



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 67 OF 2010

DANIEL MUSAU MBITHI.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 30th March, 2010, the Plaintiff averred that at all material times, the Plaintiff was and still is the registered proprietor of commercial plot number Ndalani/Ndalani/140 measuring 30 feet by 100feet; that on 1st November, 2007, the Defendant's workmen trespassed and unlawfully passed overhead power lines through the suit land and that the Defendant should be compelled to remove the said power line from the suit land.
2. In its Defence, the Defendant averred that the suit is bad in law and that no intention to sue was ever served on its officials.
3. When the matter came up for hearing, the Defendant's witnesses were not in court. The court proceeded to hear the Plaintiff's evidence. The Plaintiff, PW1, informed the court that on 17th February, 2007, he entered into an Agreement with one Richard Mutuku Mutisya for the purchase of a portion of land known as Plot No. 140B.
4. It was the evidence of PW1 that on 8th October, 2013, he purchased parcel number Ndalani/Ndalani/Block 1/140 from Masaku Nelson Kiloli; that he paid for the said land in full and that the Defendant passed its power lines over the suit land without his consent. It was the evidence of PW1 that the Defendant should be directed by this court to remove the said power line from the suit land.
5. In cross-examination, PW1 stated that the Title Deed for Ndalani/Ndalani/140 was issued to him after he had filed this suit; that the Agreement shows he bought the suit land before suing the Defendant and that he is the registered proprietor of the suit land.
6. The Plaintiff's advocate submitted that under Section 24(c) of the Land Registration Act, the registration of a person as a proprietor of land vests upon that person the absolute ownership of the land; that the Plaintiff is the registered proprietor of the suit land and that the Defendant has trespassed on the suit land.
7. The Defendant's advocate submitted that the Plaintiff was not the registered owner of the land when he filed the suit; that the documents relied on by the Plaintiff do not support his claim and that parties are bound by their own pleadings.
8. The Defendant's advocate submitted that in any event, the Defendant's company has an overriding interest in the suit land; that transmission lines constitutes an overriding interest under the provisions of the Land Registration Act and that the Defendant's electricity poles were erected on the suit land before the Plaintiff acquired ownership documents of the land.
9. The evidence before me shows that vide an Agreement dated 17th February, 2007, the Plaintiff purchased from one Richard Mutuku Mutisya a parcel of land known as Ndalani/Ndalani Block 1, Sheet 4, Plot No. 140B.
10. In yet another Agreement dated 17th September, 2013, the Plaintiff purchased a parcel of land known as "Plot No. 140 Ndalani/Ndalani Block Sheet 4 from one Daniel Musau Mbithi."
11. The Plaintiff also produced a letter dated 2nd November, 2007 in which he informed the Defendant that he is the owner of the land known as Ndalani/Ndalani/140 measuring 30 feet by 100 feet, on which land the Defendant had passed an overhead electric wire line without his consent. In the said letter, the Plaintiff requested the Defendant to relocate the said line.

12. From the letter dated 24th October, 2012, the Matungulu Yatta Ranching Company Limited informed the District Land Registrar, Machakos that the Title Deed for land known as Ndalani/Ndalani/Block 1/140 should be issued jointly to Daniel Musau Mbithi and Nelson Kiloli Masaku. However, the said Title Deed was issued to the Plaintiff alone on 24th January, 2018. However, the land itself was registered on 15th April, 1992, way before this suit was filed.

13. The evidence before the court shows that the Plaintiff herein bought the suit land, firstly from Richard Mutuku Mutisya and later on from Masaku Nelson Kiloli. Although the Plaintiff was issued with a Title Deed in the year 2018, the said Title Deed shows that the land was registered in 1992.

14. Parcel number 140 having been registered as private land in 1992, and the Plaintiff having purchased the suit land in the year 2007, it does not matter that the Plaintiff was only issued with a Title Deed in the year 2018. Indeed, the Defendant did not call any evidence to show the circumstances under which it had its electric line pass over the suit land, which was already private land.

15. Section 53 of the Energy Act, 2006, allows the Defendant to lay electric supply lines upon, under, over or across any public streets, road, railways, tramways, rivers, canals, harbours or government property. However, the Defendant can only pass electric lines or poles on private land after compulsorily acquiring the land and pay the owner of the land compensation (*See Section 54 of the Energy Act, 2006*).

16. Having not acquired the suit land either by way of compulsory acquisition or with the permission of the proprietor, and in the absence of any evidence from the Defendant's representatives controverting the evidence of the Plaintiff, I find and hold that the Plaintiff has proved his case on a balance of probability.

17. For those reasons, I allow the Plaintiff's claim dated 30th March, 2010 as follows:

a. An order be and is hereby issued compelling the Defendant to remove its electric supply line and, pole(s) from the Plaintiff's parcel of land known as Ndalani/Ndalani/140.

b. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF MARCH, 2019.

O.A. ANGOTE

JUDGE