



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MAKUENI

ELC CASE NO. 273 OF 2017

DOBBIN MUTISO NDOLO....PLAINTIFF

-VERSUS-

KENYA ELECTRICITY TRANSMISSION

COMPANY LIMITED.....DEFENDANT

JUDGMENT

1. Through an amended plaint dated 26th July, 2018, the Plaintiff prays for orders against the Defendants for;

a. Kshs. 2,669,735/= as compensation for loss of use of land, crops and forest produce damage.

b. Costs of the suit.

c. Interest on (a) above from the time of filing suit until payment in full.

2. The Plaintiff's case is that the Defendant acquired a way leave through land parcel Mbitini/Kyemundu/722 for which he is the legal representative but is now adamant to pay compensation, as per the amounts assessed by professionals, for loss of land use, damage to crops and forest produce.

3. The Defendant filed its statement of defence and admitted the acquisition of the way leave. It avers that the Plaintiff was compensated in the sum of Kshs. 281,741/= for damaged crops and trees but rejected compensation for limited loss of land use. It avers that the computation by the Plaintiff is erroneous and is deemed as compulsory acquisition which is different from acquisition of wayleaves under the Land Act 2012. Apart from the admitted items, all the other averments in the plaint were denied and the Plaintiff put to strict proof.

4. The Plaintiff adopted his statement filed on 01st August, 2018 as his evidence in chief. He testified that he is the administrator of the estate of Ndolo Kakui, the registered owner of land parcel No. Mbitini/Kyemundu/722 (*suit land*). He produced a limited grant as P.Exhibit-1. He produced a letter from the Defendant, dated 27th June, 2016, as P.Exhibit-2 through which he was informed that a power line would be erected on the suit land.

5. He produced a property damage report from the Defendant as P.Exhibit-3 and testified that it does not contain the value of the damaged trees. He engaged Panorama Valuers and their report was marked as P.MFI-4 later produced as P.Exhibit No.4. He also engaged the Ecosystem Conservator of Makueni County and his report was marked as P.MFI-5 and later produced as P.Exhibit No.5. Further, he engaged the Agricultural Officers who valued the damaged crops and prepared the valuation report marked P.MFI-6. The letter referring him to the crops officer was produced as P.Exhibit-7 and the search certificate for the suit land was produced as P.Exhibit-8.

6. P.Exhibit-9 was an extract of his bank account showing the amount deposited by the Defendant. He testified that he did not know the purpose of the money but the indication from the statement is that it was for crop compensation.

7. On cross examination he said that he had no objection about the powerline passing through the shamba and all he wanted was compensation. He was present when the property damage report was prepared and agreed to sign it. He said that the same was done before the exercise was carried out. Further he said that the power line passed through the selected site but also passed through areas that were not covered in the report. He agreed that only trees were on the site where the power line was mounted. The Agricultural officer prepared his report when construction of the power line began. He was told that he could farm underneath the power line but is yet to cultivate. He was only barred from planting trees like mangoes. In re-examination, he said that the report was with regard to where the pylons were to be mounted but trees were cut wherever the power cables passed.

8. Richard Guantai Kamenchu (PW1) is a Ward Agricultural Officer with the Ministry of Agriculture, Livestock and Fisheries-Makueni County Government. He assessed the suitland on 15th June, 2017, compiled a report and produced it as P.Exhibit-6.

9. On cross examination, he said that he had documents to show where he worked but had not carried them to Court. He had not carried his degree certificate as well. His report was based on the crops that were damaged, the area, the number of plants as well as the production. 10 mango trees were cut. He didn't know what caused the trees to be cut. An entire one acre of pasture was destroyed. The total acreage of crops destroyed was 4 acres. He was not aware that the total acreage was 1.95 as put by counsel for the Defendant. He could see the damage when he visited the scene.

10. He agreed that production is not constant. For pasture, production is 150 bales per acre at a cost of Kshs. 300/= per maize. Maize production is 8 bags at a cost of Kshs. 30/= per kg. $\frac{3}{4}$ of an acre is 6 bags of maize. Green grammes is 6 bags per acre. For $\frac{3}{4}$ acre, production is 4 bags at a price of Kshs. 7,200/= per 90kg bag. His calculation is not for future production. He relied on rates and agreed that rates are not constant. He relied on a document called Crop Compensation Guideline which is used by the Ministry of Agriculture. He was not aware as to whether the document was ever gazetted.

11. Stephen Munyai Mwanza (PW2) is the Forester in charge of Makuli Forest Station in Makueni County. He testified that he had been in service for the last 31 years and was a holder of a diploma in forestry from Kenya Forest Service Londiani. On 31st May, 2017, he assessed forest produce which had been cut on the suit land along a Ketraco service line and produced the report as P.Exhibit-5. The total damage was Kshs. 815,736.20/=. In his report, he made reference to certain tree species and volumes. He used the Forest Service General Order (FSGO) of 2016/2017 issued by the Government showing the royalty rates to calculate the total value. The royalty was Kshs. 4,588/= per cubic metres for all the first five species. The smaller poles were 126. According to the FSGO, they were to be costed at Kshs. 60/= hence Kshs. 7,560/=.

12. On cross-examination, he agreed that reliance on the FSGO is not stated in his report. FSGO provides for acacia trees. There is a densins formular for the first species. Number 15 is diameter in centimeter. The formular is for the seven in the category. One tree of acacia tortilis is Kshs. 619.38/=. He could not remember seeing P.Exhibit-3. His report has item No. 23. It includes what he saw on the ground. In re-examination, he said that FSGO provides for tree species nationwide and that Acacia tortilis is captured in the category of 'all others'.

13. Anthony Mateng'e Itui (PW3) is a Valuer by profession and a holder of Economics degree from the University of Nairobi. He was admitted as a full member on 01st February, 1984 and his membership is 245. He initially worked for the Ministry of Lands where he rose through the ranks to head the division as the Chief Government Valuer and retired in 2014. He currently runs his own practice known as Panorama Valuers.

14. He recalled visiting the suit land on 15th June, 2017 with a mission to conduct valuation of the Plaintiff's land which had been traversed by high voltage power lines. The value of the land taken by the power lines is Kshs. 955,200/=. He produced his report as P.Exhibit-4. He was licensed to practice since 1984.

15. On cross examination, he said that he visited the area and the acreage that was affected was 30 metres by 269 thus amounting to approximately 8070 square metres or 0.807 ha or 1.99 acres. The power lines were already in place and he could see the pylons. He could see cow peas growing in the affected area. He could also see mature mango trees. He did not see evidence of structures in the affected area. To a limited extent, the farmers could cultivate on the affected area. He was not aware that the Plaintiffs were compensated by the project cut off date.

16. He caveated the title so that Ketraco can ask the Registrar to enter their rights in the green card. The Plaintiff cannot grow tall trees and the base of the pylons which is 8 metres by 8 is as good as taken. There will be a challenge of sub-dividing the land in future. The percentage of the land depends on its usage and he arrived at the value of Kshs. 600,000/= based on research. He considered the market value. There were a few recorded sales like Mbitini Mutiso number 654 which has 0.4 acres.

17. The Defendant called Idel Sharon Loko (DW1), a Land Economist with Ketraco. She adopted her statement dated 20th August, 2018 as her evidence. She testified that the suit land was among the parcels to be affected by the project and there was a gazette notice to that effect. The gazette notice is dated 15th April, 2016 which date is also the project cut off date. The date prevents affected people from erecting additional structures and valuation is adopted as at that date.

18. She testified that the Plaintiff accepted the compensation of Kshs. 281,741/= but later disputed the payment on grounds that he was under compensated. He also rejected the compensation of land at Kshs. 146,250/=. The minimum of compensation is 30% of the market but it can go up depending on the impact of the transmission line on the land. In this case, they adopted the minimum of 30% because the assessed impact was 10.021% hence less than the required minimum. Ketraco contracted a Valuer in their panel, Lloyd Masika, who returned a value of Kshs. 250,000/= in Kyemundu area. He produced the following documents;

- Copy of offer letter to Plaintiff dated 13/06/2017 -D.Ex-2
- Gazette Notice dated 15/04/2016 -D.Ex-3
- Copy of property damage report for Kshs. 226,700/= -D.Ex-4
- Copy of property damage report for Kshs. 55,041/= -D.Ex-5
- Strip plan map for the Transmission Line -D.Ex-6

19. On cross examination, she said that she is a registered Valuer and a holder of Bachelor of Real Estate from the University of Nairobi. She graduated in 2013. She is the Assistant Land Economist at Ketraco and was employed in 2014. She agreed that before commencement of the project, Ketraco gave commitment to each land owner. She agreed that P.Exhibit-1 explained, in detail, how compensation would be done for

each category of damage. She agreed that the way leave damaged the Plaintiff's crops and that according to P.Exhibit-1 reliance would be on the Ministry of Agriculture and Kenya Forest Service rates. She also agreed that compensation for loss of use of land would be based on market value as given by a registered Valuer.

20. When referred to D.Exhibit 5, she said that crops and forestry are not in her area of specialization. She agreed that they did not contract anybody from the Ministry of Agriculture to carry out crop valuation. She agreed that there are no trees in D.Exhibit-8 hence they could not call anybody from KFS. She agreed that their report is specific to land. She said that she filled the rates but the item description was done by the way leave officers on the ground. The document was signed by Don Bosco Mwendw'a, the Plaintiff's son. The Plaintiff and his son went to the Defendant's offices before he filed the case. He went to dispute the assessment of crops, forest produce and land.

21. She agreed that maize, pigeon peas and beans are lumped together as the first item description but the state of their maturity is not indicated. She agreed that it was a crucial factor. She also agreed that there is no description of the type and breed of crops which is also crucial. She agreed that the rates do not particularize the time. She filed the rates part and just adopted. She did not calculate. The crops were intercrop. If there were stand alone crops, the rates would have been different. She said that they were not dealing with the yields but with the stems as they were. She did not assume that the Plaintiff grew the maize as fodder. She did not calculate the yield.

22. She agreed that the report would have been materially different if she had calculated the yield and value of the stem. She is aware that there are people specialized in crops assessment and she knows that they are readily available at the ward level. She agreed that Ketraco did not approach the crops officer at ward level and there was no impediment for getting them. She agreed that she did not fill any form on forest produce assessment. She said that the acreage of affected land being 1.95 acres was done by surveyors. She agreed that the strip plan, D.Exhibit-6 does not indicate the author and is not signed by anybody. The three straight lines depict the way leaves but she agreed that there is no key to show what that means. It does not show that the area taken up is 1.95 acres.

23. She said that she visited the site and saw the damage on crops, fruit trees and forest cover. Ketraco makes payment based on a minimum of 30% which is contained in a policy document. She agreed that she did not have the policy document in court. She agreed being in possession of the letter dated 27th June, 2016 indicating that compensation is open market value. D.Exhibit-6 shows that the power lines traverse on the edge of the right hand side. She said that according to P.Exhibit-4 which is a Valuer's document, the suit land has been cut in half. She agreed that if the land has been traversed in the middle, it would be a material factor in valuation. She agreed that she did not carry out valuation of the suit premises specifically and that the purpose of doing a general valuation was to get a general view. She knew that the Plaintiff had a case in Court when she filed their document and she also knew that the Plaintiff had declined payment. The Plaintiff's son was not aware of the valuation at the time of filing the document.

24. Further, she said that the loss of user is limited as the Plaintiff can grow crops and trees whose height at maturity does not exceed 12feet. She agreed that they compensate for crops under the way leave. She also agreed that the area where the pylons are erected is permanently taken. She did not agree that the Plaintiff's land was cut into two portions. She then agreed that the land was cut into two unequal parts. She agreed that the smaller part would be difficult to plan, sell or use. She said that they register an easement after the project person has accepted the offer, signed and received payment. She agreed that each parcel of land was affected in a special way. That would have become known to the Valuer if she had visited the suit land specifically.

25. Erastus Kiita Museleku (DW2) is a licensed Valuer, estate manager and tutorial fellow at the University of Nairobi. He produced the valuation report dated 20/06/2016 as D.Exhibit-1. They were instructed by Ketraco and the purpose of the report was to inform compensation along the Emali/Wote area. They were to determine the current open market value of one acre of undeveloped land for each parcel. There were 18 parcels in total along the way leave. Parcels Mbitini/Kyemundu/147 and 736 were some of the affected parcels. They inspected the 18 properties, did market survey and adopted the market approach.

26. They compared what had been sold or bought in the area within a period of one year and then carried out an analysis per acre. The market approach uses comparables. He used six comparables and the value per acre was Kshs. 250,000/=. He saw the Panorama valuation report which was done one year after theirs. According to the international valuation standards, valuation report is valid for 6 months and can be shorter depending on local circumstances. He said that at page 5 of the report, there were a lot of assumptions into the future in terms of how the land is to be affected by the way leave. He testified that by touching on the future, one is going beyond the market value. He also testified that the valuation could not have appreciated that much within one year. According to him, the sum of Kshs. 600,000/= is not supported by market value hence has no basis.

27. On cross-examination, he said that he does not come from the area and is from Kitui County. He only looked at two parcels of land. He does not know whether the area is a ward. The 18 parcels were not in one ward. The ones beginning with the word 'Mbitini' are not in the same adjudication section. He agreed that the area is a fruit belt for Makueni. He agreed that it is possible for parcels in the same area to have different values. Mbitini/Masue/660 and Mbitini/Masue/3 had the value of Kshs. 300,000/= and Kshs. 1,000,000/= respectively.

28. He said that he can testify for the suit land because it is based on the principle of substitution so that if one parcel is sold for A, the same value should be applied for a similar parcel in the same area. He agreed that he did not visit the suit land but visited parcel 736 which is about 4 parcels away. 722 is along the main road and 736 is 2 parcels away from the main road. He agreed that the road is a factor for valuation. Mbitini/Masue/3 was valued at Kshs. 1,000,000/= because it was along the Mombasa Highway. He did not see the same reason for 722 and 736 because the impact may not be as immense as Mombasa road.

29. He agreed that Mbitini/Masue/722 borders a major road. He also agreed that the fruit processing plant in Kalamba had come into operation. Further, he agreed that when a general value is disputed, a specific valuation to the land is done. He was not asked to carry out specific valuation for 722. He agreed that the Panorama report is specific to 722. He said that the factors affecting value include location, attributes of particular land e.g. soil and amenities like electricity and water. He agreed that the attributes differ from parcel to parcel. The Plaintiff's Valuer talked about severance which is a negative attribute.

30. He said that according to the Land Act, they do not take into account how the land would be used but concern themselves with the market

value only. The former becomes a factor under compulsory acquisition. He was aware that Ketraco would caveat the land and agreed that any future sale would be subject to the caveat. He agreed that some parcels could be more affected than others. In his opinion and based on experience, he agreed that the value would have appreciated as indicated.

31. In his submissions, the Plaintiff identified the following as the issues for determination;

a. Whether or not he is the legal representative of Ndolo Kakui (deceased), the registered owner of all that parcel of land known as Mbitini/Kyemundu/722.

b. Whether or not the acquisition of the way leave and subsequent construction of the power line traversing Mbitini/Kyemundu/722 occasioned him any loss and if so, what is the quantum of the said loss?

c. Whether or not he is entitled to the amount claimed in compensation for the loss of land, crops and forest produce occasioned by the Defendant's acquisition of the way leave and the subsequent construction of 132 KV Mwingi-Kitui-Wote-Sultan Hamud transmission line traversing Mbitini/Kyemundu/722.

d. Whether or not he issued a letter of demand before action.

e. Who should bear the costs of the suit?

f. Whether or not he is entitled to interest on the amount found due and owing from the Defendant and if so, from what time and at what rate.

32. On the first issue, he submitted that he was never cross examined on his evidence hence it is unchallenged.

33. On the second issue, he submitted that the evidence on record clearly shows that installation of the transmission line occasioned loss to the suit land. The point of departure, he submitted, is the nature, extent and value of loss occasioned. He submitted that the Defendant's letter to the Plaintiff gives a formula of how compensation would be calculated but the Defendant did not follow its own formula. On the other hand, he contended that he engaged relevant officers who computed the loss and gave evidence in Court.

34. Further, he contended that the Defendant did not avail a policy document to the effect that compensation for loss of land use is to the extent of a minimum of 30% of the market value. He submitted that without an alternative valuation report specific to the suit land, the hands of this Court are tied. It was also his submission that even if the valuation by A.M Itui (PW3) was done after the project cut off date, the same was reasonably proximate and able to give an accurate projection of the market value.

35. The Defendant's Counsel submitted that the only issue for determination is whether the Plaintiff is entitled to any money over and above what the Defendant already paid or intends to pay for the limited loss of land use.

36. He submitted that special damages must be specifically pleaded and proved. While agreeing that some forest produce was cut from the affected area, he submitted that the Defendant did not carry any tree and contended that the Plaintiff should have mitigated his losses by making use of the cut trees. He submitted that the Plaintiff's report does not indicate what became of the cut trees and insists that the sum of Kshs. 226,700/= is sufficient compensation.

37. He submitted that the report of the Agricultural officer is not reliable as it gives values of crops on a future assessment yet the Plaintiff is not stopped from farming within the said area. He has also faulted the report for giving valuation of the entire parcel instead of the affected area only.

38. Relying on section 148 of the Land Act, he submitted that the suit land was valued at Kshs. 250,000/= per acre at the project cut off date and there was no dispute about the qualifications of the Valuer, Lloyd Masika. He contended that the Plaintiff's valuation was done over a year later and it does not indicate how they arrived at their figure of Kshs. 600,000/= per acre.

39. He submitted that the rate of Kshs. 250,000/= is what was used to compensate every other person whose land was traversed by the way leave hence should be used to compensate the Plaintiff in line with the equity maxim stating that equality is equity. He relied on the case of **National Land Commission vs. Estate of Sisiwa Arap Malakwen & Anor (2017) eKLR** where the Court found that the rate of compensation ought to be the value of the property at the initial valuation and not a later date or at the determination of a suit.

40. He submitted that the pylons are permanently placed hence the reason for compensating at 30% of the affected land. He submitted that compensation for way leave acquisition is limited to loss of use of land as there is no transfer of title. He relied on the case of **KETRACO vs. Valeria Helen Wangechi Kigano & Others (2018) eKLR** where the Court stated that;

“The easement right does not imply that there will be transfer of the Defendant's land to Plaintiff. The right will only enable the Plaintiff to carry out its mandate in line with the provisions of the law. I am therefore inclined to believe that the compensation policy of the Plaintiff which is pegged at the rate of 30% of the value of affected land is grounded on sound principles of law.”

41. Having looked at the pleadings, evidence and the rival submissions, it is my considered view that the following issues arise for determination;

a. What loss was occasioned to the suit land by acquisition of the way leave and subsequent construction of the power line?

b. What is the quantum of the said loss?

42. It is not in dispute that the estate of Ndolo Kakui suffered loss as a result of way leave acquisition and subsequent construction of the power line. The property damage report is a clear acknowledgement of loss by the Defendant. The Plaintiff is the holder of a grant of letters of administration in respect of the estate hence the proper person to sue on behalf of the estate.

43. The Defendant's letter dated 27th June 2016 acknowledges that the suit land would be affected and gives a formula of how compensation would be done. It states that the total affected acreage would be determined upon completion of survey by the contractor.

44. Idel (DW1) testified clearly that he visited the site and saw the damage on crops, fruit trees and forest cover. It is therefore clear from the evidence that the estate suffered limited loss of land use, damage to crops and damage to forest produce.

45. The Plaintiff engaged Panorama Valuers who assessed the loss of the affected part at Kshs. 955,200/=. The Defendant has disputed the figure and insists that Kshs. 146,250/= is adequate compensation. The Defendant's figure is arrived at by applying the following formula; *Way leave trace acreage divided by total acreage x 100% i.e. 1.95/19.459 x 100% = 10.021%*. According to the Defendant, it adopted a minimum of 30% because the percentage of the affected area (10.021%) was less than the required minimum. The Defendant calculated the compensation payable by multiplying the percentage of the affected area by affected acreage by valuation per acre hence; $30\% \times 1.95 \times 250,000 = 146,250/=$.

46. I am aware that the Defendant did not avail its policy document which contains its compensation policy however; precedent shows that the policy has been readily applied by Courts. In addition to the **Wangechi Kigano case (supra)**, the Court, in **KETRACO vs. James Kinoti M'twerandu (2018) eKLR**, expressed itself as follows;

“Article 201 of the Constitution expresses the principles that shall guide all aspects of public finance. Sub section (d) stipulates that :

‘public money shall be used in a prudent and responsible way.’

I find no good reason to deviate from the findings in the aforementioned cases in respect of the 30 % compensation policy. The same is in line with prudent use of public funds.”

47. Similarly, I am inclined to believe that the Defendant's compensation policy, which is pegged at the rate of 30% of the value of affected land, is grounded on sound principles of law.

48. The valuation of Kshs. 250,000/= per acre is highly contested by the Plaintiff. The Defendant's Valuer did not conduct specific valuation of the suit land but estimated its value by making comparisons with neighbouring parcels which had been specifically valued. DW2 was categorical that where a general value is disputed, a specific valuation of the land should be done. This Court has no expertise in matters of valuation and in the absence of a rebuttal valuation by a registered Valuer and specific to the suit land; this Court has no option but to be guided accordingly. I therefore adopt the valuation of Kshs. 600,000/= per acre as indicated in the report of Panorama Valuers.

49. The way leave truce acreage is also in dispute. Panorama Valuers put it at 1.99 acres while the Defendant puts it at 1.95 acres. Idel (DW1) was at pains to justify the figure and she agreed that the map (D.Exhibit-6) does not show the acreage taken up and is not signed. The figure of 1.95 acres indicated in the Defendant's letter dated 13/06/2017 is an approximation. On the other hand, panorama Valuers visited the suit land and took the actual measurements hence their figure of 1.99 acres is well grounded. I therefore adopt the figure as the way leave truce acreage.

50. Using the Defendant's formular, the compensation payable works out as follows; $30\% \times 1.99 \times 600,000 = 358,200/=$.

51. The Plaintiff engaged an Agricultural Officer, Richard (PW1), who assessed the value of damaged crops at Kshs. 1,180,400/=. The Defendant's report (D.Exhibit 5) assessed the damage at Kshs. 55,041.38/=. Idel (DW1) could not testify on this area as she agreed that crops and forestry are not in her area of specialization. She also agreed that they did not contract anybody from the Ministry of Agriculture to carry out crop valuation. She however testified that in case of damage to crops, reliance would be on the Ministry of Agriculture and Kenya Forest Service rates.

52. A re-evaluation of Erastus's (DW2's) evidence shows that the Defendant arrived at its valuation in a casual manner. Some crops were lumped up together instead of being particularized. The state of their maturity was not indicated and Idel (DW1) agreed that it was a crucial factor. The type and breed of crops was also not given and Idel (DW1) agreed that it was also crucial. She admitted that she adopted the rates without calculating.

53. In the circumstances, this Court is only left with the expert opinion of Richard (PW1). His evidence was that the total acreage of crops destroyed was 4 acres and I do not see a contradiction in light of the fact that Panorama Valuers gave the affected area as 1.99 acres. Their report is clear that *'any crops, structures and improvements are to be reported on by other experts'*. Richard (PW1) testified that he relied on a document called *'Crop Compensation Guideline'* which is used by the Ministry of Agriculture. Accordingly, I am convinced that he applied the correct rates.

54. The Defendant faulted Richard's (PW1's) valuation on the ground that it incorporated future production but Richard (PW1) denied the same. P.Exhibit-6 does not have an indication of future production with regard to pasture, maize, green grams, beans, pigeon peas and pumpkins. I am convinced that the cost indicated is for production which would have been realized if the crops had not been destroyed. As for mangoes however, the assessment report indicates that 10 mature plants were destroyed and their production would have been 20 bags

each. Richard (PW1) proceeded to assess the loss of 20 bags for a period of 10 years at the rate of Kshs. 500/= per bag hence a total of Kshs. 1,000,000/=. Evidently, there was incorporation of future assessment with respect to mangoes.

55. From the evidence, the mangoes trees were permanently lost as the Plaintiff would not be allowed to plant them again since their height exceeded the one allowed by the Defendant. On the other hand, Richard (PW1) agreed that rates and production are not constant. With that in mind, it is my considered view that a period of 10 years is on the higher side and I adopt 5 years. Accordingly, the cost for mangoes is $(10 \times 20) \times 500 \times 5 = 500,000/=$. The cost of the other crops remains as per the assessment report.

56. The upshot is that the quantum of damage to crops is Kshs. 680,400/=.

57. The Plaintiff engaged the services of a forester, Stephen (PW2), who assessed the damage at Kshs. 815,736.20/=. The Defendant's report (D.Exhibit 4) assessed the damage at Kshs. 226,700/= but Idel (DW1) agreed that they did not engage anyone from Kenya Forest Service. She also agreed that any damage to forest produce would be assessed according to the Kenya Forest Service rates. Consequently, this Court is left with the expert opinion and report of Stephen (PW2).

58. Stephen (PW2) testified that he used the rates contained in the Forest Service General Order (FSGO) of 2016/2017 and a copy of the same was availed to Court. As stated earlier, this Court has no expertise in forest produce assessment and the Defendant did not avail a rebuttal report prepared by an expert. Accordingly, I adopt Richard's (PW1's) report.

59. The upshot is that the Plaintiff has proved his case to the required standard and I proceed to enter judgement for him and against the Defendant as follows: -

a. Limited loss of land use	- 358,200/=
Damage to crops	- 680,400/=
Damage to forest produce	<u>- 815,736.20/=</u>
Total	1,854,336.20
Less the amount paid	<u>281,601.00</u>
Net total	<u>1,572,735.20/=</u>

b. Costs of the suit.

c. Interest on (a) above from the time of filing the suit till payment in full.

Signed, dated and delivered at Makueni via email this 26th day of October, 2020.

MBOGO C.G.,

JUDGE.

Court Assistant: C. Nzioka