



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 58 OF 2018**

**(Formerly ELC. CASE No. 735 OF 2015 - Nairobi)**

**KENYA POWER & LIGHTING COMPANY LIMITED....PLAINTIFF**

**VERSUS**

**SAMMY WAMBUA KYALE .....1<sup>ST</sup> DEFENDANT**

**BM WAMBUA .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of a Plaint dated 10<sup>th</sup> June, 2003. In the Plaint, the Plaintiff alleged that the 1<sup>st</sup> Defendant (*deceased*) is the proprietor of a piece of land known as Plot Number 3-784 which was curved out of L.R. No. 10967; that the Plaintiff is in the process of laying a 220KV power distribution line from Kiambere Dam to Dandora in Nairobi and that in 2000, Mukaa Mukuu Farmers Co-operative Society Limited granted the Plaintiff a wayleave through its land L.R. No. 10967.

2. The Plaintiff averred in the Plaint that it had agreed to pay the Defendant Kshs. 33,504.00, Kshs. 12,590 being for the damage to crops and vegetation and Kshs. 20,914 being compensation for wayleave; that the Defendants wanted to be paid Kshs. 3,000,000 being the value of fruit trees and that the Defendants should be enjoined from interfering with the laying of the transmission lines on Plot No. 3-784.

3. The Defendants filed a Defence and Counter-claim on 19<sup>th</sup> September, 2003 which was amended on 28<sup>th</sup> September, 2017. In the Amended Defence and Counter-claim, the Defendants averred that the compensation alluded to in the Plaint was never agreed upon between them and the Plaintiff; that the construction of the Plaintiff's tower on the suit land was and remains an illegal structure; that the suit land is Plot No. 8-003 and that the suit land has been adversely affected by the high electric voltage wires that run diagonally across the land. In the Counter-claim, the Defendants have averred that they are entitled to compensation as per the valuation report of 15<sup>th</sup> July, 2015.

4. When the matter came up for hearing, neither the Plaintiff's representatives nor its advocate were in court. The Plaintiff's suit was therefore dismissed with costs for want of prosecution and the matter proceeded for the hearing of the Defendant's Counter-claim.

5. The 2<sup>nd</sup> Defendant, DW1, informed the court that the 1<sup>st</sup> Defendant is his late father. It was his evidence that in the year 2002, the Plaintiff was in the process of putting up transmission lines across the suit property and that they objected to the laying of the transmission lines across the suit land but the court allowed the Plaintiff to lay the said transmission line by way of an injunction.

6. It was the evidence of DW1 that as a member of Muka Mukuu Farmers Co-operative Society, the suit land was allocated to the 1<sup>st</sup> Defendant (*deceased*); that the entry of the Plaintiff on the land was against their right of ownership and that the high voltage transmission line passes close to their main house which needs to be relocated to another part of the land.

7. DW1 stated that during the laying of the transmission line, the Plaintiff damaged the property belonging to the Defendants and that the land has become commercially unviable due to the presence of the high voltage transmission lines in the middle of the land. DW1 stated that the court should order the Plaintiff to compensate them for the losses occasioned to them as per the valuation report.

8. DW1 produced in evidence the valuation report dated 15<sup>th</sup> July, 2015. It was the evidence of DW1 that they are entitled to compensation to the tune of Kshs. 2,785,000.

9. The Defendants' advocate submitted that there is no dispute over the ownership of Plot No. 8-003 that was curved out of L.R. No. 10967; that the 1<sup>st</sup> Defendant is the registered proprietor of the said land and that the Plaintiff has constructed a power line over the suit land without their consent.

10. Counsel submitted that the suit property was adversely affected by the Plaintiff's high voltage wires that run diagonally through the land hence rendering the suit property of low value and unusable as initially planned by the Defendants because the transmission lines run too close to houses thus necessitating their relocation.

11. The Defendants' counsel submitted that the Plaintiff did not seek permission from the Defendants before entering the suit land and laying electric supply lines and that no notice was given to the Defendants as required by the law. Counsel submitted that the Plaintiff's action of unlawful entry into the suit property entitles the Defendants to compensation as pleaded. Counsel relied on several authorities which I have considered.

12. In the Defendants' Counter-claim, the Defendants averred that the 1<sup>st</sup> Defendant is the registered proprietor of land known as plot number 8-003 which is a portion of land that was curved from Land Reference number 10967 registered in the name of Mukaa Mukuu Farmers Co-operative Society Limited situated in Machakos County. This fact was not controverted by the Plaintiff.

13. The Plaintiff admitted in its Pleint that it has laid a 220KV power distribution line from Kiambere Dam to Dandora in Nairobi to boost the national power grid. The uncontroverted evidence by the 2<sup>nd</sup> Defendant is that the Plaintiff's transmission line runs across plot number 8-003, and that the said line passes near the Defendants' house of residence and that they should be compensated for the loss of user of the land taken up by the Plaintiff's transmission.

14. According to the Valuation Report that was produced in evidence by the 2<sup>nd</sup> Defendant, the construction of the electric line and pylons over the suit land has affected human development on the land and has redefined land use patterns.

15. The Valuation Report produced by DW1 further shows that the affected area of the suit land by the said pylons and high tension cables is 2.1 acres of the suit land; that the Plaintiff acquired rights to use the affected portion of the land without acquiring ownership rights from the Defendants and that the Defendants should be compensated for the acquisition of the said portion of land. The Valuer itemized the amount that the Defendants are entitled to as compensation as follows:

| <b><u>Item</u></b>             | <b><u>Kshs.</u></b>     |
|--------------------------------|-------------------------|
| i. Sterilized land – 2.1 acres | 1,400,000               |
| ii. Tree/crops                 | 310,000                 |
| iii. Mesne profits             | 75,000                  |
| iv. House                      | <u>1,000,000</u>        |
| <b>Total</b>                   | <b><u>2,785,000</u></b> |

16. Considering that this suit was filed in the year 2003, the law applicable is the Electric Power Act, Cap 314 which was repealed by the Energy Act in the year 2006.

17. Section 45 of the Electric Power Act, Cap 314 (*repealed*) provided as follows:

“1...

2...

**3. An owner, after receipt of the notice and statement of particulars under sub-section 2 may assent in writing to the laying down of the electric supply line upon the 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.”**

18. It is therefore obvious from the above provision of the law that the permission of the land owner was required before the Plaintiff could enter the suit land to lay electric supply lines. Moreover, a notice was required to be given, which notice should have been accompanied by a statement giving the particulars of entry on the suit land. Neither of the two happened in this case.

19. Having lost the use of 2.1 acres of the suit land due to the pylons and high voltage cables passing across the suit land, the Defendants are entitled to compensation for the said portion of land. The amount payable by the Plaintiff for the said loss of user of a portion of the suit land, and the damaged crops, will be as per the Valuation Report of 15<sup>th</sup> July, 2015. The said amount, as assessed by the Valuer, is Kshs. 2,785,000.

20. As I stated above, the Plaintiff did not rebutt the Defendants' evidence that they are entitled to compensation to the tune of Kshs. 2,785,000. Consequently, the Defendants' claim is allowed as follows:

**a. The Defendants to be paid Kshs. 2,785,000 by the Plaintiff being compensation for the use of a portion of L.R No. 8-003.**

**b. The Plaintiff to pay interest on the above amount from 15<sup>th</sup> July, 2015 (the date of the Valuation) at court rates until payment in full.**

*c. The Plaintiff to pay the costs of the suit and the Counter-claim.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2019.**

**O.A. ANGOTE**

**JUDGE**