



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KISII

ELC SUIT NO. 178 OF 2017 (O.S.)

IN THE MATTER OF COMPENSATION FOR GRANT OF EASEMENT OVER

LAND REFERENCE NO. BONYAMOYO/BOSIGISA/BOBURIA/158 –KISII COUNTY

BETWEEN

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

FRANCIS AMENYA & FRED ORANGI (Sued as Beneficiaries of the Estate of the late

OBONYO ONDERI.....1ST DEFENDANT/RESPONDENT

MOSES OMUKO RATEMO.....2ND DEFENDANT/RESPONDENT

RULING

1. The Plaintiffs commenced this suit by way of Originating Summons seeking a determination of the following questions:

i. Who amongst the Defendants should the Plaintiff herein compensate for the limited use of L.R No. **BONYAMOYO/BOSIGISA/BOBURIA/158** for purposes of passing over the said property from the proprietor (sic)

ii. Who should bear the costs of the Originating Summons and the accompanying application?

iii. Whether the Defendants should be permanently enjoined from interfering with the Plaintiff's construction of High Voltage Power lines along the said parcel of land.

iv. The Originating Summons was supported by the Affidavit of Lydia Wanja, the Manager Legal Services, Kenya Electricity Transmission Company Limited in which she deposes that the Plaintiff intended to construct High Voltage Power lines which would traverse approximately 0.42 acres over the suit property. The Plaintiff and therefore done a valuation of the portion over which the power line would pass and the same was assessed at Kshs. 300,000. The said amount was to be paid to the owner of the suit property but the Plaintiff learnt that the registered owner of the suit property had died and the 1st and 2nd Defendants who are the sons of the deceased and beneficiaries of his estate are laying claim to the money. The Plaintiff subsequently learnt that before his demise, the owner of the suit property had sold a portion of the suit property measuring 1.5 acres to the 2nd Defendant who now claims the compensation as the said power lines pass through his portion of land.

2. Together with the Originating Summons, the Plaintiff filed a Notice of Motion dated 15th September, 2017 seeking a temporary injunction to restrain the Defendants from interfering with the construction of the power line on the suit property pending the hearing and determination of the Originating Summons.

3. When the application came up for hearing on the 23rd October 2017, the Court made the following orders:

1. That pending the hearing and determination of the Originating Summons, the Defendants/ Respondents by themselves, their agents or any other person claiming through them are restrained from interfering in any way whatsoever with the Plaintiff/Applicant's construction of a High Voltage Power line over 0.42 acres of L.R No. **BONYAMOYO/BOSIGISA/BOBURIA/158**.

2. The Plaintiff do deposit in court the sum of Kshs. 300,000 being compensation for the limited use of L.R No. **BONYAMOIYO/BOSIGISIA/BOBURIA/158** pending the hearing and determination of the Originating Summons.

3. The said amount be deposited in court within 21 days.

4. The Plaintiff subsequently deposited the said amount in court. Before the Originating Summons could be set down for hearing, the Plaintiff filed an application dated the 6th September 2019 seeking the following orders:

1. That the Honourable court be pleased to order Land Registrar, Kisii to execute the Easement over L.R No. **BONYAMOIYO/BOSIGISIA/BOBURIA/158** covering 0.42 acres in favour of Kenya Electricity Transmission Company Limited (KETRACO) for the purposes of the Plaintiff's High Voltage Power Line known as Kisii-Awendo Transmission Line for the consideration of Kshs. 300,000 already deposited in court.

2. That this Honourable Court be pleased to order the claim herein settled as per order No. 1 above.

3. This Honourable Court do make appropriate orders as to costs.

5. It is this application that is the subject of this ruling. When the application came up for hearing on 9.12.2020, the court directed that the parties file their written submission. However, the Defendants filed submissions in respect of the application dated 15th September, 2017 while the Plaintiff filed their submissions in respect of the application dated 6th September, 2019.

ISSUES FOR DETERMINATION

6. Having considered the pleadings and submissions filed herein, the singular issue for determination is whether the Plaintiff is entitled to the orders sought.

ANALYSIS AND DETERMINATION

7. In his submissions counsel for the Plaintiff has stated that the power line she was constructing has since been completed and the compensation sum deposited in court. Counsel admits that the only issue outstanding is for the court to determine who ought to be paid the compensation amount. Since this is one of the main reliefs sought by the Plaintiff in the Originating Summons, it would be premature to make a determination on the issue before hearing the parties. On another note, the Grant that had been issued to the 1st Defendant which was subsequently revoked, needs to be reinstated in order for the 1st Defendant to be able to pursue his title from the deceased's beneficiaries after which the issue of compensation can be resolved.

8. That being the position, I am disinclined to grant the application as it will serve no useful purpose. The same is accordingly dismissed. I direct that the suit be set down for hearing of the Originating Summons once and for all.

DATED, SIGNED AND DELIVERED AT KISII THIS 28TH DAY OF JULY, 2021.

J.M ONYANGO

JUDGE