



Gathi & another v Kenya Power & Lighting Co Ltd (Environment and Land Case Civil Suit 336 of 2014) [2025] KEELC 4826 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4826 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 336 OF 2014**

**AA OMOLLO, J
JUNE 26, 2025**

BETWEEN

DAVID MIRARA GATHI 1ST PLAINTIFF

RUTH WAMBOI NJUHO 2ND PLAINTIFF

AND

KENYA POWER & LIGHTNING CO.LTD DEFENDANT

JUDGMENT

1. The Plaintiffs filed this suit against the defendant vide Plaint dated 18th April 2005 seeking for the following orders: -
 - a. A Declaration that the Plaintiffs are entitled to full and prompt compensation for the use of the suit properties, mesne profits and general damages for continuing loss and damage in nuisance and health hazards by the Defendant.
 - b. An assessment by this Honourable Court of the compensation, mesne profits and general damages entitled to the Plaintiffs in (1) above for the use of the suit properties and for continuing loss and damage in nuisance and health hazards.
 - c. Costs of this suit.
 - d. Interest on prayers 2 to 3 above.
2. The Plaintiffs state that at all material times, they were/are registered owners of the properties appearing against their names on the Authority to act given to the 1st and 2nd Plaintiffs who are the owners of L. R No.Limuru/Ngecha/4091 and Ndeiya/Makutano/1331 respectively referred to as “the suit properties.”



3. That sometime in 1997, the Defendant through its agents and servants approached the Plaintiffs with a request to allow the Defendant to erect an electricity transmission line from Olkaria to Dandora passing over the suit properties. That the Defendant indicated that the electricity line was a single-phase domestic supply-line and thereby induced the Plaintiffs to agree to the project subject to agreed adequate compensation for the use of the suit properties prior to commencement of works.
4. Subsequently, the defendant had the Plaintiffs signed a standard form wayleave “agreement” and promised to negotiate the amount of compensation for the use of the suit properties at a later date. The Plaintiffs averred that without negotiating for compensation for the use of the suit properties, the defendant unlawfully and unilaterally trespassed and entered into the suit properties and began construction work sometimes towards the end of 2001.
5. That contrary to the indication by the defendant that the electricity line to be put is a single - phase domestic supply line, they erected huge high voltage towers/pylons to transmit high voltage electricity over the suit properties as a result the Plaintiffs have suffered loss and damage. The Plaintiffs particularized loss and damage resulting from the cutting down of trees and food crops, destruction of houses, livestock pens, and other structures, as well as being forced to relocate and rebuild houses/ homes. They also alleged that the designated wayleave area was rendered unusable for cultivation, grazing, or construction.
6. The Plaintiffs stated that sometime in 2003, the Defendant completed stringing the high voltage electric wires over the suit properties and began transmitting power. They have particularized the ongoing loss and damage due to their inability to use the wayleave area, exposure to noise pollution from the high-voltage power lines, and potential health risks from electromagnetic radiation affecting them, their livestock, and crops.
7. The Defendant filed an Amended Defence dated 17th February 2010 disputing the Plaintiffs’ claim. It stated that the Plaintiffs were paid compensation in full by the defendant and they acknowledged the receipt. That Plaintiffs numbers 95 & 172 were paid 10% of the agreed total compensation amount to enable them process their title documents as they were involved in family land disputes.
8. That also Plaintiffs Nos.2, 15, 16, 17, 53 and 120 had made exaggerated and unjustified demands but nevertheless negotiated with the defendant and declined to accept the given compensation. The defendant also stated that the remaining Plaintiffs were not in any way affected by the defendant’s electric transmission line and does not admit liability for the particulars of loss and special damages as alleged.

Plaintiffs’ Evidence

9. In the opening statement, Learned Counsel for Plaintiffs presented that the Plaintiffs are claiming compensation from the defendant arising from the defendant’s acquisition of land for wayleave. That the Plaintiffs claim is that the manner in which the defendants acquired the way leave was illegal in that the defendant did not follow the process laid out in the Electric Power Act.
10. PW1 John Kinyanjui Nganga, a resident at Ndeiya, Makutano and one of the Plaintiffs testified and adopted his recorded witness testament dated 14/12/2012 filed on 25/3/2013 as evidence in chief. He stated that his land is L.R. No. Ndeiya /Makutano/1220 and that part of it was taken as wayleave by the Defendant as confirmed by the surveyor. He said he was not paid any compensation despite their promise to come back and do so.
11. Further, he stated that the surveyor prepared a report and a sketch which showed that a portion of his land measuring 0.0935 Ha was taken as a wayleave out of the land which measured 2 acres. In support



he produced, copy of certificate of official search dated 21/7/2009, copy of title dated 7/2/1995, the surveyor's report/sketch dated 30/3/2011 and demand letter dated 5/1/2004 as PExh1, PExh2, PMFI 3 and PExh 4 respectively.

12. The witness stated that the power line passes through his land and that his cows are giving birth prematurely when it rains because of the electric sparks produced. That the Defendant has also cut his trees and his crops in that area of the land does not do well thus unable to cultivate. He averred that he has 8 children and was to gift them the said land but now he is not able to do so.
13. On cross examination by Mr Lawson Ondieki learned counsel for the Defendant, PW1 testified that from the surveyor's report, his parcel of land is the one which is 210m by 40 m and that the power line is visible towards the right. That he understands that there is the powerline and the way leave on both sides of the line, and that both the powerline and wayleave passing through his land. Shown a sketch, the witness said he does not know what the shaded area is for but the area of his land affected is 0.0935 Ha.
14. PW2, James Mwangi Kariithi, one of the Plaintiffs said he is a carpenter who resides in Ndeiya, Nguimbi. He adopted his written statement as his evidence in chief but clarified that he is not the registered owner of Nguimbi/Ndiuni/446 (Plot No. 446) as the same is registered in the name his mother, Elizabeth Rungura Karithi to whom he is a dependant.
15. He testified that the defendant had made a payment of Ksh. 26,632/= to his mother as compensation for the wayleave and that he was staying at the land when the power lines were being installed. The witness posited that his house was directly below the power line thus he had to demolish it and move to another part of the land including his mother's house. Further that their trees on the area were also cut down.
16. The witness disclosed that the mother was paid a total of Ksh.570,000 for the buildings but was not told how much was paid for his house and also stated that a sum of Ksh. 28,632 was paid to his mother for wayleave. He contended that he is seeking compensation at the market rate for the wayleave which has taken half of the land, 5 acres in size and loss of use thereof. He produced as exhibits, copies of certificate of official search dated 1/9/2009, title deed dated 15/2/1991, acknowledgment of payment dated 27/2/2002 and internal memo dated 26/9/2001 as PExh 5, 6, 7 and 8 respectively.
17. On cross examination, the witness confirmed that the land is registered under his mother, and that he witnessed his mother's acknowledgement of receiving the sum of Ksh.570,000 for the buildings and Ksh.28,632 for the wayleave.
18. PW3 was Samuel Ndegwa Mwaura who is one of the Plaintiffs residing at Sigona, Kikuyu and a flight operation officer. He adopted his witness statement as evidence in chief adding that he is the registered owner land reference number Ngumbi/Ndiuni/305, Plot No.305. He stated that the power line passes through the upper part of the land which is rectangular in shape with the wayleave occupying an estimated area of one acre.
19. The witness testified that the Defendant had initially given him a cheque of Ksh.39,000 which he declined before they gave him another cheque of Ksh. 100,000 and was forced to take being told that it was a government project thus would proceed whether he likes it or not. He contended that the cheque was given after the Defendant had installed the power lines and that he was not informed the criteria used to arrive at amount of the Ksh.100,000 compensation.
20. He also contended that the land was for settling his family which is not possible due to the size taken up by the wayleave and that his trees in the area occupied were cut. He sought for compensation for



- the loss of use of land and for surrender of the one-acre land affected. PW3 produced a certificate of official search dated 22/9/2009 as PExh 9.
21. On cross examination, PW3 confirmed that he gave an easement to the defendant for Ksh.100,000 which he acknowledged receiving but contended that he had no option having been coerced to the same.
 22. PW4, Lucy Wambui Njunge, a resident of Kikuyu, kidfamco stated that he is a small-scale farmer and owner of Nguimbi/Ndiuni/276 which is registered under the name of her deceased husband and has obtained letters of Administration. She adopted her witness statement dated 14/12/2012 as evidence in chief but clarified that the plot is not registered under her name.
 23. She testified that power lines have passed across her 5-acre land which covering an area of 270 m by 100 M. That the whole plot was taken up by the defendant because the power lines have passed in the middle of the land. She was compensated Ksh. 1.42 Million for the building; her house, children's house, chicken house and 3 water tanks.
 24. Further, that she had to move from the land to another plot but was not compensated for the relocation or for the wayleave. PW4 contended that she had planted trees which were cut down, fruits, maize and potatoes and that she not able to cultivate the same anymore thus seeks for compensation for the same, loss of use of the land and for the wayleave. She produced copies of certification of official search on 4/9/2009, title deed dated 15/2/1991 and internal memo dated 26/9/2001 as PExh 10,11 and 12 respectively.
 25. Wanjiku Njuho gave her evidence as PW5 stating that she is a resident of Ndeiya and a retired teacher. She was giving evidence on her own behalf and on behalf of her mother, Ruth Wambui Njuho by adopting their recorded statements as evidence in chief. PW5 stated that she is the owner of Plot 1326 which measures 0.19 ha and that the power line has affected the whole land objecting to the defendant's assertion that they had only taken up 0.991 acres of the land as indicated in their letter dated 3/1/2003 produced as PExh13.
 26. That she was given Ksh.59,460/= by the defendant but refused and the same was revised to Ksh.208,170/= which they stated they could not pay more and only 70% could be paid. She was not satisfied with that because she was not informed how the Defendant arrived at the said amount.
 27. The witness averred that she was cultivating the land, had planted trees and was planning to build a house on the same but the trees were cut and could not proceed with usage of land as planned. That she was paid for the trees by the defendant at a market price they unilaterally decided on and seeks for compensation of the loss of use of the land and full compensation at market price to enable her acquire a plot elsewhere.
 28. The witness testified that her mother owns Plot No.1331 measuring 0.38 Ha which has also been affected by the way leave which has occupied 0.23 acres of the same and she was not compensated. She also stated that her mother protested when the defendant was installing the power lines and by the time she was called, she found her mother down, hurt on the wrist and the defendant's employees gave them deep heat ointment to apply. Upon their protest, she was taken to a hospital near Stima Plaza but they never bothered to follow up.
 29. The witness stated that her mother seeks for compensation for the injury suffered and the wayleave. She produced a survey report as exhibit, a power of attorney donated by her mother filed on court on 15/2/2022, certificate of official search dated 21/7/2009, title deed dated 6/5/96 and demand letter dated 5/1/2004 as PExh 14, 15, 16 and 17 respectively.



30. On cross examination PW5 confirmed that she received Ksh.208,170/= from the defendant but qualified that she signed the easement without knowing what it was.
31. PW6, Francis Ngimithi Njoro is the 135th Plaintiff and a resident of Ndeiya Nguirumbi. He stated that electric power lines have encroached on his land taking up a portion measuring 0.772 Ha as per the valuation report dated 17/6/2019 at pages 20 and 22 of the bundles.
32. He stated that he received Ksh.170,000 from the defendant after having rejected Ksh.39,000 initially offered. The witness explained that he received the Ksh.170,000 cheque issued by the Defendant at their offices at Nairobi through coercion having locked in a room from 12.00 noon to 5.00 noon and forced to sign a paper. The witness stated that he used to cultivate his land, had planted trees and had plans to settle his children on the same but he is not able to do so. That the money given was not enough thus seeking for more compensation.
33. Mwaniki Muuri testifying as PW7 adopted his witness statement dated 14/12/2012 as evidence in chief and stated that he is the owner of Plot 466 where electric line has passed the land taking a portion measuring 1.065 Acres. That he was paid Ksh.37,759 which was given to him after the defendant had set up their cables and made him sign a paper. He did not know what it was but was told the money was for trespass and destruction of his crops.
34. The witness testified that the land measures 5 acres in total, where he used to cultivate crops and had planted trees that were cut down. He contends that he is not able to use the portion taken up by the power lines as he cannot build or cultivate it. On cross examination, he stated that the area affected indicated on the report as 0.1065 acres is not correct and that the correct size is 1.065 acres.
35. Joseph Thairu Kumu (PW8) testified and adopted his witness statement dated 14/12/2012 as evidence in chief. He stated that he is the owner of plot 1506 which measures 2 acres and that the power lines cross through the land to the extent of 0.79 acres as shown on page 27 and 29 of the valuer's report.
36. That he received Ksh.150,000 after power lines had already been laid on the land and that there was no discussion on the compensation. He did not sign any document allowing defendant to put the lines on his land. That he had planted trees on the land that were cut down by the defendant and was directed not to plant them in the area under dispute, thus seeks for compensation for the same.
37. Eliud Ngugi Mbugua (PW9) adopted his witness statement dated 22/6/2015 as evidence in chief. He is the owner of Plot 1221 measuring 1 acre and that the electric power line has passed through the plot taking up 0.312 acres of the land as indicated in the valuer's report produced.
38. He posited that he does not live in the suit property but had planted trees and had the plan to build a house there. That he received Ksh.30,000 money that he did not know was for the wayleave noting that he did not sign for a wayleave anywhere.
39. Paul Kirumba Kiome (PW10) testified that the defendant has encroached on his land LR.No.166/17 Redhill which measures 12 acres, taking 1 ½ acres as measured by the surveyor, particulars of which are set out at page 58 and 59 of the report produced in court. He stated that he had planted trees and fruits which were destroyed by the defendant and they said they would compensate him but failed to do so. That the defendant prohibited him from planting or building under the power lines thus unable to utilize the affected land noting that the remaining land is leased to plant flowers for export.
40. PW11, Teresia Nyambura Karuri a Plaintiff and resident of Muguga Jet scheme testified adopting her written statement as evidence in chief. She stated that she owns Muguga/Jet Scheme/2331 measuring ½ acre where she stays and Defendant's power line has passed through ¼ of the land.



41. That she was paid Ksh.250,000 by the defendant after having already put the power lines there stating that it was a thank you for allowing them pass the lines through although no one had sought for her permission. She stated after payment, she was made to sign a document that she did not know what it was because she did not read it and neither was it read to her.
42. The witness testified that she used to grow crops and trees in her land and that it was her plan to share the land with her children therefore seeks for compensation to enable her purchase another land for her and the children. On cross examination, the witness stated that the area of the land affected is 0.188 acres as shown in the valuer's report produced.
43. PW12, Margaret Njeru Ngotho adopted her recorded witness statement dated 14/12/2012 as evidence in chief. She stated that her plot is LR. No Muguga/Jet Scheme/2107 where she stays and that power line has taken 0.426 acres as measured by a valuer and report attached with the particulars found at pages 45,49 and 50.
44. She stated that she was paid Ksh 300,000 as a thank you from the defendant for giving them a way leave and Ksh. 140,000 for the house that was on the affected area. It is her evidence that there was no discussion of any compensation to be paid or valuation of the said land and house. She added that she had planted crops and trees in the land and is seeking for compensation for the same to enable her buy land for her children.
45. PW13, Michael Karunu Mbugua testified on behalf of his father Mbugua Kamiru Irungu owner of Nguimbi/Ndiuni/465, deceased but he has the letters of administration. He adopted his recorded witness statement dated and filed on 7/6/2021 as evidence in chief and produced a certificate of search as PExh 18 and letters of administration as PExh19 to claim compensation for the assessed value of the land taken at Ksh.7,926,030.
46. He stated that the father died in the year 2014 when the electricity wires had already been set up but he was not staying in the land. That they used to plant trees and crops in the land but with the wires crossing at the middle they are not able to do so, in as much as no one has prevented them to plant.
47. PW14, Margaret Wanjiru Njuguna testified on behalf of her deceased husband, David Njuguna Mwaura who died in 2018 stating that she has a grant of letters ad litem in respect to his estate and adopted her recorded statement dated 2/3/2020 as evidence in chief.
48. She stated that her deceased husband owned the land Miguga/Jet Scheme/1367 measuring $\frac{3}{4}$ acre where the electric line has passed through as seen in the photographs at page 39 of the valuation report. That the powerline has taken up $\frac{1}{4}$ acre of the land, 0.19 acres which as per valuer's report on page 43 and 44 valued at Ksh.1,663,200/=.
49. PW14 stated that her husband was told that he would be paid Ksh.12,000 but refused the offer. After the amount was increased to Ksh.50,000, he accepted. She said that at the time of making the offer, the defendant had put up the electricity wires having also promised him that they would connect his house to power but they did not.
50. Further, She states that they used to cultivate on the land and had planted trees but they cannot do so where the land has been taken up. That the land was to be shared with their children and because of the wires, the children are not able to occupy. She produced letters of administration as PExh 20 and documents at pages 310 to 318 of the bundle of documents as PExh 21.
51. During cross examination, the witness confirmed that they are currently connected to electricity which was done in 2015 and that she was not aware that the late husband signed off a wayleave and



- acknowledged compensation as shown at page 313 of the bundle and as registered against the title because she was not involved in any discussions or transactions.
52. PW15, Geoffrey Gachoka Munyuko adopted his written statement at page 437 of the bundle as evidence in chief. He testified that he owns of LR No. Limuru /4885/84 measuring 10 acres and that electricity line passing through his land were put up without his consultation or permission. Thereafter, they gave him inadequate compensation but cannot recall how much money. According to him, the payment was for the things destroyed and not for the land, thus seeks for compensation for the land taken up which is 4.5 acres.
 53. On cross examination, the witness stated that he is not sure if he had produced the title to the land and that he wanted to sell the same or build houses but his plans have been frustrated.
 54. Veronica Wangui Gichuru, Plaintiff No.55 was the 16th witness (Pw16) and adopted her statement dated 14/12/2012 found at pages 121-122 as well as produce documents at pages 123 -136 (of the Plaintiffs' bundle) as exhibits. She stated that she was not informed by the defendant about powerlines being erected on her land and that she was forced to demolish her structures.
 55. She affirmed that she was given Ksh.210,000 without the Defendant telling her how much she was to be paid for the land taken up which is equivalent of 1 acre as per the valuer's report. She added that she was promised to be paid Ksh.100,000 more for the demolished structures but that was not done.
 56. The witness stated that she cannot use the land where the powerline follows despite her plans to give the same to the children to build. On cross examination, the witness testified that the title is under her late husband's name who died before the powerlines were set up. She was shown a cheque of Ks. 217,000 at page 6 vol 2 of defendant's bundle, acknowledgement at page 170 and a cheque of 93,000. However, she could only remember receiving Ksh.210,000 which was paid through her bank in installments as alerted by Muriuki of KPLC, the defendant.
 57. She testified that her house is approximately a quarter acre from where the lines are and when it rains there is noise from the powerlines. She confirmed that she has not brought proof of payment of Ksh.210,000 received in light that she denied receipt of Ksh.217,000 and Ksh.93,000.
 58. Hanna Wanjiku Kariuki,(Pw17) as chairlady of Kabuku Women Group testified on behalf of the group through her written statement dated 14/12/12 found at pages 256-258 of the bundle and adduced documents at pages 259-268 as exhibits. Further, she stated that the group is registered as per certificate at page 261, owns 2 parcels of land L.R Limuru/Ngecha/976 and 1200 and not 980 as stated in her statement.
 59. That in plot 976 the group had rental houses which were demolished and power lines erected on the land without their consultation or permission. That they were paid Ksh.770,000 by the defendant without providing a valuation for the houses or discussing on the compensation. That at the time of demolishing, there were tenants and they used to get rent from Ksh.8,500 per month.
 60. She continued in evidence that the group was formed to buy and develop plots and that after their houses were demolished, they were not able to buy land. Currently they farm at the land and seek compensation of the land which is valued at Ksh.5,451,320 as per valuation report dated 10/2/2022.
 61. On cross examination, she confirmed that she was paid Ksh.406,000 for L.R. No.976 and on L.R. No 1200, Ksh.770,000 for the demolished houses on plot 976 as shown in the acknowledgment for 14 houses. She admitted that there are no houses on 1200 and that there are no power lines crossing the said plot. However, there is space taken for the lines which she signed an easement for, making



- the remaining portion not fit for construction because it is steep. That the Ksh.770,000 received was indicated as 70% of what was to be paid and 30% later but no more money was received.
62. PW18, Paul Kamanu Kamangu, the 39th Plaintiff adopted his written statement dated 6th May 2019 as evidence in chief and produced documents in the list dated 24/4/2019 as PExh 30,31 and 32. He was not notified by the defendant of the power lines being erected on his land L.R. No. 3579 which is Muguga/Jet Scheme/1366 as at the time of filing the suit. He does not stay on the property.
 63. The witness confirmed receipt of a letter from the defendant dated 9/1/2003 which stated that they had taken up 0.0171 acres and that he would be paid Ksh.1,026 as compensation. It is his case that he was not given the basis of how the amount was reached. That he did a subDIVISION of the land that is in subject as 3579 measuring 0.014 valued at Ksh.115,920 as per valuation report dated 11/6/2019. Thus, he seeks for compensation.
 64. On cross examination the witness stated that Ksh.1,026 is not commensurate for 0.0141 in 2003. He confirmed that in respect of paragraph 8 of his statement, it stated the wayleave had taken 30% of the impugned land that measures 0.66 ha. However, the shaded part which is the affected area does not constitute the 30% of the land.
 65. Stephen Ndirangu gave evidence as PW19 and introduced himself as the administrator of 44th Plaintiff's estate. He adopted his statement dated 2/3/2020 as his evidence in chief. The witness produced documents at pages 451-456 of the bundle and letters of administration as exhibits PExh 33-37.
 66. He asserted that they have never received compensation from the Defendant and that they did a valuation of the area affected on Plot 27 as per page 28 of the report which indicate it to be 0.3 acre valued at Ksh.2,484,000. That no development can be undertaken on the affected area and it reduces parcel no 1982 such that nothing can reasonably be done. On account of this, he seeks to be compensated.
 67. During cross examination, the witness confirmed that as per the valuation report, the red line which is the power line does not pass through 1982 and that the blue line which is the wayleave runs along the boundary. He admitted that nothing stops him from using the remainder part of the land including planting crops along the wayleave. The witness added that he does not stay in the land but had plans to move which he cannot now because of the powerlines erected.
 68. PW20, Moses Ndungu Mbugua, the 60th Plaintiff testified through adoption of his written statement dated 14/12/2012 found at page 141-142 of the bundle as evidence in chief and produced documents at pages 143-151 as exhibits; valuation report photo at page 39 of the valuation report dated 17/6/2019 narrative at pages 42 and 43 of the report.
 69. It is his case that the power lines are passing through his land no.1920 Muguga Jet Scheme measuring approximately 3.1 acres. The powerline took up approximately ¼ acre valued at Ksh.2,103,120. That he was paid Ksh.27,000 by the defendant without any agreement on the money payable and this was after the powerlines were fixed. He stated that he was directed not to plant any trees around the area or build under the said lines. The witness posits that he had plans to distribute the land to his children. On cross examination conformed that the area not affected measures around 2.75 acres.
 70. Daniel Ngotho Njoroge, the 132nd Plaintiff (PW21) gave evidence on his behalf and on behalf of the 133rd Plaintiff, his father Stephen Ngotho. His witness statement dated 14/12/12 is at page 334-335 of the bundle and he adopted the same as his evidence in chief. He also produced at page 45, 50-53 the valuation report. The witness stated that land parcel No. Muguga/Jet scheme/2108 is registered under his father's name and 2325 under his name. That on plot 2108 was a house developed which had



been valued at Ksh. 3.75 M (at page 359-364 of the bundle) before being demolished as per defendant direction. They were paid the said money (3.75M).

71. That the Defendant offered him Ksh.1.76 M which he rejected but when they said that they will nonetheless demolish the house he accepted leaving a balance of Ksh.1.99 M which he prays to be paid with interest. The witness averred that after the house was demolished, he built another on one on parcel number 2325. That before doing so, he liaised with Mr. Muriuki of KPLC who was measuring safe distances.
72. That during valuation, the valuer told him the house on 2325 is also within the wayleave area/boundary by 0.25 acre valued at Ksh.10,511,000 with the land being ¼ acre as shown at page 45 (supplementary bundle). He stated that his father was never paid for his land 2108 and that the defendant had offered him Kshs.16,680 noting that his land affected measures 0.315 acre valued at Ksh.3,912,300. His documents found at pages 355 -370 are produced as PExh 38-44.
73. During cross examination, he confirmed that he received the Ksh.1.76 m in installments and that the wayleave is 20 meters on each side of the wire. That however, the report at page 359-364 does not set out the terms of reference so it is not easy to tell whether the valuation given is for the house only or house plus land.
74. PW22, Peter Gathu, the 64th Plaintiff testified and adopted his statement at pages 462-464 as evidence in chief and produced documents at pages 465-466 as Exhibits. He stated that he is the owner of land number Muguga /Jet Scheme/1922 measuring 1 ½ acre in which a red line passes through it and the wayleave takes a portion of 0.575 acre together with the powerline taking ½ acre which portion is valued at Ksh.5,721,000.
75. He testified that he was given Ksh.56,000 by the defendant without explaining to him how they arrived at the said sum which amount was paid after the power lines had been put up. That he is unable to build or plant trees in the area affected and that his plans to build on the land and share it with the children cannot be fulfilled.
76. PW23, Harron Muiruri Mbugua, 63rd Plaintiff testified and adopted his statement dated 14/12/2012 at pages 164-166 as evidence in chief and produced documents at page 167-173(the image at page 39 and narrative at page 42 of valuation report) as Exhibits. PEx 46-48.
77. He stated that on his land L.R 1921 measuring 1 ½ acres passes a power transmission line in the middle of the land which together with the wayleave affect 0.604 acre valued at Ksh.6,108,120. That he was paid Ksh.67,000 and was not shown any valuation done or meeting held and that the money paid was not fair compensation.
78. He said that the defendant directed that he should not plant trees or build on the affected area and that his plan being to develop the land and share it with his children he is not able to do so as the line cuts in the middle of the land. On cross examination, he stated that he has not tried to sell the land and that he signed the easement and under the affected area he is able to farm some crops.
79. PW24, Peter Kamanga adopted his witness statement dated 14/12/2012 at pages 59-60 and produced documents at pages 61-66 which is image at page 45 and narrative at page 47 of the valuation report as Exhibits PEx 49, 50 and 51. He stated that he stays on Plot No.2427 at Muguga/Jet scheme. That the transmission line does not cross on his plot but the wayleave area by 0.05 acre valued at Ksh.621,000 does.
80. He avers that after visiting the defendant's office, he was told that he can only be paid for the cow shed and small room for his works at Ksh.34,000. He stated that at the time the lines were put up, he did not



have title to the land which was L.R 279 registered in his mother's name Penina Kamanga and confirms that the signature on the agreement on 279 is his mothers. The witness stated that the compensation should be paid to the sons as indicated since when the subDIVISION of 279 was ongoing they were occupying their portions but was not paid as the mother had directed. He urges to be compensated as per the valuation report.

81. PW25, Joseph Ndichu, who is the 78th Plaintiff adopted his statement dated 14/12/2012 found at pages 206-208 as his evidence in chief. He also produced documents at pages 209-210 as Exhibits PExh 52 and 53. The 78th Plaintiff testified that power lines have passed on his plot Limuru/Ngecha/1665 measuring one acre with the affected land being more than half acre. He confirms being paid Ksh.384,000 in 2002 which in his view was for the house, maize and beans that were under the line but did not include compensation for the land.
82. That in the land there are lower electricity pilons which make it impossible for him to plant thus his plans of building, planting and sharing the land to his children cannot be realized. On cross examination, he stated that he had a house on the plot and that he was not given time to read the easement agreement before he signed. Neither does he know that the said easement allows him to plant crops upto 12 feet.
83. John Muranga Nguni, who is a land valuer testified as PW26 and stated that he is a registered and practicing for over 10 years. It is his evidence that he was instructed by the Plaintiffs on 2.5.2019 to identify on the ground parcels affected by the transmission lines. That he visited the suit parcels in the month of May and June 2019 and after the inspection compiled the data and drew the report dated 17/6/2019.
84. He testified that he needed a special approach to get the value using the market value approach. That wayleaves are not traded in the market so they had to get the appropriate method. He affirmed that the highest and best use of land in a particular area determines its valuation and for the area being residential and agricultural they used the market value.
85. The witness explained that market value refers to data collected from sales within a reasonable time for a particular area, and that compensation is an offer so it is not a comparable with buyer-seller demands. He stated that page 11 of the report discuss the various wayleaves such as surface wayleaves, overhead wayleaves etc which impact on the land as they lock up the potential of that land. That in their valuations, they consider the depreciation of land, use wayleave valuation matrix which categories the effect of wayleaves on land and adopted the right band (90-100%) as compensation for land under the trace line.
86. The valuer also stated that they did valuation for the structures on the trace line using the cost replacement method; and there is also severance which refers to effect of the line on the land outside the trace line depending on how each parcel of land was affected. The details are set out at pages 30 and 33 of the report where there are structures on the front of the wayleaves and are semi-permanent i.e chicken house and livestock shade.
87. At page 33, solarium is the disturbance allowance to take care of the removal of the structures and is pegged at 15% on land. Pages 37-38 (1012), image has trace line through the land and in one corner it leaves a very small land that is inadequate for use whether to build or for agricultural purposes. That at pages 39-40, the trace line cuts the land into two and the remaining portion cannot be effectively used (0.3 acres) and that he put the depreciation value at 40% which also applied to parcel Jet scheme/1921.
88. He testified further that you cannot put a green house under the line because the line will be maintained. That on parcel Jet scheme 2108, the wayleave has split the land into two and the two



portions left in total of 0.179 acre after acquisition making it 70% of the land acquired. For plot 2107 which is adjacent to 2108, the line cuts across the land leaving one portion on the front. Thus, the trace line takes about 70% of the total land.

89. For parcel 2325 at the time of inspection he found it is square shaped. That there is a permanent house constructed in the middle of the land and part of the house is within the wayleave. He stated that the Defendant's policy, such structure must be removed and they used the replacement cost method and gave a value for the structures.
90. In regard to L.R. Redhill 1616 which is located along Limuru-Ndenderu-Ruaka road, the affected area faces the road. Neighboring plots have put up commercial structures but the suit parcel cannot undertake such development. The valuer continued in evidence that he received further instructions to value two additional properties Ndiruki/ 276 and Gatimu/4885/28/3 which he prepared a report for both dated 10/12/2019 produced as PExh 55. That he also valued Limuru/Ngecha/976 whose report is dated 10/2/2022 produced as PExh 56.
91. The witness stated that he has perused the valuation report by the defendant and his comments are summarized in the report dated 6/11/2023 thus; it does not say when the land was valued; while doing the valuation you do not rely on other people's valuation and it should be current; the valuation was signed with 2003 returns which renders the report improper; and that for the valuation to be independent the value returns should be generated as at the date of valuation; and it should not rely on information from the client.
92. On cross examination, PW26 confirmed that the report was signed by one Mr. Muchiri who was not before court. He testified that the wayleave is 20 meters on either side of the power line but on pages 54,57 & 58 of the valuation report, it gives a distance of 30 metres from the wireline. He agreed that they should abandon the 30 m distance and use 20m.
93. He also confirmed that he is not a surveyor and that he did not use any surveyor's report to confirm the areas/sizes affected when he was undertaking the instructions. The witness admitted use of google maps (page 19 of the report (par. 9) indicating that he was not aware that google maps has been adopted by survey of Kenya for purposes of preparing reports.
94. The witness also stated that at the time he was preparing the report, the land use was confirmed as agricultural and residential but, in his opinion, it could be used as commercial too though there was no evidence of application for change of user produced. He added that pages 7-8 of the report on KPLC resettlement framework, replacement costs mean the amount needed to replace the demolished structures. That the policy refers to net depreciation (depending on the age of the structures) and that also on page 9, world bank approach does not factor in depreciation, and it applies to projects funded by the world bank.
95. In further cross-exam, PW26 admitted that he did not confirm whether the project was funded by the world bank, neither was there any documents showing that the project was funded by the world bank.
96. The valuer asserted that his terms of reference did not require him to consider the easement agreements because he did not need the documents produced in volume 4 tab 7 which at clause 4 of the easement agreements allowed the owner of land to plant trees not exceeding 12 feet and maintain structures with consent of the defendant.
97. He was also referred to pages 50-51 of the valuation report which assessed the value of the structures to be demolished and moved. He affirms that he found the structures when he went to do the valuation in 2019 and that his report was made on the assumption was that all the buildings would be demolished. Further, he confirmed that he was not told that the defendant had given notices for the structures to



- be demolished and/or moved. That at page 54, no one told him the house should be demolished and that it was his assumption. Also, in page 58, there are no structures on the front of the trace line.
98. He stated that it is possible to get market value of a property in any particular year from the lands Registry, including in the year 2003 but the returned figures are as at the value in 2019 when valuation was done. That to his opinion, if the claimant was not compensated then, he should be compensated at the current market value.
 99. The valuer stated that solarium (disturbance allowance) is 15% as per the Land Acquisition Act, Cap 295 (LAA) which is applicable to land compulsorily acquired by the government. He contended that the remainder of the land cannot be used for agricultural purposes without interference. He argued that if the land is for agricultural purposes, then payment under severance would not apply.
 100. That valuation method of Sherwood D. Wayleave valuation matrix does not provide for payment of 15% solacium or severance. Sherwood provides for a percentage of market value of the land affected by the wayleave and that he assessed the affected use at 90% for all the parcels of land valued. He stated that he stands by the valuation under the 3-heading given (use, solacium and severance).
 101. The valuer also stated that on Page 8 of the report, net depreciation is not the international standard accepted method as what is accepted is the replacement method. He also confirmed that had the defendant's report of 2003 have had a valid date, then it would be considered a good report. That the SOP is that value of property must be returned as at the date of inspection.
 102. The witness avers that for compensation on wayleave, he used the matrix at page 16 and that there are instances where severance can be paid even for agricultural purposes, for example where the land left is too small for construction of structures.

The Defendant's evidence.

103. In opposing the claim, the defendant called 3 witnesses with Jediel Muriuki Marangu, testifying as Dw1. He introduced himself as a registered and gazetted valuer working with KPLC. The witness adduced the valuation report dated 3rd November 2023 found at page 19-56 of vol 7 which he presented as DExh1.
104. He criticized the Plaintiff's report dated 17/6/2019 on the basis that the valuation was market value as at 2019 and that the wayleave did not require the approach adopted in the said report. That a valuation can be done in retrospect because the line was built in 2003 which is the value date of compensation.
105. He testified that records held with the defendant had the applicable rates with the value attached to each of the blocks being found at page 7. That the other affected owners accepted the compensation and the grant of wayleaves agreements were registered on the respective titles.
106. Dw1 continued to state that in their case, they employed 50% valuation due to the severity of the line and the dual usage by both parties as both KPLC using the line and the land owner using the land albeit with restrictions. The witness argued that the Defendant did not acquire the land wholly so the solarium approach is inapplicable and so is severance pay. At page 19 on the Plaintiff's report, he questioned the accuracy of using the google map to ascertain the area affected stating that in their case, they used the services of a surveyor who visited the suit properties and physically obtained the areas affected.
107. He emphasized that any structure falling within the area the powerline is to be constructed would be removed and the owner compensated. That the structures at page 51 would not be subsisting if they were under a powerline thus it is his opinion that the court should apply the value as at 2003 and use 50% due to the co-ownership, and set aside the solarium and severance claim.



108. On cross examination, DW1 stated that he received instructions to carry out the valuation in 3/11/2023 and that he did not inspect the properties but used the survey report (in volume 8 of Defendant's bundle) to prepare his report. He stated that his report reproduced the market values as contained in the earlier report and that at page 8 of his report, DEx1 on the compensation schedule refers to people who were not paid in 2003.
109. That in the survey report used to prepare his report, at page 2 names Nancy W.Kamau with affected area given as 0.24 ha and in his report at page 9 gives the area as 0.15 acres, giving a difference of 0.3 acres. Also, at page 3 of the said survey report, on Wanjiku Njuho (Claimant 156) gives the affected area as 0.137 ha translating to 0.4 acres, but in his report, it gives the area 0.46 acres.
110. Similarly, John Kinyanjui's area affected as per their survey report is 0.22 ha which is 0.54 acres but, in his report, it indicates 0.776 and Lucy Wangui at page 5 of the surveyor's report shows her affected area to be 0.830 ha, 2 acres and in his report at page 12 indicates 0.487 acres. The witness admitted that there are discrepancies between his report and that of the surveyor that he relied on and since he applied the values on the affected areas, his valuation is not accurate.
111. He stated that the market values provided are for land sales and that he obtained the data from KPLC which was used to compensate the affected persons thus the compensation offered would be proper if the claimant accepted. For example, in column 3 of his report, the market value per acre which he obtained from KPLC records for the area in question at Ngecha being Kshs 1.2 M per acre, Muguga Ksh.600,000 per acre and Limuru at Kshs 1.6 M per acre.
112. It is his further evidence that in wayleave compensation, an offer is given and it is upon a claimant to acknowledge the price (market value) when negotiating with KPLC. That nothing prevented a land owner to engage a professional for negotiation of the compensation, as it is equivalent with buyer-seller relationship.
113. He confirmed that a land owner can refuse acquisition although he did not indicate the date of publication of the acquisition but was only quoting the Land Acquisition Act. He affirmed that powerline impacts different owners of land differently but his report did not capture the different impacts. That he applied compensation of 50% across board as shown in page 8 thereof.
114. He admitted that KPLC policy restricts the kind of structure to be built and crops to be planted under the powerlines. That there is no provision for KPLC to acquire any portion of land which remains very small.
115. Under further cross-examination, DW1 admits at page 11 (Steven-Jet scheme 2108 and 2107) sheet no.8 shows that 2108 is within the wayleave but has not captured the said plot in his report. He further admitted that his report did not value the structure appearing at pages 51 and 54 of the Plaintiff's valuation report.
116. The witness could not confirm or deny whether the Sherwood matrix used at page 16 of the Plaintiff's report is an authority in wayleave compensation. He stated that the usage of wayleave trace is applicable across board and there is no difference in severity. That where there is a building, the first call is to do valuation to include disturbance for the affected owner and that such persons were compensated before hoisting the power line. For any structures not moved, it means that it did not fall within the power line hence he was not required to value the property in page 51 and 54 because they do not fall under the powerline.



117. James Kibet Sacho, the acting Chief Wayleaves Officer of the defendant testified as DW2 by adopting his written statement dated 3/11/2023 as evidence in chief and produced the documents filed in volumes from Nos 1-7 as defence exhibits.
118. On cross examination by Ms Kangethe learned counsel for the Plaintiff, the witness stated that the construction of the powerline from Olkaria Geothermal Plant to Dandora substation was done by the defendant. That before issuance of the offer letters, there was valuation which was handled by another officer.
119. He asserted that it is at the point of identification of the lands when the land owners are notified but admitted that he did not have any notice issued to these Plaintiffs. That further, he did not have evidence to show that the defendant conducted sensitization to the Plaintiffs of how their land would be affected. He also admitted that he is not sure whether the defendant's valuation of areas affected and amount to be compensated as indicated in the offer letter was shared with the land owners.
120. The witness stated that the offer was issued ranging between 10% to 50% with certain instances the range going beyond 50% for example the offer to Kamiti farmers in Kahawa area and the payment to Milka Nduta Limuru/Ngecha/3770 where the compensation if calculated, it is more than 50%.
121. He testified that when compensation began for the trace, it was 10% and when there was an outcry, the defendant raised the percentage to 50% across board. Those that had an objection of the 50% negotiated to an agreeable amount. That the consideration to pay more than 50% was where the land was affected more severely, looking ta the area taken and size of the remainder land.
122. He affirmed that upon the defendant putting the power lines, they would access it for repairs and maintenance and that there is restriction on the usage of the land affected and once the land is taken up, the only thing the land owners can do with it is farming, grazing and parking.
123. He also confirmed that at paragraph 15 of his written statement, the offer letter does not give the value of the affected area and neither does it indicate what the owner should do if unhappy with the offer. Peter Njoroge, Claimant no 21 indicated that part of his property is on the wayleave and as documents in page 15 of volume 5 which gives his plot no as 2427/Muguga/Jet Scheme. That the area affected is 0.034 valued at Ksh.2,040 without showing how the said amount was arrived at.
124. Also, at page 117 of the Defendant's bundle refers to Plot 2424 for Peter Kamanga with area affected being 0.064 acres and the amount offered being Ksh.11,646 equated to 30% but nothing indicates that the claimant accepted the offer. Similarly, at paragraph 23 23}} (Claimant 39) who owns L.R 1366, the compensation offered was at Ksh.1,026 but does not indicate the value and % of the value offered.
125. That the land number is an old one as subsequently the same was subdivided but shown PEx 30 the title is in the name of Paul Kamangu issued on 13/9/1995. The title indicates that as at 2003 when the offer was sent out, the claimant was the owner of the land and that he can confirm the claimant was not paid. He added that the line is at the boundary with one part on the claimant's land and the other part on the next land.
126. In regard to documents at page 2 of tab 25, (defs vol 1), the payment of Ksh.399,000 was for house, kitchen, pit latrine and shade that were demolished being 70% of the value. At page 5 tab 25, the payment of the balance of the 30% for the demolished structures, noting that there is no evidence that the claimant was paid for the land.
127. The witness testified that in page 5 of the survey report, the affected area is given as 0.862 ha while the valuation report at volume 7 page 30, the size of the same plot is given as 1.55 acres with the



- compensation given at Ksh.387,500 which is 50%. There was no proof to show that the claimant was paid.
128. He stated that claimant no.43 (Paragraph 26 26}}) whose documents are found at volume 1 tab 27, paragraph 27 27}} on claimant no.50 whose documents are found at vol.2, the payment was Ksh. 994,000 in regard to houses, tanks, pit latrine and animal shades. That this was 70% and additional payment of the balance found at page 3 of the same tab. He conceded that there is no evidence of payment to this claimant for the trace value.
 129. He stated that the valuation report at page 30, the 3rd Claimant compensation was assessed at 50% (being Ksh.121,750) but does not have evidence of the said payment. Paragraph 28 28}}(Claimant 55) whose documents are found at vol. 2 tab 6, 2nd defendant confirms payment of compensation for Ksh.217,000 which is 70%, being for house, kitchen, animal shade and pit latrines. At page 5-payment of Ksh.93,000 was balance of the 30% for the house, pit latrine and animal shade.
 130. That the valuation report gives affected area as 0.993 acres with 50% compensation tagged at Ksh. 293,000 but do not have evidence that the payment to the claimant was paid.
 131. He stated at paragraph 29 of the statement that sheet 8 shows the trace cuts on L.R No.1921 into 2 and that the claimant was paid Ksh.67,000 and the affected area is given at 0.62 acres with 50% compensation slated at Ksh. 186,000. The witness stated that this claimant might have accepted the offer at a lesser percentage hence why he was not paid the Ksh.186,000.
 132. It is his evidence that the approval of 50% was across board after some people were paid and that it was not applied retrospectively. He could tell when the policy was passed.
 133. He testified that at page 30 of volume 7 is valuation of the property giving the affected area as 0.267 acres and 50% compensation of Ksh.80,100 as per the valuation report. Yet this claimant was not paid the difference because the valuation was done after they were initially paid.
 134. The witness confirmed that for parcel no.2107, from the map the land remaining is a small triangular portion with 50% taken and the payments made were for structures on the land but has no evidence of payment for the trace to the Plaintiff.
 135. That the claimant no. 132 whose documents are found at volume 6 (sheet 8) was affected by the wayleave and was paid (tab 3 volume 4) for the structures existing on the land. That there was no evidence to support payment for the wayleaves on the said parcels (2108 and 2325). The witness confirmed that for Claimant no.156 L.R 1326 page 27 of volume 7 gave the affected area at 0.469 with 50% compensation pegged at Ksh.140,700 but after negotiation she was paid Ksh. 208,170 (which is beyond 50%).
 136. It was his testimony that sensitization is done with the affected land owners informed about the project and processes that follow including compensation and in this case the defendant deployed people to do the same. He also stated that where the claimants do not submit documents, the payment is not done referring to Paragraph 23 23}} where the claimant was not paid and Paragraph 24 24}}, a copy of title was not presented to the Defendant during the negotiation.
 137. With regard to Claimant No. 40 (James Mwangi) the witness said that the registered owner of the land as per page 7 of tab 25 is Elizabeth Ruguru Karithi who was paid as per pages 1-6. The witness added that claimant no.50 accepted in the acknowledgement; (tab 4 page 1) for access to Kenya Power, which format was signed by all those that were paid. Page 2 tab 11 acknowledges receipt of Ksh.6700 and paragraph 3 of the acknowledgement, confirms he has no further claims against the defendant. Dw2



concluded his evidence by stating that in 2003, there were about 400 properties affected but it is only the claimants herein who have challenged the awards.

138. DW3 is Albanus Musau, a senior land surveyor with the Defendant testified producing the survey report dated 17/11/2023 as Dex8 in support of the Defendant's case. During cross examination he stated that instead of going to the land, they survey the powerlines then super-impose on the maps. That in the old days, the maps would be joined physically but currently the maps are available digitally. That he took physical measurements of areas with complaints.
139. The witness testified his report on claimant no.3 gives the area affected as 0.13 ha translating into 0.338 acres but at page 395 of the Plaintiff's bundle is a letter dated 3/1/2003 in regard to L.R 1326 which gave the trace area as 0.991 acres. He affirmed that the trace area cannot change.
140. That his report excludes claimant no. 136, 162 and 103 because their land was not within the wayleave trace emphasizing that it is only the names in the list 1 given by the Advocate that appear in his report.
141. With regard to L.R. Nos. 2107 and 2108, the witness stated that they are within the way leave but were left out because the original number before subDIVISION was compensated. That he visited L.R 2107 and 2108 where one-person states that he has been paid and another was claiming and that he used Trebble GPS machine marking which you cannot use without going physically to the property.

The Plaintiffs' Submissions:

142. The Plaintiffs filed submissions dated 19th February 2025 and stated that between 2001 and 2004, the Defendant unlawfully entered their land and erected high-voltage power lines and steel pylons without proper consent. That the Defendant misrepresented the project as a domestic supply line that would benefit them through free or cheap electricity connections.
143. That many Plaintiffs consented based on this misrepresentation, while others were unaware of the project until construction began. They contend that this was done without being consulted nor adequately compensated, with some receiving payment only after the power lines were erected and under a non-negotiable "take it or leave it" approach.
144. It is their submission that several Plaintiffs were forced to demolish homes and structures and lost mature trees, with no compensation for the destruction and/or for relocation costs. They aver that the power lines have degraded their living conditions, devalued their properties, and limited future development, all done without adherence to legal procedures for acquiring wayleaves.
145. They stated that the defendant failed to follow the lawful procedure outlined in Sections 45 and 46 of the Electric Power Act, 1997 (repealed), in acquiring wayleaves over the Plaintiffs' properties. That the Act required the Defendant to obtain ministerial authorization, issue a 14-day written notice to landowners, enter the land only after the notice period, and then provide a detailed written statement describing the proposed location and impact of the power lines.
146. Further, that compensation was to be negotiated and agreed upon before any construction commenced, with provisions for valuation and court determination in case of disputes. It is their argument that they were neither issued with notices nor furnished with detailed statements of the project, and compensation was not negotiated. Instead, the Defendant misrepresented the nature of the power lines, falsely suggesting a domestic supply that would benefit the landowners, thereby breaching statutory requirements and denying the Plaintiffs the opportunity to meaningfully consent to or contest the use of their land.



147. They cited the case of Cape Suppliers Limited v Kenya Power & Lighting PLC (ELC Case E307 of 2021), where Mogeni J. held that failure to notify and compensate a landowner before laying power lines amounts to trespass. The judge stated that the Defendant's continued presence on the Plaintiffs' land without consent and full compensation similarly constitutes unlawful and ongoing trespass.
148. That the Plaintiffs submit that they have suffered and continue to suffer damages, including the loss of free use and development potential of their land, the forced demolition of homes and structures, environmental nuisances such as the hissing noise from high-voltage lines, and the depreciation of their property value. That these violations, particularly against elderly landowners, have caused undue hardship and demonstrate a blatant disregard for lawful acquisition processes.
149. In their submissions, the Plaintiffs outlined the claimants who did not receive payments as compensation for land affected by the wayleave and valuations as follows;
1. John Kinyanjui Nganga (No. 7) – LR Ndeiya/Makutano/1220, 0.02 acres; Kshs. 134,440
 2. Lucy Wambui Njunge (No. 50) – LR Nguirubi/Ndiuni/276, 1.359 acres; Kshs. 3,700,784
 3. Ruth Wambui Njuho (No. 2) – LR Ndeiya/Makutano/1331, 0.1315 acres + structures; Kshs. 1,065,791
 4. Paul Kirumba Kiome (No. 16) – LR 166/17 Red Hill, 1.467 acres; Kshs. 36,440,280
 5. Mbugua Karanu Irungu (No. 129) – LR Nguirubi/Ndiuni/465, 2.735 acres; Kshs. 7,926,030
 6. Geoffrey Gachoka Munyuko (No. 172) – LR 4885/84, 4.22 acres (357 acres error in report); previously paid Kshs. 1,006,400, balance due Kshs. 3,877,600+
 7. Veronica Wangui Gichimu (No. 55) – LR Ndeiya/Makutano/1012, 0.896 acres; unpaid house balance Kshs. 100,000, total claim Kshs. 6,125,340
 8. Paul Kamanu Kamangu (No. 39) – LR Muguga/Jet Scheme/3579, 0.014 acres; Kshs. 115,920.30
 9. Mwaura Ndirangu (No. 44) – LR Ndeiya/Ndeiya/1982, 0.3 acres; Kshs. 2,484,000
 10. Stephen Ngotho Njoroge (No. 133) – LR Muguga/Jet Scheme/2108, 0.315 acres; Kshs. 3,912,300
 11. Daniel Ngotho Njoroge (No. 132) – House on LR Muguga/Jet Scheme/2108, unpaid balance Kshs. 1,990,000; additional claim LR Muguga/Jet Scheme/2325 (0.25 acres + developments); Kshs. 10,511,000
 12. Peter Njoroge Kamanga (No. 21) – LR Muguga/Jet Scheme/2427, 0.05 acres; Kshs. 621,000
150. The Plaintiffs further relied on the Supreme Court decision in Hon. *Attorney General v Zinj Limited (Petition No. 1 of 2020)* which affirmed that the proper measure for land compensation is market value. That based on this and the evidence adduced, they sought for full compensation as per the independent valuations, adjusted for any partial payments already made.
151. They also assert that the Defendant's coercive and opaque compensation process violated their rights, and compensation should be awarded in accordance with constitutional and statutory safeguards. On general damages for trespass, the Plaintiffs stated that having established that the Defendant unlawfully entered and remained on their properties without their consent which trespass continues to date.



152. That trespass to land is actionable per se, and a claimant need not prove actual loss to be entitled to general damages, a principle reaffirmed in *David Kimuqun Koskei v Benjamin Tuwei & Another* [2019] eKLR and *Park Towers v John Mithamo Njika & 7 Others* [2014] eKLR, where the court held that once trespass is proved, damages must follow, assessed on the facts of the case.
153. The Plaintiffs also submitted that they have demonstrated that the high-voltage powerlines have created a nuisance by emitting a persistent hissing sound, disrupting their peaceful enjoyment of land, reducing property values, and limiting land use. They relied on the definition of nuisance in *Nakuru Industries Ltd v S.S. Mehta & Sons* [2016] eKLR, where it was defined to include any interference with the enjoyment of land due to a neighbouring act or omission. Accordingly, they seek general damages of Kshs. 2,000,000 per Plaintiff for trespass and Kshs. 1,000,000 per Plaintiff for nuisance, which they submit are fair and reasonable in the circumstances.

The Defendant's submissions:

154. The defendant's submissions are dated 9th May 2025 with opening remarks that out of the initial 172 plaintiffs, only 26 appeared in court to give evidence in support of their claims which remain for the court's consideration and that the rest are deemed abandoned due to lack of evidentiary support. Further, that among the 26 Plaintiffs that testified, the claims of Mwaura Ndirangu (Claimant no. 44), David Njuguna Mwaura (Claimant no. 122), and Mbugua Karani Irungu (Claimant no. 129) have abated by virtue of the provisions of Order 24 Rule 3 of the Civil Procedure Rules, 2010. This is so because their legal representatives failed to formally apply for substitution within the prescribed one-year period after their deaths.
155. The defendant cited the case of *M'Mboroki M'Arangacha v Land Adjudication Officer Nyambene & 2 Others* [2005] eKLR, where the court affirmed that abatement of suits under this rule is automatic and does not require a court order, underscoring the procedural consequence of inaction in cases of deceased plaintiffs.
156. Additionally, the Defendant submitted that parties are bound by their pleadings and cannot raise new issues in submissions that were not pleaded. In support cited *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR, where the Court of Appeal emphasized that a party cannot introduce new claims or arguments through submissions, as this would prejudice the other party who would have had no opportunity to address them. This was raised to counter the Plaintiffs' argument that the Defendant violated the provisions of the Electric Power Act, 1997 since the issue was not pleaded in the original suit.
157. The defendant submitted that the issues properly arising from the pleadings are –
- i. whether the claimants are entitled to compensation for the erection of the transmission line on their land,
 - ii. the appropriate compensation if any, and
 - iii. whether damages are warranted for alleged health hazards.
158. The defendant contended that on the issue of compensation for the transmission line, all 26 claimants maintained that they are entitled to compensation, including those who admitted to having received payment for easements. That through the evidence of DW3 (its Chief Wayleaves Officer), they outlined a standardized procedure followed in acquiring wayleaves for over 400 affected parcels.
159. The defendant explained that the process included surveying the affected land, identifying registered owners, and issuing compensation offers based on the market value of the affected area (ranging from



- 10% to 50%) depending on the degree of interference. It submitted that DW2, a licensed surveyor, confirmed the standard wayleave trace was 40 meters wide (20 meters on either side of the line), rebutting the claimants' unsupported assertion of a 60-meter trace.
160. The defendant insisted that the wayleaves did not fully deprive owners of land use, allowing for compatible activities such as farming and further the claimant's allegation that they were coerced into accepting compensation, no evidence was provided to support the same.
161. It submitted that of the 26 who testified, 20 acknowledged receiving compensation and executing easement documents and allegations of coercion made by five claimants were vague, lacked specific details, and failed to identify any coercive individuals. That additionally, two claimants (numbers 156 and 65) claimed ignorance of the nature of documents they signed, but as established in the case of *Josephine Mwikali Kikenye v Omar Abdalla Kombo & Another* [2018] eKLR, a person of full age and understanding is generally bound by their signature unless misled about the document's nature, an exception that did not apply here.
162. The defendant itemised each of the claimant's compensation claim in two categories; those that were paid and those whose compensation was not paid or partial issues remain respectively as follows;
1. James Mwangi Kariithi (No. 40) – Claim over mother's land (Nguiribi/Ndiuni/446); 0.862 ha affected. KES 570,000 paid and acknowledged in two instalments.
 2. Samuel Ndegwa Mwaura (No. 43) – Nguiribi/Ndiuni/305; 0.308 ha affected. Received KES 100,000. Signed acknowledgment and Grant of Easement.
 3. Lucy Wambui Njung'e (No. 50) – Nguiribi/Ndiuni/276; 0.830 ha affected. Paid KES 1,420,000 in two instalments. Continues to farm under power lines.
 4. Wanjiku Njuho (No. 156) – Ndeiya/Makutano/1326; 0.137 ha affected. Paid KES 208,170 after rejecting initial lower offer. Signed Grant of Easement. Farms maize and potatoes.
 5. Francis Ngimithi Njoro (No. 134) – Nguiribi/Ndiuni/300. Accepted KES 170,000. Still farms the land.
 6. Mwaniki Muuri (No. 136) – Nguiribi/Ndiuni/466; 1.1065 acres affected. Paid KES 37,759. Still farms maize and beans.
 7. Joseph Thairu Komu (No. 162) – Nguiribi/Ndiuni/1506; 0.79 acres affected. Paid KES 150,000. Plants napier grass.
 8. Eliud Ngugi Mbugua (No. 109) – Ndeiya/Makutano/1221; 0.312 acres affected. Paid KES 30,000. Signed Easement.
 9. Teresia Nyambura Karuri (No. 65) – Muguga/Jet Scheme/2331; 0.081 ha affected. Paid KES 250,000. Signed Easement.
 10. Margaret Njeri Ngotho (No. 103) – Muguga/Jet Scheme/2107; 0.426 acres affected. Paid KES 440,000 in three instalments. Still farms.
 11. Veronica Wangui (No. 55) – Ndeiya/Makutano/1012; 0.395 ha affected. Paid KES 310,000 in two instalments. Still cultivates crops.
 12. Hannah Wanjiku Kariuki (No. 94) – Represented Kabuku Women Group (Limuru/Ngecha/976 & 1200). Paid KES 1,176,000 total + KES 6,000. Signed Easement. Group continues farming.



13. Moses Ndung'u Mbugua (No. 60) – Muguga/Jet Scheme/1920; 0.108 ha affected. Paid KES 27,000. Still lives and farms.
14. Daniel Ngotho Njoroge (No. 132) – Muguga/Jet Scheme/2108 (father's land). Paid KES 1,760,000. Easement executed. (Note: No payment yet for his land – see below.)
15. Peter Gathu Kibunyi (No. 64) – Muguga/Jet Scheme/1922; 0.224 ha affected. Paid KES 56,000.
16. Harun Muiruri Mbugua (No. 63) – Muguga/Jet Scheme/1921; 0.248 ha affected. Paid KES 67,000.
17. Peter Njoroge Kamanga (No. 21) – Muguga/Jet Scheme/2424; 0.027 ha affected. Paid KES 34,000. Mother signed Easement.
18. Joseph Ndichu Gitichu (No. 78) – Limuru/Ngecha/1665; 0.238 ha affected. Paid KES 384,000. Signed Easement.

(Claimants Who Did Not Receive Compensation or Where Partial Issues Remain):

1. Daniel Ngotho Njoroge (No. 133) – Muguga/Jet Scheme/2325 (his parcel): No compensation paid yet. 0.05 acres affected. To be paid KES 15,000.
 2. John Kinyanjui Ng'ang'a (No. 6) – Ndeiya/Makutano/1220; 0.02 acres affected. To be paid KES 6,000.
 3. Paul Kirumba Kiome (No. 16) – 166/17 Red Hill; 1.26 acres affected. No title produced. If ownership is proven, entitled to KES 378,000.
 4. Ruth Wamboi Njuho (2nd Plaintiff) – Ndeiya/Makutano/1331; 0.12 acres affected. To be paid KES 36,000.
 5. Paul Kamanu Kamangu (No. 39) – Muguga/Jet Scheme/3579; 0.012 acres affected. To be paid KES 3,600.
163. On the issue of damages for health hazards, the defendant submitted that the Plaintiffs claim that the power line emits a hissing noise that interferes with their enjoyment of their land was not supported with any medical or expert evidence prove the health hazard or injury. Therefore, no damages for health hazards are warranted as the plaintiffs failed to prove any actual harm.

Analysis and Determination:

164. The claim is for compensation, mesne profits and general damages by the Plaintiffs against the defendant arising from the construction of the 220kv transmission line from Olkaria Geothermal Plant to Dandora Substation, and which line cut across the Plaintiffs' respective parcels of land.
165. There is no dispute that the construction of the said transmission line passed through the parcels of land owned by the Plaintiffs. The dispute is whether they were fully compensated for the wayleaves and or there should be additional compensation due if any. Secondly, whether the Plaintiffs are entitled to general damages for trespass and for nuisance.
166. In support of their case, the Plaintiffs called 27 witnesses who testified in court stating that their respective parcels of land were taken up and that no compensation or no sufficient compensation was made. The Defendant admitted that for the Plaintiffs who were not paid, they were entitled to compensation but averred the compensation should be pegged on the value as at the 2003 rate. That



for the deceased plaintiffs, their claim abated; and that no general damages were payable for the alleged injuries occasioned by the powerline as no such injury was proved.

167. In light of the evidence presented by either side, I frame the following questions for determination of the dispute;
- a. Whether or not the deceased plaintiffs' claim abated.
 - b. The status of the claim of the plaintiffs who did not testify.
 - c. Whether the Plaintiffs who received payments are entitled to any further compensation
 - d. What rate is applicable for compensation payable to the Plaintiffs not paid any sum
 - e. Whether the plaintiffs are entitled to general damages for trespass and nuisance.
 - f. Who bears the costs of the suit?

Abatement of the claims:

168. It is not in dispute that there were no applications made to substitute the deceased claimants but their representatives testified on their behalf. These were; Claimant No.44 Mwaura Ndirangu who died on 13/8/2018, Claimant No. 122 David Njuguna Mwaura who died on 20/2/2018 and claimant No 129 who died in 2015, suit abated by 2016.
169. It is trite law that an application seeking that a legal representative be made a party in the place of the deceased claimant/Plaintiff must be done within year, less the suit abates. The Defendant cited the provisions of order 24 of the Civil Procedure Rules and the case of M'Mboroki M'Arangacha v Land Adjudication Officer Nyambaene & 2 Others (2005) eKLR in urging this court to hold that the claims by 44, 122 and 129th Plaintiffs abated and no judgement should be entered in their favour. The Plaintiffs' counsel did not address this issue in their submissions.
170. Although there was no formal application for substitution made, three witnesses gave evidence on behalf of the said deceased plaintiffs and produced letters of administration to show where they derived their authority from. For instance, Mwaura Ndirangu who died on 13th August 2018, the representative (Stephen Ndirangu) obtained letters of administration issued on 12th Sept 2018 and filed a witness statement dated 2nd March 2020 indicating that he was now the legal representative.
171. The same scenario applied to the case of David Njuguna Mwaura (claimant no 122) whose representative obtained letters dated 19th June 2019 and for Mbugua Karanu Irungu (claimant no 129) which were granted on 15th July 2020.
172. It is my considered opinion that the legal representatives of the deceased estate having testified, their claims cannot be said to have abated. The filing of a formal application for substitution in my view is a procedural technicality that does not nullify the evidence of these parties who come before the court and say we are legal representatives and produce documents of such representation. I dismiss the Defendant's argument that these claims abated and shall proceed to consider them on their merits.

Status of claim of the Plaintiffs who did not adduce evidence:

173. The number of Plaintiffs who registered the claim were 172 but those who gave evidence were 26. The Defendant submitted that the claims of those who did not tender any evidence should not be considered. I agree with this position as pleadings are only statement of facts which must be proved



for a party to obtain any orders. This is premised on the provisions of section 107 of the *Evidence Act* Cap 80 which states thus;

- “(1) 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.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
- 109 The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Status of claimants who received compensation:

174. One of the arguments presented by these set of Plaintiffs in support of the claim is faulting the Defendant for not following the provisions of section 45 and 46 of the Electric Power Act [1997] (repealed). Section 45 provided thus;

“45.

- (1) No licensee shall lay and connect on any land, other than his own land, an electric supply line, whether aerial or otherwise, without permission first had and obtained from the Minister.
- (2) A Licence who has obtained authorization from the Ministry and who intends to lay an electric supply line on the land of another person shall give notice in writing to the owner of that land of his intention, after the expiration of fourteen days from the date of the notice of a specification day to enter upon that land for the purpose of fixing the location of the electric supply line and within fourteen days of entry shall serve the owner with a statement in writing containing full particulars of the description and proposed location of the electric supply line.
- (3) An owner, after receipt of the notice and statement of particulars under sub-election 2 may assent in writing to the laying down of the electric supply line upon payment of such compensation as may be agreed upon, and any assent so given shall be binding on all parties having an estate or interest in the land, subject to the following provisions:(underline mine for emphasis)
 - a. That an arrangement entered into by an owner under disability or incapacity, or not having power to give assent except under this act, shall not be valid unless it is approved by two valuers, one of whom is to be nominated by the person giving notice and the other by the owner; and each of the valuers, if they approve of the arrangement, shall annex to the document containing declaration to that effect subscribed by them;



- b. That any compensation to be paid by the person giving notice to the owner, in cases where the owner is under disability or incapacity or has no power to assent to the application except under this Act, shall be applied in such manner as the court may determine;
 - c. That an occupier or person other than the owner interested in the lands shall be entitled to compensation for any injury he may sustain by the laying of the electric supply line, so long as the claim therefore is made within twelve months after the laying of the electric supply line; and the amount of compensation shall be determined in the case of dispute by the court.
- (4) No assent expressed in writing in accordance with subscription (1) shall be void by reason of only non-compliance with any statutory requirements as to registration.”

175. The Plaintiffs relied on the provisions of section 45(2) of the Electric Power Act which required giving notice of 14 days in writing to the land owner of intention to construct an electric line. In rebuttal, the Defendant through Dw2 stated that acquiring a way leave involves a long process.

176. The Defendant submitted that the issue of non-compliance on service of notice was a new matter raised only in the Plaintiffs’ submissions and therefore should be disregarded since they don’t get a chance to respond to it. However, throughout the hearing, the evidence of the Plaintiff is that they were not sensitized on the project neither were they informed of their powers to negotiate. Such that even if the matter of serving notice was not pleaded, it came out during the proceedings and the Defendant cross-examined the witnesses on that point.

177. Although the record does show no notice in writing was served by the Defendant, there is evidence the Plaintiffs made aware of the project. For example, there is correspondence produced both by the Plaintiffs and the Defendant to this effect in volume one (1) a letter dated 6th January 2003 from the Defendant to Paul Kamanu Kamangu and James Wandati Wakabiru (page 357 of Plaintiffs’ bundle) referenced 220Kv Olkaria-dandora Line L.R. No Muguga/JSS/1366. The introduction reads thus;

“ As you are already aware, the implementation of the above project is currently in progress.

We intend to start stringing of the powerline immediately.

After surveying the power line over your land, we established that the wayleaves trace that you granted us over your land affects about 0.0171 acres....”

178. The introduction clearly tells that this was not the first communication regarding the subject matter to the Plaintiffs. Further, the documents contained in volume 5 of the Defendant’s documents have handwritten notes of the discussions that were held by each of the persons whose land was to be affected with the wayleaves and the compensation payable running from start of February 2003 to February 2005.

179. Therefore, one can safely conclude that although no notice in writing has been produced, the Plaintiffs were sufficiently engaged about the project which would create way leaves through their parcels of land.



The documents they signed clearly set out the size of land affected hence, I decline to declare that the process of acquiring the wayleave was null and void.

180. On the claim for compensation, having analysed the evidence adduce, I categorize the Plaintiffs claims into three;
- a. Those who were paid for the wayleaves.
 - b. Those whose documents show they were paid for the structures and not for the wayleaves (land).
 - c. Those who did not receive any money for compensation.
181. The Plaintiffs pleaded that they are entitled to full and prompt compensation over their various parcels of land with those who were paid any compensation stating that what was paid was fair since they have lost usage of their respective parcels of land. Both the Plaintiffs and the Defendant produced on record acknowledgement form acknowledging receipt of payments from the Defendant (save for those not paid any money). A sample acknowledgment read thus:

“I/We Elizabeth Ruguru Kariithi identity Card (I.D) No. 7248918 of Post Office Box Numbers 5, Limuru in the Republic of Kenya, hereby acknowledge receipt of cheque No. 633967 for Kenya Shillings One Hundred Seventy-One Thousand Only (Kshs.171,000/ = in figures) from the Kenya Power and Lighting Company Limited (KPLC) being 30% compensation of the value of the following structure(s) to be demolished.

Main House, House No. 2, Store Cow Shed & Pit Latrine

Situated on Land Reference Number Nguirubi/Ndiuni/446, necessitated by the construction of the 220Kv Olkaria – Dandora Transmission Line KPLC.

I/We confirm that I/We have no further claim against KPLC and shall keep KPLC indemnified. I against anybody claiming through or under me/us in respect of the structures aforesaid and what is herewith received constitutes my/our claim for the same.

I/We accept that KPLC is entitled to enter the portion affected and carryout the construction works of the line and to maintain the said line without any obstruction of interference. I/We further undertake not to construct any structures along the wayleaves trace or interfere with KPLC’s interest in the said land and any encroachment on my/our part shall constitute unlawful occupation thereof.

Signed ID No. 7248918 Date 20/09/2002

Witnessed by

Name James Mwangi Kariithi Signature..... ID No. 9236495

Date: 20/09/2002

182. On the face of the acknowledgement, the signatory confirms full and final settlement of their claim. The Defendant went further to state that the Plaintiffs who received the compensation monies went ahead and signed grant of easement agreements with the Defendant (produced in the bundles marked as vol. 1-4). Despite the production of these documents, it was the evidence of the Plaintiffs that they were coerced into signing these documents without being explained for their consequences and or that they had the opportunity to negotiate for the compensation payable before accepting.



183. For the assertion of coercion, the burden of proof lay on the Plaintiffs yet none of them (except Francis Njoro) explained to this Court what action of the Defendant constituted coercion. For instance, what/ who intimidated them at place and time of execution of the acknowledgements. None of the witnesses who testified disclosed that they were illiterate and or incapacitated therefore could not read and understand the acknowledgements and or the grant of easement agreements.
184. In the case of LTI Kisii Safari Inns Ltd & 2 others v Deutsche Investitions-Und Entwicklungsgellschaft ('Deg') & others [2011] eKLR relied on by the Petitioners, the Court noted as follows about unconscionable bargains:

“Unconscionable bargains is also an equitable doctrine. There are at least three prerequisites to the application of a doctrine, firstly, that the bargain must be oppressive to the extent that the very terms of the bargain reveal conduct which shocks the conscience of the court. Secondly, the victim must have been suffering from certain types of bargaining weakness, and, thirdly, the stronger party must have acted unconscionably in the sense of having knowingly taken advantage of the victim to the extent that the behaviour of the stronger party is morally reprehensible.”

The court went on to state that;

“The courts will only interfere in exceptional cases where as a matter of common fairness it was not right that the strong should be allowed to push the weak to the wall. The concepts of unconscionable conduct and the exercise by the stronger of coercive power are thus brought in....”

185. Francis Njoro asserted that he was driven to the Defendant's office in Nairobi, locked in a room until 5pm and when they opened the door, he was given a document to sign. This according to him was coercion. He does not state any threats issued to him during the journey to Nairobi and or when he was being put in this room. He does not describe how the room he was allegedly locked up in looked like- was it an office or dark room etc. Neither does he state what words he was told when the document was brought to him for his signature. I find that being put in a room per se without any evidence of threats does not constitute suppression/coercion.
186. Consequently, it is this court's holding that with respect to the Plaintiffs who signed acknowledgements where only their land was affected their claim for further compensation is not viable. There is basis in law for this court to assess compensation merely on an argument that the amount paid was little is. The categories of plaintiffs falling under this finding are;
1. Samuel Ndegwa Mwaura
 2. Moses N. Mbugua
 3. Teresia Nyambura
 4. Peter Gathu Kibunyi
 5. Joseph Ndichu
 6. Kabuku Thayu Women Group
 7. Francis Njoro
 8. Mwaniki Muiruri



9. Joseph Thairu Kumu
 10. Eliud Mbugua
 11. Margaret Wanjiru Njuguna
 12. Geoffrey Gachoke
 13. Stephen Ndirangu
 14. Peter Kamanga
187. It is important to point out that there are certain plaintiffs which averred that what remained of their land after construction of the trace and the wayleave the remainder land was too little. This includes the owner of parcel number 1922 (Peter Gathu Kibunyi). I have looked at page 39 of the valuation report that shows the trace line on parcel numbers 1921 and 1922 with the valuer giving affected size at 0.575 of an acre (almost same size stated by the Defendant at 0.224ha). In reading the copy of title attached to the valuation report, the entire land measures 0.64ha. It means the portion affected is one third of land and not half as put the claimant.
188. For L.R. No Jet scheme/1921 (Harun Muiruri), the size taken is given by the valuer at 0.604 acres out of 0.64ha. The manner in which the picture shows the trace line and the wayleaves divide the land persuades me that the remainder portions puts the owner to a disadvantage while planning any development. The same scenario applies for L.R No. 2107 (Margaret Njeru Ngotho). That is to say the evidence presented show that the wayleave can be equated to acquisition of the entire land. It was justiciable of the Defendant to have paid them compensation for the entire land and not for the portions acquired. These two claimants are:
1. Harun Muiruri Mbugua
 2. Margaret Njeru Ngotho
189. The 2nd category of plaintiffs I find in their favour despite signing the acknowledgement forms are those whose compensation documents confirm they were paid for the structures but not for the land. These include the following:
1. Lucy Wambui Njunge
 2. Veronica Wangui Gichumu
 3. James Mwangi Karithii
190. For the plaintiffs who were not paid, the Defendant did not contest that they are entitled to be compensated. The only question to be determined alongside the ones I have added in the compensation list what valuation rate that should be applied in calculating the compensation for the respective land owners affected. Whether this court should apply the values as at 2003 (as presented by the Defendant) or the current value as per the report of 2019 (as argued by the Plaintiffs).
1. Daniel Ngotho Noroge
 2. John Kinyanjui Nganga
 3. Paul Kirumba Kiome
 4. Ruth Wamboi Njuho
 5. Paul Kamanu Kamangu



6. Michael Karanu Mbugua on behalf of Mbugua Karanu Irungu
191. In the urging the court to use the 2003 value, the Defendant cited Charles Reuben Gitau & Ano versus Gideon Kinuthia Bere & 3 Others which held that the valuation of 2021 was prepared too long after the breach and would result in unjust enrichment. The acquisition for the wayleave herein was undertaken in the year 2003-2005. The suit was commenced in the year 2005 before being transferred to this court in 2014 after the ELC was operationalised.
192. In determining the valuer date, this court takes into consideration the fact that since the Defendant did not complete the process by compensating for the land during that period, their presence in these claimants land amount to trespass. If this position is right and I order the Defendant to remove the offending powerline, these Plaintiffs would deal with their parcels of land at current market price save for being compensated in damages for the trespass.
193. The second angle I take is the just and or equitable remedy taking into consideration the value of the monies as at 2003 and now. Would it be just to pay a party for instance Kshs 1000 as valued at 2003 now as recompense yet the Defendant completed the project and has been using the wayleave? Supposing this money had been deposited in the joint interest earning account, how much would be the total sum available? For the twin reasons stated, I decline to adopt the year 2003 as the valuer date.
194. My finding is supported by the decision of Patrick Musimba versus NLC (2016)Eklr where a 5-judge bench held thus:
- “ 118. In our view, a closer reading of Article 40(3) of *the Constitution* would reveal that *the Constitution* did not only intend to have the land owner who is divested of his property compensated or restituted for the loss of his property but sought to ensure that the public treasury from which compensation money is drawn is protected against improvidence. Just as the owner must be compensated so too must the public coffers not be looted. It is that line of thought that, under Article 40(3), forms the basis for “prompt payment in full, of just compensation to the person” deprived of his property though compulsory acquisition. As was stated by Scott L.J, in relation to compulsory acquisition, in the case of Horn v Sunderland Corporation [1941] 2 KB 26,40: “The word “compensation” almost of itself carries the corollary that the loss to the seller must be completely made up to him, on the ground that unless he receives a price that fully equaled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice”.
- “119. Effectively Lord Scott’s statement gave rise to the unabated proposition that the compensation of compulsorily acquired property be quantified in accordance with the principle of equivalence. A person is entitled to compensation for losses fairly attributed to the taking of his land but not to any greater amount as “fair compensation requires that he should be paid for the value of the land to him, not its value generally or its value to the acquiring authority”: see Director of Buildings and Lands v Shun Fung Wouworks Ltd [1995] AC 111,125.”
195. I am alive to the fact that this was not a full acquisition of the land but guided by the above finding, whatever rate the (50% of the trace) should be premised on the current rate. In terms of computing the figures, the Defendant relied on the valuation report as at 2003 which I have already found cannot



be applied. I will therefore adopt the valuation report of the Plaintiffs as of 2019 taking note that the compensation is not for compulsory acquisition save for the Plaintiffs whose remainder land cannot benefit them.

Quantum:

196. For the compensation tallying for the Plaintiffs whose claim succeed in whole (those who had not been paid) and those who were not compensated for the wayleaves, I award them compensation in terms of the figures set by the valuer (PW26). For two Plaintiffs (Harun and Margaret) who were paid for the area of the wayleave but who I find ought to have been for the entire land, they shall be paid the values returned on their land less what they had received.
197. I shall the award the respective Plaintiffs guided by the valuation report of 2019 because there was no comparable report. The questions raised by the defence during cross-examination that the method used to calculate values for wayleaves (something called Sherwood D.) should have been followed by a report giving the appropriate figures as of 2019 in their view. To expect this court to adopt such a standard to arrive at the correct valuation is like turning the court into an expert witness.
198. Further, I rely on the Supreme Court of Kenya decision in the case of *Attorney General versus Zinj, Petition 1 of 2020* [2021] KESC 23 (KLR) (Civ) (3 December 2021) which held at paragraph that;
- “As we have arrived at a similar conclusion, we see no reason to interfere with the findings of the two superior courts in this regard. We take note of the appellant’s submission to the effect that in arriving at the quantum of special damages, the trial court placed reliance upon a valuation Report by a private valuer. Such Report, in the view of the appellant, was not only unreliable, but could very likely have been tailored to support the respondent’s claim. However, in answer to this court’s question as to whether, the appellant had tabled in court, a Government valuation Report to counter the contents of the impugned one, counsel for the appellant stated that no such Report was ever tabled at the trial court. The main basis upon which special damages can be granted for the deprivation of property, is the market value of the said property. In case of general damages, a court of law exercises discretion guided by the circumstances of each case. In granting special damages, the trial judge was guided by the valuation Report tabled by the respondent. In the absence of a contrary report on record, we have no basis upon which to interfere with the award. Even if there had been one such other report, our jurisdiction to interfere would still have been largely circumscribed, unless the award had clearly ignored the fundamental principles of valuation as demonstrated by the counter-report.”
199. Lastly, the Plaintiffs sought for damages for tort of nuisance arising from the hissing sound emanating from the trace line especially when it is raining. The Defendant urge the court to dismiss the claim for want of proof. The Plaintiffs did not call any expert witness who measured the levels of noise generated by the hissing sound to confirm that its effect on the neighbours is harmful. Therefore, I make no award on this heading.
200. In conclusion, I dismiss the claim by the 14 plaintiffs listed under paragraph 186 186}} hereinabove. Judgement is entered for the eleven (11) plaintiffs listed in paragraphs 188 188}}, 189 189}} and 190 190}} who are awarded compensation on the following terms:
- a. Harun Muiruri Mbugua- Kshs 3million minus Kshs 67000= 2,933,000
 - b. Margaret Njeru Ngotho- Kshs 2.5 million minus Kshs 300,000= 2,200,000



- c. Lucy Wambui Njunge- Kshs 2 million
- d. Veronica Wangui Gichumu -Kshs 3.5 million
- e. James Mwangi Karithii – Kshs 1.5 million
- f. Daniel Ngotho Noroge for L.R No. 2108 -Kshs 1.5 million and for L.R No 2325- Kshs 2.5 million
- g. John Kinyanjui Nganga- Kshs 120,000/=
- h. Paul Kirumba Kiome – Kshs 100,000/=
- i. Ruth Wamboi Njuho- Kshs 700,000/=
- j. Paul Kamanu Kamangu- Kshs 100,000/=
- k. Michael Karanu Mbugua (on behalf of Mbugua Karanu Irungu-deceased)- Kshs 5.5 million
- l. Interest on the above sums at court rates from the date of this judgement
- m. Cost of the suit to the Plaintiffs

DATE, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE, 2025.

A. OMOLLO

JUDGE

