

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 8 OF 2021**

**CHARLES MUYA KABIRA ..... 1<sup>ST</sup> PLAINTIFF**

**LUCY NGUNJU MUYA ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

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

**JUDGMENT**

**Background**

1. By their Complaint dated 20<sup>th</sup> May 2021, Charles Muya Kabira and Lucy Ngunju Muya (the Plaintiffs) pray for judgment against Kenya Power & Lighting Company Limited (the Defendant) for:

- a) A sum of Kshs 71,726,875/=;**
- b) An order compelling the Defendant to remove the offending posts and electric cables from land parcel Mweiga/Thungare/Block1/Kamiru/193;**
- c) General damages for trespass;**

**d) Interest on (a) and (c) above; and**

**e) Any other or better relief that the Honourable Court may deem fit to grant.**

2. Those prayers arise from the Plaintiff's contention that they did purchase the suit property for the purpose of constructing executive and affordable residential houses and that while they were still in the process of finalizing architectural drawings the Defendant trespassed onto the suit property and haphazardly erected posts and live electric cables thereon thereby making it impossible for the Plaintiffs to proceed with their intended project.
3. It is the Plaintiffs' case that despite demand made, the Defendant has refused and/or failed to remove the said power cables and as a result, the Plaintiffs have suffered loss and damage.
4. But in their Statement of Defence dated 29<sup>th</sup> June 2021, as filed herein on 2<sup>nd</sup> July 2021, the Defendant Company denies that the Plaintiff purchased the suit property for the said purpose and/or that it has trespassed thereon as stated or at all. The

Defendant further denies that the Plaintiffs could not continue with the proposed development and/or that the prospect of earning from the project was frustrated by the conduct of the Defendant.

5. The Defendant avers that the Plaintiffs' claim is fraudulent and is a mere ploy to facilitate their unjust enrichment. It is further the Defendant's case that the suit as filed is premature as the Plaintiffs have not exhausted the laid down statutory procedures for addressing and ventilating such disputes.

### **Analysis and Determination**

6. At the trial herein, the 1<sup>st</sup> Plaintiff testified as the sole witness in their case while the Defendant called two (2) witnesses.
7. I have carefully perused and considered the pleadings filed by the parties, the testimonies of their witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by Ms. Mwai, Learned Counsel for the Plaintiffs. I was unable to find any submissions filed on the part of the Defendant.
8. By their suit as filed herein, the two Plaintiffs accuse the Defendant Power Company of trespassing upon their parcel of

land known as Mweiga/Thungare/Block 1/Kamiru/193 and proceeding to haphazardly erect posts and live electric cables thereon without the Plaintiffs' permission or authority. It is the Plaintiffs' case that they had jointly acquired the suit property for the purpose of constructing executive and affordable residential houses thereon and that while they were in the process of finalizing architectural drawings therefor, the Defendant trespassed onto the land thereby making it impossible for the Plaintiffs to proceed with their intended project.

9. According to the Plaintiffs, they had as a result of the Defendants' actions suffered loss and damage. As a result, the Plaintiffs claim from the Defendant the sum of Kshs. 5,726,875.00 categorized as loss of professional fees due to the 1<sup>st</sup> Plaintiff as well as Kshs. 66,000,000.00 which they categorize as loss of profit. In addition, the Plaintiffs have also urged the court to condemn the Defendants to pay them general damages for the trespass.
10. On its part, the Defendant denies that the Plaintiffs had purchased the suit property for purposes of constructing the

said residential houses. The Defendant denies that it had trespassed on the suit property in the manner purported by the Plaintiffs or at all. According to the Defendant, there was no evidence that the Plaintiffs proposed project was frustrated by the conduct of the Defendant and the entire claim was fraudulent and a mere ploy to facilitate the Plaintiffs' unjust enrichment.

11. From the material placed before the court, there was no dispute that the parcel of land known as Mweiga/Thungare/Block 1/Kamiru/193 was registered in the names of the Plaintiffs and that they were issued with a Certificate of Title therefor on 9<sup>th</sup> March 2012. The bone of contention herein was whether or not the Defendant had erected power supply pole lines thereon and if so, whether the same were erected with the authority of the Plaintiffs.
12. In support of their case, the 1<sup>st</sup> Plaintiff testified at the trial that the Defendant had erected high voltage power lines on their property between the year 2014 and 2015 without seeking their permission. The 1<sup>st</sup> Plaintiff produced a number of correspondences between the Plaintiffs and the Defendant as a

demonstration that before they came to court, they had asked the Defendant to remove the said power lines. In addition, the Plaintiffs produced a number of photographs said to have been taken of the suit property during the period in dispute.

13. In rejecting the Plaintiffs' testimony, the Defendant called one Aggrey Muchilwa (DW1) a registered surveyor working in its Infrastructure Development Department and its Wayleaves Officer one Charles Wagana (DW2). The two witnesses were unanimous that on 27<sup>th</sup> April 2023, they had both proceeded to the suit property on the instructions of the Defendant to establish the position of what they termed as the Defendant's Medium Voltage electricity poles and lines with respect to the boundaries of the suit property. According to the two witnesses the said Medium Voltage electricity pole lines lay on the road reserve outside the suit property and not within it as was stated by the Plaintiffs. It was their case that only low voltage lines serving the property lay within the perimeters of the suit property.
14. From the material placed before the court however, it was clear to me that the two witnesses were being very economical with

the truth. It was telling that the two witnesses did not invite the Plaintiffs and/or their representatives when they unilaterally carried out the survey of the suit property vis-à-vis the position of the power lines on the said 27<sup>th</sup> day of April 2023.

15. Some two (2) years before their visit to the land, the Plaintiffs had written yet another letter to the Defendant on 25<sup>th</sup> March 2021 imploring its officers to consider removing what they termed as “Unauthorized Power Lines”. In response to that letter, the Defendant’s then County Business Manager, Nyeri County, one Mathew Muthini wrote back to the 1<sup>st</sup> Plaintiff on 30<sup>th</sup> March 2021 stating as follows:

**RE: UNAUTHORIZED POWER LINES IN PLOT NO MWEIGA/THUNGARE BLOCK1/KAMIRU/193**

**We wish to acknowledge receipt of your letter dated 25/3/2021 on the above subject matter.**

**Further, we sincerely apologize for our delay in replying to your previous correspondence vide your letter dated 5<sup>th</sup> February 2021.**

**We are happy to advise that our technical team accompanied by the Wayleaves Officer visited the site and**

**established that the power line at the ground had been constructed about half a meter inside your land.**

**We are in the process of checking in our records to establish the actual design and construction details of this section of the line, with a view to taking immediate corrective measures appropriately....”**

16. That admission on the part of the Defendant that its power lines lay half a meter inside the suit property was made barely 2 months before this suit was filed and it was difficult to fathom how the two witnesses, certainly junior in position to the author of the letter, could establish a different position some 2 years later. At the trial herein, DW2 confirmed that the letter dated 30<sup>th</sup> March 2021 was indeed authored by their Nyeri County Business Manager.
17. In further corroboration of the contents of that letter, the Plaintiffs produced a number of photographs said to be those of the suit property. Two of the photos at Pages 42 and 43 of the Plaintiffs’ bundle clearly puts the power lines about a meter inside the fenced property. Asked about the said photos in cross examination, DW2 responded as follows:

**“The photos are on the same property. One of the photos in Page 42 and 43 show the poles inside the property.**

**We always obtain Wayleaves before we pass power lines on the land. The cables on the photos are not passing over the land. In the photo it shows at Page 42 that the line passes on the land. Page 43 is also inside the land. They are high voltage lines.**

**I am not aware that the high voltage lines were put on the land by the KPLC. I did not check who had put the cables on the land.”**

18. As it were, before one can survey and use another person’s land to lay electricity power lines, Section 46 and 47 (1) of the Energy Act, 2019 provides as follows:

**“46. Permission to survey and use land to lay electric power lines.**

**(1) No person shall enter upon any land, other than his own -**

**(a) To lay or connect an electric supply line;  
or**

**(b) To carry out a survey of the land for the purposes of paragraph (a), except with the prior permission of the owner of such land.**

**(2) The permission sought in subsection (1) shall be done by way of notice which shall be accompanied by a statement of particulars of entry.**

#### **47. Assent to proposal**

**(1) An owner, after receipt of the notice and statement of particulars under section 46, may assent in writing to the construction of the electricity supply line upon being paid such compensation as may be agreed and any assent so given shall be binding on all parties having an interest in the land, subject to the following provisions:-**

**(a) that any compensation to be paid by the Licensee giving notice to the owner, in cases where the owner is under incapacity or has no power to assent to the application except under the Act, shall be paid to the legal representative of the owner; and**

**(b) That an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the construction of the electricity supply line, so long as the claim is made within three months after the construction of the electric supply line.”**

19. In the matter herein, there was no demonstration on the part of the Defendant that it had sought or received permission from the Plaintiffs to survey and use their land to lay electric power lines before they erected the same and the conclusion can only be one.

20. As was held in the case of *John Kiragu Kimani -vs- Rural Electrification Authority (2018) eKLR*:

**“Following that evidence, it is clear from the record that no consent, authority or permission of the Plaintiff was ever sought and/or obtained. No notice was given to him of the impending project as contemplated by section 46 of the Energy Act. The irresistible conclusion is that the Defendant is guilty of trespass.”**

21. Similarly, in the matter before me, I was left under no doubt from the evidence placed before the court that the Defendant herein is guilty of trespassing upon the suit property.
22. It was the Plaintiff's case that as a result of the trespass, they were entitled to compensation in the tune of Kshs. 71,726,875/- being the losses incurred as well as general damages for trespass. The said sum of Kshs. 71,726,875/= is the result of an amalgamation of the sum of Kshs. 5,726,875/= said to be due and owing to the 1<sup>st</sup> Plaintiff as professional fees and the sum of Kshs. 66,000,000/= categorized as loss of profits.
23. In support of his application for the said professional fees, the 1<sup>st</sup> Plaintiff told the court that he is an Architect by profession duly certified to practice by the American Institute of Architects and a member of the Architectural Association of Kenya. He told the court that between the years 2001 and 2014, he worked in the United States of America where he registered a firm in the name of Ideal Property and Home Inspections.
24. It was the 1<sup>st</sup> Plaintiff's case that having purchased the suit property for the purpose it was intended and as an Architect,

he prepared the architectural drawings and started marketing the proposed houses in the USA intending to sell the houses off-plan. He told the court that he rendered his professional services on the project and that the fees due to him at the time it became difficult to proceed with the project was the said sum of Kshs. 5,726,875/=.

25. With respect, I was unable to find any basis for this claim. To begin with, the claim was not supported by any receipts or any real evidence of services having been rendered. In support of the claim, the Plaintiffs have attached a fee note prepared by the 1<sup>st</sup> Plaintiff and pegged on 2.5% of the sum of Kshs. 229,075,000/= which they claim to be part of the building costs for phase 1 of their project. They have also produced architectural drawings prepared by the 1<sup>st</sup> Plaintiff.
26. It was clear from a perusal of the documents produced in support of the professional fees claimed that the 1<sup>st</sup> Plaintiff was at all material times dealing only with himself. The letter dated 7<sup>th</sup> May 2013 where he purports to invite and introduce Kenyans in the diaspora to “Holiday/Retirement Homes” was addressed to only one person as follows:

Charles M. Kabira,  
39486 River Birch Lane  
Murrieta, CA 92563.

27. That was clearly the Plaintiff addressing himself at his address in the USA. Similarly, the fee note for Kshs. 5,726,875.00 dated 26<sup>th</sup> August 2013 sent by himself is again addressed to himself in his Kenyan address at Nairobi and to an entity known as Ideal Properties & Homes at the very same address as that of the 1<sup>st</sup> Plaintiff in the USA. Asked about the letter in cross examination by counsel for the Defendant the 1<sup>st</sup> Plaintiff responded as follows:

**“This is a letter addressed to a Company that was managing the project dated 26.8.2013. I drafted the letter and addressed it to Ideal Properties Ltd which was handling the sale of the properties in the USA. I was the sole proprietor of the company. It is true I drafted the letter to myself and my company.**

**I have nothing to show that the company received the letter. I have not filed anything to show Ideal Properties Ltd had requested for any**

**correspondence. I needed to comply with American requirements and regulations.**

**Ideal Properties & Homes is not registered in Kenya. I have not produced anything to show Ideal Properties & Homes is a registered company anywhere in the world.”**

28. Arising from the foregoing, I was unprepared to accept that the 1<sup>st</sup> Plaintiff could sit somewhere, dream of a project which had not been approved by any authority and claim that he was entitled to charge fees to himself, his so-called company or anyone else. Nobody had asked him to design any project and if he had drawn any architectural designs, that was clearly not something for which he could claim compensation from the Defendant.
29. That same position goes to the claim for loss of profits. According to the 1<sup>st</sup> Plaintiff, the claim of Kshs. 66,000,000/= was pegged on the profit that he had projected they would get from the sale of the houses. The claim was clearly speculative as the project had not been approved and no actuarial or other

reports had been prepared or produced as a basis for the figures relied on by the Plaintiffs.

30. It is otherwise the law that trespass to land is actionable per se and a party need not prove that he/she has suffered any specific damage or loss in order to be awarded damages. In the circumstances herein the Plaintiffs are entitled to general damages for trespass. The issue which arises then is the measure of the damages payable herein. In their submissions before the court, the Plaintiffs have proposed an award of Kshs. 30,000,000/= as general damages for trespass.

31. As was observed by the court in the case ***Willesden Investment Limited -vs- Kenya Hotel Properties Limited Nbi HCCC No. 367 of 2000 (unreported)***:

**“There is no mathematical or scientific formula in these types of cases and the guiding factors are the circumstances in each case...”**

32. In the matter herein, it was apparent that the Defendant had erected the electric power lines on the Plaintiffs land in the year 2014. Despite being informed by the Plaintiffs of the trespass and their own tacit acknowledgement of the position

in writing, they have to-date not done anything to remedy the situation. In the circumstances herein, this court grants general damages in the sum of Kshs. 20,000,000/=.

33. Accordingly, judgment is hereby entered for the Plaintiffs against the Defendants as follows:

**(a) An order is hereby made compelling the Defendants to forthwith remove the offending posts and electric cables from land parcel No. Mweiga/Thungare/Block 1/Kamiru/193.**

**(b) The Defendant is hereby ordered to pay to the Plaintiffs the sum of Kshs. 20,000,000/= as general damages for trespass.**

**(c) The Defendant shall bear the costs of this suit.**

**Judgment dated, signed and delivered in open court and virtually at Mombasa this 4<sup>th</sup> day of December, 2025**

.....  
**J.O. OLOLA**  
**JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms Lucy Mwai Advocate for the Plaintiff
- c) No appearance for the Defendant

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