he was aware that the Defendants' contention had been that they had not registered the easement because he had not complied, he could not have complied unless they had asked him to. That indeed, before the filing of the instant suit, he had been asked to wait until the Defendant got in touch with him. He explained that the conditions in the letter of offer could only be met once the other party also met its end. That he had presented his documents but nobody was there to receive them. He confirmed that he was aware that the National Land Commission had challenged the titles herein.



38. When he was referred to Defence documents No. 1 herein marked as DMFI 1, he confirmed that the said challenge had been there. That whereas Ethics and Anti-Corruption Commission (EACC) had been a party in the Petition filed in Nakuru, he did not know their cause of action as a party because they had just asked to be joined. He confirmed that the Defendant was a public co-operation and that the National Land Commission and the Ethics and Anti-Corruption Commission (EACC) were also state agencies. That he however did not know that in case of any challenge, one state agency could not act against the interest of another. That he was aware that the Defendant did not pay because there was a question on the validity of the title.
39. In re-examination he had been referred to Paragraph 1 of the Plaintiff, and when paragraph 2 of the Statement of Defence dated 18th September 2023 was read to him, he confirmed that the Defendant did not dispute the personality of the 1st Plaintiff or whether it existed or not. He confirmed that he had filed the Plaintiffs' bundle on 11th July 2023 which bundle had included the letter of authority to act. He confirmed that there was no objection of the suit by the 1st Plaintiff. That indeed, from the said paragraph 2 of the Defence, there was no dispute on the operations of the 1st Plaintiff.
40. He confirmed that the letter of authority had shown the address of the 1st Plaintiff as P. O. Box 46235 – Naivasha. That however, he had not seen or been asked to produce documents on the incorporation of the 1st Plaintiff. When he was referred to Paragraph 4 of the Plaintiff, he testified that it confirmed that the 1st Plaintiff was the registered owner of the parcels of land listed therein. That other than the question that he had been asked in court, there had been no objection of the existence of the 1st Plaintiff.
41. He confirmed that the Statement of Defence was on record and that he had filed a reply to the same which reply had been received by the court. He clarified that he was neither an employee, Director or a shareholder of the 1st Plaintiff. That however, he had authority to testify on behalf of the 1st Plaintiff as per the Letter of Authority dated 7th July, 2023, produced as Pf exh 1. He testified that before the questions that had been posed to him, he was not aware that there had been an objection to the said authority. That further, the Defendant's lawyers did not seek to inspect the original document.
42. His evidence was that the documents had been accepted by Igal who had signed and written his name. That whereas the same did not show Plot No. 5212/2019, the error had been made by the Defendant who had indicated the wrong number. That in any case, nothing had been brought forth by the Defendant to show that the Title No. 27368 indicated therein had existed.
43. He confirmed that the letters of offer to the 1st Plaintiff had not been signed since the same had been accepted through a phone call. That indeed, the Defendant would not have entered the land had the offer not been accepted. When he was referred to Pf exh 3(a), he confirmed that he did submit the documents as had been shown at paragraph 5.
44. He also confirmed that Defendant did not acknowledge receipt of the documents and neither did he have any written communications from the Defendant that they were ready to receive the documents. When he was referred to paragraph 10 of the Defendant's witness statement, he confirmed that the defendant had received the documents but was not willing to pay.
45. On being referred to Pf exh 4, he confirmed that the Respondents therein had been the National Land Commission, Chief Land Registrar, Director of Survey and the Attorney General and that the Gazette Notice that he was shown had been the issue in that judgment. When he was referred to paragraph 51 of Pf exh 4, he confirmed that the Gazette Notice of 22nd February 2019 had been quashed. That the date of the letter of offer was 18th December 2020 and that judgment had been delivered on 27th September 2022.



46. He confirmed that he had not been paid the wayleave for his parcel of land to date.
The Plaintiffs thus closed their case.
47. The Defence case proceeded for hearing with the testimony of Johnson Muthoka, a trained land economist and a registered valuer from the Institution of Surveyors of Kenya who testified as DW1 to the effect that he was a Senior Manager in charge of wayleave acquisition. He adopted his witness statement dated 2nd October 2023 as his Evidence in Chief and sought to rely on the Defendant's list of documents dated 6th October 2023 in evidence.
48. He proceeded to testify that the Gazette Notice No.1716 had been brought to their attention by the Ethics and Anti-Corruption Commission (EACC) office at a time they had tried to establish ownership of land that they were traversing with Olkaria-Lessos-Kisumu transmission line which land was just after Naivasha Prisons Compound. That through the said Gazette Notice their attention had been drawn to the controversy surrounding land parcel LR No. 5212 to the effect that the said parcel of land and the one next to it being LR No. 5211 belonged to the former KARI now Kenya Agricultural and Livestock Research Organization (KALRO).
49. He explained that compensation sought for the wayleave was for land parcels LR No. 5212/16 – 19 which properties the Plaintiffs sought compensation and which properties had been a sub-division of parcel LR No. 5212. That parcel LR No. 5212/19 however did not exist but what existed instead was LR No. 27368.
50. That since they were using public funds, they had to heed to the alert by the Ethics and Anti-Corruption Commission (EACC.) That through the said Notice, the Chief Land Registrar was to revoke the title Nos. LR 5211 and 5212 which was held by Karati Farm and Top Farm respectively and thereafter, vest the property to KALRO.
51. That since they were still constructing the line and the people were obstructing the contractor, they had to sit down with them, wherein they disclosed the valuation return and issued offers for compensation for the parcels of land herein. That the revocation of title to LR. No. 5212 had also revoked the sub-divisions. He produced the said Gazette Notice as Df exh 1.
52. He confirmed that a letter dated 18th December 2020, Ref: KET/4/14G/6/1187–20/MM/rc, was an offer for compensation for wayleave for Ksh. 19,340,517/= addressed to the 1st Plaintiff for LR. No. 5212/16. That signing at the back of the letter signified the acceptance of the offer. That nonetheless, this letter had not been signed. He produced the Letter of Offer as Df exh 2.
53. That a letter dated 18th December 2020, Ref: KET/4/14G/6/1186 20/MM/rc, was an offer for compensation for wayleave for Ksh. 28,176.813/= addressed to the 1st Plaintiff for parcel LR No. 5212/17 and which letter of offer had not been signed. He produced it as Df exh 3.
54. Next was a letter of offer dated 18th December 2020, Ref: KET/4/14G/6/1184–20/MM/rc for compensation for wayleave for Kshs. 3,780,630/= in respect to LR No. 27368 which letter had been addressed to Morendat Limited. The same had been accepted on 24th December 2020. He produced the said letter as Df exh 4.
55. That via a letter of offer dated the 18th December 2020 Ref: KET/4/14G/6/1185–20/MM/rc which did not have an addressee as they had to do a search, was in reference to LR No. 5212/18 for Ksh. 14,499,828/=. The offer had been accepted by Michael Mwangi Muturi, the 2nd Plaintiff herein. He produced it as Df exh 5.



56. He confirmed that although he was aware of the revocation and the court case facing the parties, he however did not know whether the revocation had been annulled or reversed but he was aware that there had been an Appeal filed as per the Notice of Appeal he produced as Df exh 6.
57. His evidence was that whereas they had offered compensation to the owners of the 4 parcels of land, they were yet to pay them. He explained that once the offer was issued, one needed to accept the same officially. That indeed, they had asked the various owners to submit various documents, that is, the acceptance, title deed, identification documents, KRA Pin Certificate, and 2 passport size photographs. That subsequently, the owners of the land in question were supposed to avail themselves at the Defendant's offices after which an easement document would be prepared and signed by the land owner and in most cases the Defendant's Managing Director and Company Secretary.
58. That thereafter, the document would be submitted to the Land Registrar Central Registry Nairobi to be entered in the title indicating that there was an agreement with the land owner where the Defendant had paid for the wayleave trace on the land. That their lawyers would then do another official search with the easement noted and submit it to the Defendant as evidence that the Defendant's interest had been entered in the Registry. He explained that when dealing with companies, they needed certain documents to enable them to transact. That it was only after compliance with this process, that they would pay.
59. He acknowledged that Df exh 2 (Pf exh 8) had not been accepted and that they had neither been given any document or the details of the bank account. He also confirmed that in regard to Df exh 3, the same had neither been accepted and neither had the requisite documents been supplied. That nothing had been submitted in regard to Df exh 4, in respect of LR No. 27368 despite the same having been accepted and therefore they did not have any details of the person who had signed the offer.
60. In reference to Df exh 5, he responded that he knew Michael Mwangi, the 2nd Plaintiff herein because he had dealt with him on the ground. That whereas there was a search confirming that he was the owner of LR No.5212/18, the 2nd Plaintiff did not also submit any documents, the most sensitive document herein being the title. That where they received a title, they would acknowledge with a small slip for the purpose of registering the easement, wherein after registration, they would return the title.
61. That in the absence of the documents and the procedure above, one could not proceed with the preparation of the easement in the absence which payment could not be processed that this coupled with the communication by Ethics and Anti-Corruption Commission (EACC) about revocation of the mother titles, they could not pay since they had to carry out due diligence and trend carefully.
62. His evidence was that whereas property LR No. 5212/19 had been listed in the Plaint as one of the properties where the wayleave was to traverse, they had not issued any letter of offer in respect to the said land and that there had been no claim in reference to Df exh 4 being LR No: 27368, in the Plaint. He explained that in order for the Plaintiffs to be paid they needed to submit the signed offer together with the documents that the Defendant had asked for.
63. That since the case herein had been filed pre-maturely as there were no accounting documents to pay the Plaintiffs, the same should be dismissed with costs.
64. In cross-examination, he confirmed that he became aware of the Gazette Notice after notification by the Ethics and Anti-Corruption Commission (EACC) who had seen their communication to the public. That whereas the proof of the said communication had not been produced in evidence, after they had been notified by the Ethics and Anti-Corruption Commission (EACC,) he had gone to the specific website where he was able to peruse the Gazette Notice.



65. In reference to Df exh 6, his response had been that the Defendant was not a party to the suit and that the said Notice of Appeal had been retrieved by their Advocates who had been present in court. He explained that the letters of offer and the Gazette Notice were issued almost at the same time. That the letters of offer had been issued in the year 2020 whereinafter the Gazette Notice had been issued.
66. That the Notice of Appeal in respect of Petition No. 8/19 in Nakuru, the Ethics and Anti-Corruption Commission (EACC) had been an interested party. That the decision in which they had not been satisfied with was of the year 2022. He confirmed that he had not seen the Appeal approximately 3 years since the said Notice of Appeal had been lodged. He confirmed that they worked together with Ethics and Anti-Corruption Commission (EACC.)
67. He also confirmed that he neither had the Appeal number pursuant to the Notice of Appeal and neither were they supplied with a court order staying their decision. That whereas the decision of the Appeal was important in this issue, an order of stay of their decision was equally important for purposes of payment. He confirmed that if there was no decision by the Court of Appeal setting aside the decision of the court on the Gazette Notice, the Gazette Notice stood set aside and he would not proceed to implement it.
68. He confirmed that they were delivered the letters of offer on the site/ground and whilst they would normally register to whom they had delivered the letters of offer, he confirmed not having produced the register in court. He confirmed that they had passed their line over the Plaintiffs' land and that at the time they were delivering the letters, the construction had already been built where it had remained only 6 KM on the Plaintiffs' land to complete the 300 KM line from Olkaria to Kisumu. He also confirmed that where possible, they were able to conduct searches to get the owners of the land.
69. In reference to Df exh 4, he confirmed that he was involved in the preparation of the letters of offer and that the same had been received by Igal R. Elfezouaty on 24th December 2020. He explained that when somebody filled the letter, they deemed him to be the owner of the land and that there was no risk because at payment point they would require identification. He further confirmed that whereas the said letter of offer was addressed to Morendant Limited, somebody had tried to strike out the name with a pen. That however, he had no problem with the cancellation so long as the title was correct. He confirmed that their line had passed through LR No.27368 as per the map survey of Kenya that had been provided.
70. He admitted that he had not produced the search for LR No. 27368 and explained that an independent external valuer had done the valuation of the said land. That whereas he was the one in charge of valuation for the Defendant, the valuation herein had not been a normal valuation issue since what they did was sampling to save on variation fee. He confirmed that Morendant Limited was the owner of the land.
71. He also conceded that whereas they had an acceptance register to register all acceptance letters wherein they had over 3,500 offers in Naivasha, he had not produced an extract of the said Register in Court. That this notwithstanding, the slips they had issued had been extracted from the register.
72. His evidence was that he could not confirm the total amount of the public funds that had been allocated for the project because the documents were kept by the finance department. However, since there had been a budget for the process, if the Plaintiffs went through the process, they would be paid as there had been a fund in the National Treasury that had kept the money for the Plaintiffs.
73. He pointed out that the project had ended around January 2021, wherein they had not found it necessary to remind the Plaintiffs to go for their money and neither had they told them that they were not paying because there was a case by the Ethics and Anti-Corruption Commission (EACC.)



74. He explained that the letters of offer were a pre-condition to enable them proceed with the construction of the line which they had done and completed. That they had asked the Plaintiffs for offers which had been given hence they had been waiting for their compliance to date.
75. That since 10% of the amount claimed by the Plaintiffs had been deposited in the court's joint account, the court do issue an order for the Defendant to receive the Plaintiffs' documents and for the Nairobi Registrar to register an easement on the title, and they would pay the amount due.
- The Defence closed its case and parties were directed to file their written submissions.
76. The Plaintiffs' submissions dated 21st March 2025 raised the following issues for determination:
- i. Whether the Defendant breached the agreements dated 18th December 2020 thereby violating the Plaintiffs' right to prompt compensation?
 - ii. Whether the 1st Plaintiff is entitled to compensation for wayleave on property LR No. 5212/19 whose offer was erroneously sent to LR No. 27368?
 - iii. Whether the Plaintiffs should be compensated and the amount of compensation?
77. On the first issue for determination, the Plaintiffs' submission was that whilst it was not in dispute that through the letters of offer dated 18th December 2020, the offer had been accepted and consequently implementation of the project completed, yet it was clear that the amounts that had been stated in the offer letters had never been paid for reasons advanced albeit without any evidence, that there were pending disputes over the subject properties between the Plaintiffs and the Ethics and Anti-Corruption Commission (EACC.) and that the Plaintiffs had failed to avail certain documents to them.
78. That Pf exh 4 was evidence that the purported Gazette Notice No. 1716 of 22nd February 2019 had been set aside and/or quashed by a judgement delivered on 27th September 2022 in Nakuru, ELC Petition No. 8/2019 wherein DW1 had on cross-examination confirmed that there had been no stay of execution orders against the said judgment hence there was no order preventing payment of way leave compensation.
79. That despite there having been a Notice of Appeal dated 3rd October 2022 filed against the judgment dated 27th September 2022 in Nakuru, ELC Petition No. 8/2019, there had been no evidence of the actual appeal filed. That it was trite law under provisions of Order 42 Rule 6 of the Civil Procedure (Amendment) Rules 2020 and section 66 of the *Civil Procedure Act* that an appeal could not operate as a stay of execution of a judgment of the Court. That further pursuant to Rule 84 and 85 of the Court of Appeal Rules 2022, the Court could not infer an appeal where it had been over 2 years since the filing of the said Notice of Appeal. The Defendants could not therefore be heard to rely on the defense of the purported Gazette Notice or a Court Order restraining them from paying for wayleave based on a none existent Appeal.
80. That the Plaintiffs had delivered the documents that had been requested for by the Defendant in the letters of offer, after they had signed and accepted them, only that they had no proof wherein the Defendant did not provide them with the engrossed easements to execute.
81. That DW1 was unable to demonstrate his claim that the Plaintiffs did not provide copies of the requisite documents in the offer letter when he admitted that he had not produced an extract of a register of documents that had been received in respect of the project by the claimants of the parcels of land, evidence of easements sent or given to the Plaintiffs which they had refused to sign and or rebut



- the assertion that copies of the requisite documents produced in the Plaintiffs bundle of documents had been provided to them.
82. That it was trite that the copies of title, personal identification documents of the Plaintiffs and copies of search that had been provided were sufficient to draft Easements and deliver them to the Plaintiffs for execution.
 83. That it was now over 6 years since the offer letters had been issued yet there was no single communication to the Plaintiffs to return the signed offer letters or submit copies of the requisite documents. That in any case the obligation to register easements or ensure the Easements were duly executed was upon the Defendant. That further, it was ironical despite the Defendant acknowledging that it normally conducted searches to ascertain the owners of land, yet it had done nothing towards issuance of Easements or demanding requisite documents for processing wayleave payment from the persons it had issued letters of offer and who's land they had taken possession of.
 84. That indeed, the suit herein had been filed on 11th July 2023 yet the Defendant after being served with summons and suit documents never made any kind of communication to the Plaintiffs asking to be supplied with the documents in the letters of offer now that they claim that they did not have copies of the same. It was thus their submission that the defense for non-payment was made in bad faith and was frivolous.
 85. That whereas the Defendant had insisted on alleged delivery of documents that had been indicated in the offer letters, no provision of law had been cited to support the said condition and/or override the provisions of Article 40(3) of *the Constitution* of Kenya. That in the absence of any legal provision backing up the alleged demand for original documents or searches, copies of the same having been provided, the procedure to the affected proprietors, laying down the framework and failure by the Defendants to promptly pay wayleave compensation was unlawful and unconstitutional.
 86. They placed reliance on the provisions of Section 173(3) of the *Energy Act* to submit that while the Defendant had admitted to having given out letters of offer to the Plaintiffs, there was no evidence of compliance with the provisions of the said section. Further reliance was placed on the provisions of Section 116 of the *Land Act* to submit that the claim that the Defendant could not pay public funds in compensation made in error, was an afterthought because DW1 had admitted that it had power and normally carried out searches on land to ascertain owners.
 87. Their reliance was placed on the provisions of *the Constitution* to submit that the Defendant's actions had been in violation of the Plaintiffs' rights to property as guaranteed under Articles 40(1) and (3) of *the Constitution*, wherein it had obtained and utilized the suit properties without prompt payment in full of just compensation to the Plaintiffs. That Section 111 of the *Land Act* placed upon the state department the duty to pay compensation for wayleaves promptly.
 88. Reliance was placed in the decided case of *Modern Coast Builders & Contractors Limited v National Land Commission* [2021] eKLR to submit that withholding of compensation from the Plaintiffs because there had been a pending a dispute on ownership, when at all times the Plaintiff were in possession of the suit properties and maintained the titles as well, was an afterthought and baseless in law as there had been no such evidence tendered.
 89. They also placed reliance in the decided case of *Mutiso v Kenya Power & Lighting Company Limited* [2024] KELAT 1547 (KLR) to submit that the allegation of failure to avail the title, even though the same had been produced in this case, did not disentitle the lawful occupants of the property of their rights.



90. On the second issue for determination as to whether the 1st Plaintiff was entitled to compensation for wayleave on property LR No. 5212/19 whose letter of offer was erroneously sent to LR No. 27368, submissions were to the effect that LR. No. 27368 did not appear on the map showing the parcels of land that were to be affected by the lines, the maps annexed to the offer letters produced by the Plaintiffs had been prepared by the Defendant and issued to the persons in occupation of each piece of land at the material time. That subsequently, the 1st Plaintiff had been issued with such offer letter, by the fact that he was in occupation of the property known as LR. No. 5212/19 that had been wrongly identified as LR. No. 27368. That the error had thus been caused by the authors of the letters of offer, who had even corrected the error by cancelling the wrongly addressed recipient and counter signing the same as per Pf exh 9.
91. That in any case, there was no proof that Morendat Ltd was in possession or claiming any interest in the suit property since the Defendant did not prove by search or otherwise that the suit property LR No. 5212/19 belonged to the alleged Morendat Ltd. It was thus their submission that the said defense had not been proved and should be dismissed.
92. As to whether the Plaintiffs should be compensated and the amount of compensation, they placed reliance on the provisions of Article 40 of *the Constitution* to submit that despite the Defendant having taken possession of their parcels of land and built their transmission lines, they had up to date failed to pay the sum of Kshs. 65,797,788/= that had been agreed upon as compensation without any justifiable reason. That they were entitled to the compensation as had been agreed between the parties. Reliance was placed in the decided case of John Peter Mwangi Kagira v National Land Commission & another [2019] eKLR to submit that having established that the Defendant had breached their agreement with the Plaintiffs by failing to pay the compensation, the reliefs sought in the Plaint dated 10th July 2023 should be issued as prayed with accrued interest from 24th December 2020 at Central Bank Lending rate prevailing from time to time provisions as provided for under Section 148 (4)(5) and Section 117 of the *Land Act*, until payment in full with costs of the suit.
93. They thus sought for an order to issue that within 45 days from the date of judgment herein, the Defendant do deliver to them engrossed Easements for execution and thereafter pay the Plaintiffs' wayleave compensation as prayed in the Plaint upon registration of Easements on the said Plaintiffs' Titles or parcels of land, and in default, the Deputy Registrar of the Court do execute the requisite easements for registration on the Plaintiffs' titles.
94. That since the provisions of Sections 26 and 27 of the *Civil Procedure Act* state that costs follow the event, the Defendant be ordered to pay costs of the suit and interest on the principal claim, that the sum of Kshs. 6,579,778/= deposited in the joint interest earning account of the court, plus interest thereon also be released to the Plaintiffs. That their suit be allowed as prayed.
95. The Defendant, vide its written submissions dated 25th April 2025 and in opposition of the suit framed its issues for determination as follows:
- i. Whether this court has the original jurisdiction to determine this dispute?
 - ii. Whether the 1st Plaintiff's suit is properly before the court?
 - iii. Whether the 2nd Plaintiff has proper authority to act for the 1st Plaintiff?
 - iv. Whether the purported land parcel LR. 5212/19 exists?
 - v. Whether the Plaintiffs have complied with the terms of their respective letters of offer as sent to them by the Defendant?



- vi. Whether the Plaintiffs' suit has crystallized?
- vii. Whether the Plaintiffs are entitled to an award of the 14% interest claimed?
96. On the first issue for determination as to whether the court has the original jurisdiction to determine dispute herein, it placed reliance on the provisions of Sections 9, 11(i), 23, 24, 25, 36 and 37 of the Energy Act on the establishment and functions of the Energy and Petroleum Regulatory Authority and the Energy and Petroleum Tribunal to submit that the proper forum with the original jurisdiction to adjudicate on the instant dispute was the Energy and Petroleum Regulatory Authority established under the provisions of Section 9 of the Energy Act 2019. That indeed, the Energy Act gives any party aggrieved by the decision of the tribunal a right to appeal to the High Court (read Environment and Land Court) within 30 days of the date of the decision or order of the tribunal. It placed reliance in the decided case of Kenya Power & Lighting Company -vs- Odongo (Environment and Land Appeal E001 of 2023) [2024] KEELC 4942 (KLR) (13 June 2024) (Judgment) to urge the court to find that it was bereft of the original jurisdiction in the present matter.
97. That indeed, despite making extensive reliance on the Energy Act 2019 in their pleadings and submissions, the Plaintiffs had failed to invoke and/or exhaust the primary dispute resolution mechanisms established therein yet it was trite that the law was not to be read in isolation. It was thus their submission that the suit herein had offended the provisions of Article 169 of the Constitution by purporting to oust the Energy and Petroleum Regulatory Authority of its statutory original jurisdiction over the present matter as had been envisaged by the Energy Act 2019.
98. Reliance was placed in the court of Appeal's decision in the case of National Assembly -vs- Karume (1992) eKLR to submit that the court's hands were tied by the want of jurisdiction thus the present suit was liable to be struck out forthwith. Further reliance was placed in the Court of Appeal's case of Court of Appeal in Owners of the Motor Vessel "Lillian S" vs- Caltex Oil (Kenya) Ltd [1989] eKLR.
99. On the second issue for determination as to whether the 1st Plaintiff's case was properly before the court, it submitted that the 1st Plaintiff had failed to prove its capacity to institute the instant suit in its own name since being juristic persons, companies had a separate and distinct existence from their Directors as was held in Salmon -vs- Salmon.(sic) That it was not clear whether the 1st Plaintiff was indeed incorporated or just a shadowy entity as no Certificate of Incorporation whatsoever had been exhibited by the 1st Plaintiff to demonstrate its existence as a body corporate hence it had failed to prove its capacity to institute the instant suit in its own name in the manner that it had done. It placed reliance in the decided case of Humanity Home for Children Trust -vs- Agumba & Another (Environment and Land Appeal E012 of 2019) [2023] KEELC 21241 (KLR) (2 November 2023) (Judgment) to submit that the 1st Plaintiff's suit was incompetent and a candidate for striking out since in the event of any payments being made to the 1st Plaintiff, loss of public funds shall ensue should the true Directors of the said 1st Plaintiff eventually come out to properly claim compensation.
100. That further, the 1st Plaintiff had failed to exhibit a Company Resolution authorizing the filing of the instant suit since being juristic persons, companies only communicate through company resolutions made in a duly constituted meeting of Directors, convened within prescribed statutory timelines and authenticated with the company seal. That the Plaintiffs had failed to tender evidence of any such resolution authorizing them to pursue this suit against the Defendant on behalf of the 1st Plaintiff, thus the 1st Plaintiff's suit must accordingly fail. Reliance was placed in the decided case of Kiserian Isinya Pipeline Road Resident Association (KIPRRA) & 6 Others -vs- Jamii Bora Charitable Trust & Another [2007] eKLR.



101. That the 1st Plaintiff's alleged Director had also failed to prove his identity as and no copy of an official search (CR12) from the Business Registration Bureau or any evidence whatsoever had been exhibited by the Plaintiffs proving that indeed Mr. Igal Elfezouaty was a Director of the 1st Plaintiff as had been alleged. It was thus its submission that the said Mr. Igal Elfezouaty was a shadowy character and an impostor whose authority to transact on behalf of the non-existent 1st Plaintiff was doubtful.
102. That the 2nd Plaintiff also had no authority to act for the 1st Plaintiff, as he had not exhibited the Company's resolution under seal by the 1st Plaintiff nominating the 2nd Plaintiff to act on its behalf in the matter herein. That subsequently, the suit by the 1st Plaintiff for a total of Kshs 51,297,960/= being the alleged compensation for land parcel numbers LR. 5212/16, 17 & 19 was a non-starter, baseless, incompetent and fatally defective.
103. On the fourth issue for determination as to whether the purported land parcel LR No. 5212/19 existed, it submitted that whereas the Defendant had sent out a letter of offer over land parcel LR. No 27368 (the purported LR. No 5212/19) to Morendat Limited, the 2nd Plaintiff had alleged during his cross-examination that the said land belonged to an entity called "SHELTER YETU", which entity was not a party to the instant suit, and that the correct parcel number was allegedly LR. No 5212/19. That having failed to exhibit a copy of the title therein and while relying on the provisions of Section 26 of the Land Registration Act 2012 that the purported land parcel LR. No. 5212/19 was non-existent hence there was no basis for awarding the Kshs 3,780,630/= compensation claimed thereunder. That the court should thus dismiss the 1st Plaintiff's suit for wayleave compensation over the purported LR. No 5212/19 in toto.
104. On the fifth issue for determination, it was their submissions that the Plaintiffs having based their respective claims on the terms of their letters of offer from the Defendant, they ought to have complied with all the terms in the said letters but they had only signed the letters of offer and not submitted the accompanying documents necessary to complete the process and facilitate the Defendant's registration of the Easements and processing of payments.
105. That the process of Easement creation as between the parties herein entailed four (4) essential stages as follows:
 - i. Petitioners' tendering a written acceptance of the offer within fourteen (14) days;
 - ii. Submission of the required relevant documents to the Respondent to facilitate registration of Easement at the Lands Registry;
 - iii. Registration of the interest and endorsement of the same against the title documents; and
 - iv. Processing and payment of compensation to affected landowners.
106. The Defendant then placed reliance in the decided case of NIC Bank Limited -vs- Victor Ochieng Oloo [2018] eKLR to submit that the 1st Plaintiff's letters of offer over land parcels LR. No. 5212/16 and 5212/17 being Pf exh 6(d) and Pf exh 8 respectively were never executed and returned to the Defendant in part acceptance of the offers therein. On the other hand, whereas the offer letter to the 2nd Plaintiff for land parcel LR. 5212/18 being Pf exh 3 (a) had been executed in part acceptance, the same was never returned to the Defendant with the required attachments for registration of an easement over the title and processing of his compensation.
107. The further, whilst the offer letter to Morendat Limited for land parcel LR. No. 27368 being Pf exh 9 had been executed in part acceptance, it was never returned to the Defendant with the required



- attachments for registration of an easement over its title and processing of its compensation. That in any case, the said parcel of land was not part of the dispute in court.
108. That it was not disputed that the Plaintiffs had partially accepted their offers as they had not tendered any evidence indicating that they had surrendered the required documents sought in their letters of offer to satisfy the second condition. The Defendant placed reliance in the decided case of *Spellman & Walker Co. Ltd -vs- University of Nairobi* [2005] eKLR to invite the court to find that there had only been part compliance with its letters of offer.
 109. As to whether the Plaintiffs' suit had crystallized, the Defendant submitted in the negative and explained that the same should abide the outcome of the pending Ethics and Anti-Corruption Commission (EACC) Appeal since the Plaintiffs had not produced any court order striking out the Notice of Appeal herein produced as Dfexh 6. That no application to strike out under the provisions of Rule 86 of the Court Appeal rules, 2022 had been exhibited thus rendering the suit herein premature. Reliance was placed in the Court of Appeal's decision in the case of *National Industrial Credit Bank Ltd -vs- Aquinas Francis Wasike & Another* [2006] eKLR.
 110. That in the instant case, prudence dictates that payment of any compensation to the Plaintiffs abides the hearing and determination of the EACC appeal which could nullify their titles so as to avoid potential loss of public funds accruing. That the Defendant was a public entity funded by the public coffers which should be prudently utilized and was equally liable to account to the Auditor General & the public for public funds spent. It thus submitted that the Plaintiffs' suit for compensation for wayleaves was premature. That in any case, the Plaintiffs had failed to surrender their original titles for creation and endorsement of easements thereon in violation of the second condition in the Defendant's letters.
 111. Further reliance was placed on the decisions in the cases of *Regional Container Freight Station Limited -vs- Kenya Ports Authority & Another* (Environment & Land Case 280 of 2018) [2022] KEELC 3849 (KLR) (26 July 2022) (Judgment) and *Linda Telles -vs- Director of Planning, Compliance and Enforcement & 6 Others* [2018] eKLR to submit that the Defendant had always been amenable to compensating affected landowners upon registration of easements against their titles and that the Defendant being a public body, it could only pay upon registered interests in land to avoid loss of public resources.
 112. They also hinged their reliance in the Court of Appeal's decision in the case of *National Bank of Kenya Ltd -vs- Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR to submit that a Court of law could not re-write a contract between the parties and that parties were bound by the terms of their contract wherein they invited the court to find that the Plaintiffs had not fully complied with the terms in their letters of offer as to bind the Defendant to compensate them in the manner sought.
 113. On the seventh issue for determination as to whether the Plaintiffs were entitled to an award of the 14% interest claimed, they placed reliance on the provisions of Sections 117 of the *Land Act* 2012 on the applicable rate of interest payable on withheld compensation to submit that the Plaintiffs' claim for 14% interest was baseless. That in any case, in the present case, the Plaintiffs were not entitled to an award of interest claimed as they were the authors of their own misfortunes. It placed reliance in the decided case of *Mwatech Enterprises Ltd -vs- Equatorial Commercial Bank Ltd* [2021] eKLR.
 114. The Defendant thus prayed that the present suit be struck out and or be dismissed with costs.
 115. In response to the Defendant's Submissions, the Plaintiff vide their Supplementary Submissions dated 2nd May 2025 submitted that the jurisdiction of this court to adjudicate on wayleave compensation had been settled in several decisions, where the Defendant's similar objections had been overruled. They



- placed reliance on the decisions in the cases of Feneast Nominees Limited v Transmission Company Limited (Environment & Land Case 15 of 2023) [2024] KEELC 3601 (KLR) (2 May 2024) (Ruling) and Muchuku v Kenya Electricity Transmission Co Ltd (Land Case Petition E003 of 2022) [2023] KEELC 101 (KLR) (19 January 2023) (Ruling).
116. That the totality of the provisions of Article 162 (2) (b) and 3 of *the Constitution* as read together with Section 13 (1) of the *Environment and Land Court Act* was that the Environment and Land Court was bestowed with the powers and/or jurisdiction to deal with disputes relating to the environment, land use and planning, boundary disputes, land disputes among others. That the provisions of Section 11(i) of the *Energy Act* No. 1 of 2019 vested the Energy and Petroleum Regulatory Authority with the power to instigate and determine disputes relating to licenses and license conditions only.
 117. They placed reliance on the provisions of Section 2 of the *Energy Act* to submit that the dispute flowing from non-payment of wayleave compensation did not fall within the confines of the Energy and Petroleum Regulatory Authority and subsequently, the provision of Section 11(i) and 36 of the *Energy Act* was not applicable in the instant dispute.
 118. They thus submitted that the provisions of Articles 162 (2) of *the Constitution* as read together with Section 175 of the *Energy Act*, Section 148 of the *Land Act* and Section 13 of the *Environment and Land Court Act* donates this court with the jurisdiction to hear the Petition before it hence the same was properly before the court. That further, the case laws that had been cited herein were distinguishable and irrelevant in the instant case.
 119. As to whether the 1st Plaintiff's case was properly before the court, they submitted in the affirmative to the effect that the Defendant had expressly admitted the description of the 1st Plaintiff at paragraph 2 of its Statement of Defence, that further, the 1st Plaintiff's existence, personality or participation in the present suit having given a letter of authority to the 2nd Plaintiff was neither disputed nor challenged in the pleadings.
 120. Reliance was placed on the provisions of Order 2 rule 4(6) of the Civil Procedure (Amendment) Rules to submit that parties were bound by their pleadings thus the Defendant's purported challenge on locus, personality or competent of the 1st Plaintiff's suit was baseless, an afterthought and a departure from the Defence before Court. Reliance was placed on the Court of Appeal's decision in the case of Green & another v Kazungu & 2 others (Civil Appeal E017 of 2020) [2022] KECA 991 (KLR) (23 September 2022) (Judgment)
 121. On whether land parcel LR. No 5212/19 existed, they invited the court to look at a copy of the letter of offer dated 18th December 2020 produced by both parties and which the Defendant had alleged that it had been addressed to Marindat Limited. That the court would note that the name Marindat Ltd was nowhere in the said letter of offer since the offeree had been cancelled and signed against. That on the second page of the said letter, the offer had been accepted by Igal R. Elfezouaty on 24th December 2020 and that there was no dispute that the said Igal was a Director of the 1st Plaintiff who was the claimant of the said parcel of land. That indeed, at the same page 2 of the said letter, D. Langat had signed off at the bottom acknowledging it as a received acceptance of the letter, illustrating that the Defendant had duly received the 1st Plaintiff's acceptance of the offer on the said land. That in any case, no evidence was produced in court to prove that the land belonged to the alleged Marindat Limited or Shelter Yetu.
 122. The Plaintiff submission was that their suit had crystalized, they had disclosed a reasonable cause of action in law to which the Defendant had failed to disclose a reasonable Defence in law. That the decision of the Court of Appeal in National Credit Bank Ltd case (supra) was distinguishable and inapplicable in the instant case since the court therein was adjudicating on an interlocutory application



under Rule 5 (2) (b) of the Court of Appeal Rules. That pursuant to the Court of Appeal's decision in *Kibunja v Kirweya & 2 others* (Civil Application E040 of 2022) [2024] KECA 363 (KLR) (12 April 2024) (Ruling), failure to file an appeal or demonstrate steps in filing an appeal within the 60 days after the Notice of Appeal deemed the Notice of Appeal as withdrawn. No evidence had been adduced that an application for stay of execution had ever been filed at the Court of Appeal.

123. Lastly that they were entitled to a 14% interest pursuant to the provisions of Section 117 of the *Land Act*, 2012. That in any case, 14% was a court rate awarded under the provisions of Section 26 of the *Civil Procedure Act* because they had been unjustifiably denied compensation since 24th December 2024, a period of over 6 years. They thus prayed that their suit be allowed as prayed.

Determination.

124. I have considered the Plaintiffs' suit, the Defendants defence, the parties' respective submissions and the authorities cited in support and in opposition thereof of their positions, as well as the applicable law here.
125. The brief history giving rise to the issue before court and which facts are not disputed is that between the year 2019 and December 2020 the Defendant, sought a wayleave corridor trace of about 60-meter-wide route through the suit properties herein for the construction of its 400/220/132kv Olkraia-Lessos-Kisumu transmission line. That in so doing, through its agents on the ground, and after the valuation of the respective land, it had distributed letters of offer dated 18th December 2020 for wayleave Compensation for land parcels No. LR No. 5212/ 16 – 19 situate in Naivasha sub County Nakuru County as follows;
- i. Ref: KET/4/14G/6/1187–20/MM/rc, an offer for compensation for wayleave for Ksh. 19,340,517/= addressed to the 1st Plaintiff in respect to parcel LR. No. 5212/16.
 - ii. Ref: KET/4/14G/6/1186–20/MM/rc, an offer for compensation for wayleave for Ksh. 28,176,813/= addressed to the 1st Plaintiff in respect to parcel LR No. 5212/17.
 - iii. Ref: KET/4/14G/6/1184–20/MM/rc an offer for compensation for wayleave for Kshs. 3,780,630/= addressed to Morendat Limited in respect to parcel LR No. 27368.
 - iv. Ref: KET/4/14G/6/1185–20/MM/rc an offer for compensation for wayleave for Ksh. 14,499,828/= but which had no addressee and was in respect to parcel to LR No. 5212/18.
126. It is not in contention that the proprietors of the affected parcels of land upon receipt of the said letters of offer were to convey their acceptance of the offer by signing at the back of the letter wherein for LR. No. 5212/16 and LR No. 5212/17 the letters had not been signed, for LR No. 27368, the same had been accepted on 24th December 2020 and for LR No. 5212/18, the offer had been accepted by Michael Mwangi Muturi, the 2nd Plaintiff herein.
127. Lastly is not in contention that the Defendant had taken possession of the suit properties, laid the transmission lines and were utilizing the wayleaves on the suit properties without payment of wayleave compensation.
128. Whereas the Plaintiff's argument was that despite having submitted to the Defendants copies of their titles, and their identity cards, wherein they had been promised to be contacted to execute the documents for wayleave and to avail the original titles for registration, they were never contacted because the Defendants alleged that ownership of the land had a dispute with Ethics and Anti-Corruption Commission (EACC) and KALRO, although the Defendant had taken possession of



- their land, laid the transmission lines and were utilizing the wayleaves without payment of wayleave compensation.
129. The Defendants' defence on the other hand was that indeed upon the issuance of the letters of offer, no easement interests had been created and registered over the suit properties because despite the said letters of offer having been conditional (on two terms), there had been non-compliance by the Plaintiffs in that the letters of offer to LR. No. 5212/16 and LR No. 5212/17, Def exh 2 and 3 respectively had not been accepted and neither had they been supplied with the requisite documents. That in relation to LR No. 27368, Df exh 4, despite the same having been accepted there were no details and therefore they did not have any details of the person who had signed the offer. Lastly in respect to LR No.5212/18, the 2nd Plaintiff did not also submit any documents, the most sensitive document herein being the title.
 130. That in the absence of the acceptance, and or/documents sought in the second condition of their letter of offer coupled with a communication received from the Ethics and Anti-Corruption Commission (EACC) about revocation of the mother title LR No. 5212 which gave rise to the subdivisions which were the suit properties herein, they could not proceed with the preparation of the easement in the absence which payment could not be processed.
 131. Another twist in the matter that emerged was whether or not parcel LR No. 5212/19 was LR No. 27368 which parcel of land existed or whether they were distinct parcels of land.
 132. Having summarized the matter in issue, what stands out for the court's determination is the following:
 - i. Whether this court has jurisdiction over this matter, if yes
 - ii. Whether Gazette Notice No. 1716 of 22nd February 2019 revoking ownership of L.R No. 5212 the mother title of the suit properties, was set aside.
 - iii. Whether the Plaintiffs made out their case.
 133. On the first issue for Determination as to whether this court has jurisdiction over this matter, Article 162(2)(b) of *the Constitution* of Kenya establishes a superior court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, wherein the *Environment and Land Court Act* operationalizes the said provision of *the Constitution* at Section 13 of the *Environment and Land Court Act*, which grants the Environment and Land Court (ELC) exclusive jurisdiction to hear and determine all disputes relating to the environment, land use, occupation, title to land as well as disputes concerning contracts, choses in action or other instruments granting any enforceable interests in land.
 134. Wayleaves are rights of way over land, often registrable as easements, and involve compensation for the use and occupation of land and as such, they directly fall under the purview of the Environment and Land Court's mandate.
 135. Section 148 of the *Land Act* which deals with determining disputes over the quantum of compensation for wayleaves, the interpretation of wayleave agreements, and the assessment of damages arising from the establishment of such infrastructure on private land and Section 149 which grants powers to courts to enforce public rights of way also reinforces the Environment and Land Court's role in such land disputes given the Environment and Land Court's specialized jurisdiction over land matters.
 136. On the other hand, in dealing with wayleaves, the *Energy Act*, relates to energy infrastructure (like power lines) and while the Act establishes an Energy and Petroleum Tribunal (EPT) its primary role is to deal with disputes between licensees (e.g., KPLC, oil companies) and other stakeholders, including consumers, regarding licenses, service quality, billing, and compliance with energy laws. Although the



Energy and Petroleum Tribunal EPT might handle disputes related to the exercise of the wayleave (for example damage caused during operations, adherence to technical standards), yet the core dispute of fair compensation for the land itself usually lies with the Environment and Land Court. Appeals from EPT would then lie to the High Court. This means that if a wayleave dispute with an energy company involves aspects that the EPT hears (for example a dispute about the terms of the wayleave agreement rather than the land value), the appeal route would be through the High Court.

137. The Supreme Court in its decision in *Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023)* [2023] KESC 113 (KLR) (28 December 2023) (Judgment) observed as follows:

“In addressing the conundrum placed before us, we must remind ourselves that, what is in dispute before this Court is the applicability of these provisions to the appellant’s claim and not the true meaning of the provisions of either EMCA or the *Energy Act*. This is because the provisions of EMCA or the *Energy Act* do not expressly oust the jurisdiction of the ELC in respect of the procedure for the determination of disputes that involve the management of the environment or issues of petroleum and energy. In the ordinary course of events, the ELC still has original jurisdiction over the matters that are handled by NEMA, unless such jurisdiction is specifically and expressly ousted in a constitutionally compliant manner. The same holds true for proceedings under the *Energy Act*.

138. I thus find that the court is vested with the requisite jurisdiction to hear and determine the issues presented before it for adjudication.
139. On the second issue for determination, as to whether Gazette Notice No. 1716 of 22nd February 2019 revoking ownership of L.R No. 5212, the mother title of the suit properties, was set aside, it is not in contention that The National Land Commission had recommended that the chief Land registrar revokes the title to L.R No. 5211 and 5212 held by Karati Farm and Top Farm and vest the property to Kenya Agricultural and Livestock Research Organization (KALRO). It is also not disputed that this decision had been challenged via Nakuru ELC Petition No. 8 of 2019 (Consolidated with ELC No. 24 of 2019) wherein the same had been quashed by a judgement dated the of 27th September 2023 reported as *Prosperity Developers Limited v National Land Commission & 3 others* [2022] KEELC 12651 (KLR).
140. The Court of Appeal sitting in Mombasa in *Kibunja v Kirweya & 2 others* (Civil Application E040 of 2022) [2024] KECA 363 (KLR) (12 April 2024) (Ruling) observed as follows at paragraph 9.

“The provisions of rule 85 of the Court of Appeal Rules are predicated on the existence of circumstances from which the Court can deem a Notice of Appeal as having been withdrawn. Firstly, the steps that are required to be taken in instituting an appeal are those required by this Court’s Rules. Secondly, there is no evidence that such steps namely, those of seeking typed proceedings, issuance of a certificate of delay, and filing of the record of appeal have been demonstrated by the 1st and 2nd Respondents, and the reasons for the delay have not been proffered. Since the relevant facts in this application have not been demonstrated, the Notices of Appeal filed by the 1st and 2nd respondents may be deemed to have been withdrawn.”

141. There having been no evidence that the decision in the Nakuru ELC Petition No. 8 of 2019 (Consolidated with ELC No. 24 of 2019) had been set aside, that decision by the Land Commission via Gazette Notice No. 1716 of 22nd February 2019 in my view remains quashed.



142. As to whether or not parcel LR No. 5212/19 was LR No. 27368 and which parcel of land existed or whether they were distinct parcels of land, evidence had been adduced that there had been served upon the Plaintiffs a Letter of Offer dated 18th December 2020 in respect of Title No. LR 27368 herein produced as Pf exh 9 and whereas the Plaintiff's argument was that what existed was land parcel No. 5212/19, the Defendant was adamant that No.LR 27368 existed as per their map.
143. The provisions of Section 26(1) of the Land Registration Act are clear that the Certificate of Title issued upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner. Interestingly in the current case there was no certificate of either of the land produced in evidence and therefore the court is at a loss as to whether or not either of these suit properties are in existence and/or who is the registered Proprietor.
144. As to whether the Plaintiffs made out their case, the Defendant in their defence managed to poke serious holes into the Plaintiffs' case, when it questioned whether the 2nd Plaintiff has proper authority to act for the 1st Plaintiff and secondly that the Plaintiffs had not complied with the terms of their respective letters of offer.
145. The 1st Plaintiff in this case had been defined in the Plaint as Limited Liability Company. It is trite that a company is a legal entity, which acts through its Directors and/or members. To ensure proper corporate governance and to demonstrate that the lawsuit is authorized by the company, a formal resolution (usually a Board Resolution or a Members' Resolution) is necessary which resolution grants the specific individuals (e.g., directors, managing partners) the authority to instruct lawyers, sign legal documents, and pursue the case on behalf of the Company. Therefore, for the company to act as the claimant, it must authorize the institution of the suit. This authorization is typically evidenced by a resolution without which a Defendant could challenge the validity of the lawsuit on the grounds that it was not properly sanctioned by the company.
146. Indeed, I am aware of the decision that had been followed and applied in this country for a long time being the Ugandan case of Bugerere Coffee Growers Ltd v Sebaduka & Others (1970) 1 EA 147 (HCU) where the court had held that a company authorizes the commencement of proceedings by resolution of the company or by way of minutes of its board of directors. I am also aware that his holding was overturned by the Supreme Court of Uganda in case of United Assurance Co. Ltd v Attorney General (Civil Appeal 1 of 1986) [1986] UGSC 18 (6 October 1986) where it had been held and is now settled that, it does not require a Board of Directors, or even the general meeting of members, to sit and resolve to instruct Counsel to file proceedings on behalf and in the names of the Company. Any Director, who is authorized to act on behalf of the company, unless the contrary is shown, has the powers of the board to act on behalf of that Company. In the present case, whereas there was no resolution of the Board of Directors filed alongside the Plaint to show that the Company had authorized the filing of the suit, there was no copy of an official search (CR12) from the Business Registration Bureau or any evidence whatsoever had been exhibited by the Plaintiffs proving that indeed Mr. Igal Elfezouaty existed and was a Director of the 1st Plaintiff as had been alleged, there was no Certificate of Incorporation of the 1st Plaintiff. The only evidence adduced as Pf exh 1 was the authority to testify and act which authority bore no stamp or seal of the Company and wherein no evidence had been adduced that the 2nd Plaintiff was either a Director or Shareholder of the 1st Plaintiff.
147. In the case of Spire Bank Limited v Land Registrar & 2 others [2019] KECA 530 (KLR), the Court of Appeal held as follows: -
- “...It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on



its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized."

148. I thus find that the 2nd Plaintiff who was not in any way associated with the 1st Plaintiff, as either a shareholder, member or Director of the company, had no authority to act for the 1st Plaintiff and neither was this suit sanctioned by the 1st Plaintiff if at all it existed. Indeed, at para 2 of the Plaint no such connection had been established.

149. Lastly, although it is not in contention that the Defendant herein upon the issuance of the letters of offer, took possession of the suit parcels of land, constructed their wayleaves therein but failed to pay compensation, there has been an argument on the reasons as to why the said compensation was not paid with the Defendant stating that there had been non-compliance with the second part of the said letter of offer which read in part as follows;

"Kindly convey your written acceptance of this offer within fourteen (14) days from the date of receipt.

In the meantime, we request you to submit to KETRACO, your Title Deed, copy of National Identity Card/ Passport, 2 Colour Passport photographs, PIN Certificate and your bank account details as well as a copy of this letter endorsed in token of your acceptance of the offer to enable us commence processing of your compensation claim."

150. That the Plaintiffs failed to submit the undersigned documents and therefore frustrated the contract by failing to provide the original title deeds, identification and other documents necessary for processing of the easement agreements for execution and registration to create an interest on the suit properties. Although the Plaintiffs evidence had been that they had submitted the required documents, no evidence had been tendered to confirm this allegation. The Defendants' position was that they were willing and ready to pay the compensation upon tendering of the original documents by the Plaintiffs.

151. The Court of Appeal sitting in Nyeri in *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* [2013] eKLR, had observed as follows:

"...We have considered the rival submissions on this point and state that section 107 and 109 of the *Evidence Act* places the evidential burden upon the appellant to prove that the signature on these forms belong to the Respondent. Section 107 of the *Evidence Act* provides that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

Section 109 stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness."

152. In the present case, I find that the Plaintiff did not discharge the burden placed on them as provided for by the law.



153. I find that after taking all the circumstances of this case into consideration, and the fact that the Court of Appeal in National Bank Kenya Limited –vs- Pipeplastic Samsolit (K) Limited & Another [2002] 2 EA 503 held that a Court of law cannot rewrite a contract between the parties and that the parties were bound by the terms of their contract unless they could prove that coercion, fraud or undue influence was used to procure the contract.

154. I find that the Plaintiffs' suit lacks merit and the same is herein dismissed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 10TH DAY OF JULY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

