

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
MACHAKOS
ELC CASE NO. 3 OF 2019

SAMUEL G WANJOHI 1ST

PLAINTIFF

PHYLLIS J KISABEI 2ND

PLAINTIFF

ALICE WAIRIMU NJIHIA 3RD

PLAINTIFF

EMILY MORAA 4TH

PLAINTIFF

KIBET KIBII 5TH

PLAINTIFF

WYCLIFFE LISA LITSA 6TH

PLAINTIFF

CATHERINE MURITHII 7TH

PLAINTIFF

JOSEPHINE N MACKENZIE 8TH

PLAINTIFF

MARY YATICH9TH

PLAINTIFF

BEATRICE NJERI MUCHIRI 10TH

PLAINTIFF

NORAH KEMUNTO 11TH

PLAINTIFF

VERSUS

**KENYA ELECTRICITY TRANSMISSION
COMPANY LIMITED**

DEFENDANT

JUDGEMENT

1. The Plaintiffs commenced this suit vide a plaint dated 27th November 2018 and amended on 21st October 2021. They contended that they are registered proprietors of several parcels of land purchased through Afya Sacco Co-operative Society in **Mavoko Municipality Block 39** around the year

2000. Further, that they were issued with their title deeds

between the year 2000 and 2002 respectively. They claimed that without notifying or compensating them, the Defendant seized and utilized their respective parcels of land thus unconstitutionally depriving them of the said lands. They tabulated their respective parcels and the acreage allegedly seized as follows;

1	2	3	4	5	6	7
ITEM	NAME	LR	SIZE OF THE LAND OWNED	SIZE SEIZED	PERCENTAGE OF LAND SEIZED	TITLE ISSUED ON
1	Samuel G.Wanjohi	Mavoko Municipality Block 39(Afya)/38	0.0848	0.0609	71.56	6/02/02
2	Phylis J Kisabei	Mavoko Municipality Block 39(Afya	0.0848	0.0651	100.00	18/01/02

) /82				
3	Emily Moraa	Mavoko Municipality Block 39(Afya) /223	0.0890	0.0890	100.00	21/01/02
4	Kibet Kibii	Mavoko Municipality Block 39(Afya) /237	0.0890	0.0890	100.00	23/01/02
5	Wycliffe Lisa Litsa	Mavoko Municipality Block 39(Afya) /243	0.0890	0.0890	100.00	23/01/02
6	Catherine Muriithi	Mavoko Municipality Block 39(Afya) /560	0.0800	0.0800	100.00	19/02/02

7	Josephine N. Mackenzie	Mavoko Municipality Block 39(Afya)/50	0.0816	0.0816	100.00	11/02/02
8	Alice Wairimu Njihia	Mavoko Municipality Block 39(Afya)/139	0.0841	0.0841	100.00	22/01/02
9	Alice Wairimu Njihia	Mavoko Municipality Block 39(Afya)/38/140	0.0806	0.0806	100.00	22/01/02
10	Mary Yatich	Mavoko Municipality Block 39(Afya)/50	0.0835	0.0373	100.00	6/02/02
11	Beatrice	Mavoko	0.0890	0.0890	100.00	24/01/02

	Njeri Muchiri	Municip ality Block 39(Afya) /245				
12	Norah Kemunto	Mavoko Municip ality Block 39(Afya) /151	0.0890	0.0892	100.00	23/01/02

2. It was their case that long after seizure of their properties, the Defendant unilaterally imposed a blanket valuation of Kshs. 650,000 per parcel, which they rejected. Subsequently, in meetings held on 2nd May 2018 and 28th June 2018 respectively, the Defendant offered that the National Land Commission, herein referred to as “NLC” could be invited as a neutral party to value their parcels and provide a guide on fair compensation. To this end, NLC conducted a valuation of each parcel as per the Defendant’s request vide a letter dated 22nd May 2018.

3. They averred that they also sought an independent professional valuation from Dantu Valuers at a cost of kshs.540,000/= to determine the fair market value for their respective parcels but the Defendant refused to compensate them as per the said valuation and NLC's valuation. They tabulated both valuations as hereunder;

1	2	3	4	5
ITEM	NAME	LR	VALUE AS PER NLC	VALUE AS PER DANTE VALUERS
1	Samuel G.Wanjohi	Mavoko Municipality Block 39(Afya)/38	4,553,833.33	4,513,000.00
2	Phylis J Kisabei	Mavoko Municipality Block 39(Afya)/82	4,553,833.33	4,513,000.00
3	Emily Moraa	Mavoko Municipality Block 39(Afya)/223	4,724,600.00	4,624,000.00
4	Kibet Kibii	Mavoko Municipality Block 39(Afya)/237	4,722,905.00	4,624,000.00
5	Wycliffe Lisa Litsa	Mavoko Municipality Block 39(Afya)/243	4,722,905.33	4,624,000.00

6	Catherine Muriithi	Mavoko Municipality Block 39(Afya)/560	4,243,210.00	4,152,000.00
7	Josephine N. Mackenzie	Mavoko Municipality Block 39(Afya)/50	4,347,860.00	4,237,000.00
8	Alice Wairimu Njihia	Mavoko Municipality Block 39(Afya)/139	4,469,486.00	4,367,000.00
9	Alice Wairimu Njihia	Mavoko Municipality Block 39(Afya)/38/140	4,469,486.00	4,184,000.00
10	Mary Yatich	Mavoko Municipality Block 39(Afya)/50	4,553,833.30	4,513,000.00
11	Beatrice Njeri Muchiri	Mavoko Municipality Block 39(Afya)/245	4,722,905.00	4,634,000.00
12	Norah Kemunto	Mavoko Municipality Block 39(Afya)/151	4,724,600.00	4,636,000.00

4. They hence sought judgement against the Defendant for:

- a) The total of Ksh.54,809,607.29 being the sum total amounts due on the 12 parcels belonging to our client as per NLC valuation, being the sum due to each viz:-**

- i. Samuel G. Wanjohi - Kshs.4,553,883.33**
 - ii. Phyllis J Kisabei-Kshs. 4,553,833.33**
 - iii. Emily Moraa-Kshs.4,724,600.00**
 - iv. Kibet Kibii-Kshs. 4,722,905.00**
 - v. Wycliffe Lisa Litsa-4,722,905.33**
 - vi. Catherine Muriithi-4,243,210**
 - vii. Josephine N Mackenzie-Kshs.4,347,860.00**
 - viii. Alice Wairimu Njihia-Kshs.4,469,486.32**
 - ix. Mary Yatich-Kshs-Kshs.4,553,833.00**
 - x. Beatrice Njeri Muchiri-Kshs.4,724,600.00**
 - xi. Norah Kemunto-Kshs.4,724,600.00**
- b) Mesne profits at the rate of ksh. 250,000.00 per acre per month, pro-rated as per size seized.**
- c) Punitive damages**
- d) i) Exemplary damages**

- ii) **Special damages [Kshs.45,000/= per parcel, for 12 parcels] kshs.540,000/=**
- e) **Interest on a, b, c, and d above at the rate of 14% since January 2011 upto the date of full settlement.**
- f) **Expenses incurred including survey and valuation.**
- g) **Costs of this suit together with interest thereon at such rate and for such period as this Honourable court may deem fit.**
- h) **Any such and further relief as this Honourable court may deem fit to grant.**

The Defendants case

5. The suit is opposed by the Defendant vide its statement of defence. It denied allegations leveled against it and contended that it embarked on the construction of the Mombasa-Nairobi transmission line project which was a 462 km of 400k volts Transmission line from Rabai Substation in Mombasa to the proposed Isinya substation to the South East

of Nairobi. Further, that the Plaintiffs were absentee landlords and the Defendant could not indulge them as their parcels were subject of a dispute in **Machakos CMCC No. 958 of 2011**, which was settled by consent thereby granting the land to Mavoko Afya Housing Association but after determination, it compensated one hundred and seven (107) out of one hundred and fifty-two (152) persons affected by the project.

6. It admitted the size of the “land seized” as pleaded save for those of the 6th, 7th and 11th Plaintiffs whose data it contended to be 0.0789, 0.0809 and 0.0885 respectively. It also admitted that it offered the Plaintiffs’ Kshs. 650,000/= as compensation for limited loss of land use, pegged on its Compensation Policy (Resettlement Policy Framework). It rejected the valuations by NLC, contending that they were for the years 2016 and 2017 yet the project cutoff date was 2010.

7. The matter proceeded for hearing where both the Plaintiffs and Defendant had witnesses.

Evidence of the Plaintiffs

8. PW1 was Duncan Mwangi Gichangi, a property valuer practicing in the name of Dantu Valuers Limited. He confirmed to the Court that he did valuations of the parcels belonging to the Plaintiffs in 2016 and 2017 respectively and made a valuation report dated 6th November 2017. It was his testimony that since all the parcels were similar, he used the 6th Defendant's parcel as a sample. He opined that renting or leasing a property in the location of the Plaintiffs' business /farming would earn between Kshs.120, 000/= - 150,000/= per acre per year. He therefore tabulated the possible rent for each of the Plaintiffs' properties as follows:

ITEM	NAME	SIZE	AMOUNT	TOTAL ACCRUED FROM
		SEIZE	DUE PER	JANUARY 2011 TO
		D	MONTH	DECEMBER 2021(11

				YEARS)
1	Samuel G.Wanjo hi	0.0609	Ksh.2,618.75	Ksh.345,675.00
2	Phylis J Kisabei	0.0651	Ksh. 2,618.75	Ksh. 345,675.00
3	Emily Moraa	0.0890	Ksh.2,750.00	Ksh.363,000.00
4	Kibet Kibii	0.0890	Ksh.2,737.50	Ksh.361,350.00
5	Wycliffe Lisa Litsa	0.0890	Ksh.2,737.50	Ksh. 361,350.00
6	Catherin e Muriithi	0.0800	Ksh.2,462.50	Ksh. 361,350.00
7	Josephin e N. Mackenz ie	0.0816	Ksh.2525.00	Ksh. 325,050.00
8	Alice Wairimu Njihia	0.0841	Ksh.2597.50	Ksh.342,870.00
9	Alice Wairimu	0.0806	Ksh.2597.50	Ksh. Ksh.342,870.00

	Njihia			
10	Mary Yatich	0.0373	Ksh.2618.75	Ksh.345,675.00
11	Beatrice Njeri Muchiri	0.0890	Ksh.2750.00	Ksh. Ksh.363,000.00
12	Norah Kemunto	0.0892	Ksh. 2750.00	Ksh. Ksh.363,000.00
				TOTAL ACCRUED AMOUNT FOR 12 PARCELS FOR 11 YEARS KSH.4,4220,865.00

9. He stated that at the time of valuation, he learnt that the Defendant had also obtained a valuation from NLC, which has no significant difference from his. When shown another valuation from Mr. Johnson Muthoka (DW1), an employee the Defendant, he claimed it was erroneous as it valued the parcels at a uniform compensation of Kshs. 650,000/=. His valuation for each parcel is as tabulated at paragraph 3 herein.

10. In cross-examination, PW1 clarified that he conducted two separate valuations in respect to the suit plots, the first one in respect to the 6th Plaintiff's parcel was done on 6th November 2016, while second one for the rest of the Plaintiffs' parcels was undertaken on 6th November 2017. He explained that he had used the 6th Plaintiff's parcel which was vacant, as the baseline for valuation as he had information on the size of the other parcels, which were all in one location but are not the same size. It was his testimony that he was paid for the valuation in portions but he did not issue individual receipts to the Plaintiffs. Further, that he did not know the cost of each parcel of land but based his estimation on rent figures within the area. He also stated that when he visited the area, a few neighboring properties were in use, and that the Plaintiffs parcels were residential. He confirmed that the Defendant's power lines did not cover the whole of the 6th Plaintiff's plot but what was left out is not useful. He insisted that DW1's valuation report of 2010

giving each of the Plaintiffs' parcel Kshs. ksh.650, 000/= is an undervalue.

11. The 2nd Plaintiff testified as PW2. She confirmed that she owned **LR No. Machakos Municipality Block 39(Afya)/82**, measuring 0.0848 hectares, out of which 0.0651 had been seized by the Defendant. It was her testimony that about July 2016, she was called by an employee of the Defendant for negotiation on compulsory acquisition of her plot and she was given an offer letter dated 28th June 2016 offering her compensation of Kshs. 650,000/= which she declined. She claimed that subsequently, the Defendant wrote to NLC through a letter dated 22nd May 2018 requesting for an independent opinion of the appropriate value of the Plaintiffs' properties and a valuation report dated 6th June 2018 showed that her property was valued at kshs.4,553,883.83 but the Defendant refused to pay her the amount determined by NLC and insisted on paying them kshs.650,000/= as exhibited from

minutes of a meeting held on 20th June 2018, between the Defendant together with the 1st and 6th Plaintiffs, in which the Defendant took a position that it would not vary compensation awarded to other owners who accepted its offer of compensation of Kshs.650,000/= for the same size of land, in the same neighborhood as it would be discriminatory since they may demand a top up on the difference upon learning of the same.

12. She produced her title as Exhibit No. 3, letter of offer from the Defendant as Exhibit 4, NLC report as Exhibit 5 and the Defendant's valuation report. She was agreeable to be awarded compensation as valued by NLC at Kshs. 4,553,883.33. She testified that she learnt of the Defendant's acquisition of her parcel in 2016 from the Notice Board at Kenyatta National Hospital where she worked at the time.

13. In cross-examination, PW2 stated that she acquired her property on 18th January 2002 at ksh.65,000/= and that she paid for it for 3 years and was issued with title in January

2002. She confirmed that she took possession, marked the boundaries but did not farm there as she intended to build a house but could not do so due to the Defendant's powerline. She defended her claim for Mesne profits stating that value of land appreciates even where the owner is absent. She did not know the baseline NLC used to value her land at Kshs.4.5 million.

14. She admitted that more parcels of land were acquired by the Defendant for the same project and some people accepted the Defendant's offer of ksh.650,000/=as per its valuation of 2011. She also admitted that the valuation report by Dantu valuers did not indicate what the value of her land was in 2011.
15. In re-examination, she stated that she did not know whether Joseph Siror, the Defendant's general manager at the time was authorized to sign the letter dated 22nd May 2018 authorizing NLC to conduct a valuation of the Plaintiffs' parcels.

16. The 1st Plaintiff testified as PW3 and confirmed his parcel is **LR No. 39(Afya)/38**, Mavoko measuring 0.0848 hectares, out of which 0.0609 had been seized by the Defendant. He testified that he was issued with a title on 6th February 2002 and just like PW2, by a letter dated 28th June 2016, he was offered compensation of ksh650,000/= by the Defendant, which he declined. He stated that as per the NLC's report dated 22nd May 2018, his property was valued at Kshs. 4,553,833.33. He insisted that he is entitled to mesne profits of Kshs. 31,425.000 per year since 2011, which translates to Kshs. 345,675 as at December 2021. He produced his title deed as P.Ex 6 and a letter of offer for compensation dated 28th June 2016 as P.Ex 7 and his letter dated 8th August 2016 rejecting the offer as P.Ex 7 B .

17. He averred that the Plaintiffs had engaged the Defendant through meetings held on 2nd May 2018 and 20th June 2018 respectively. He produced the minutes thereof as P.Ex 8, NLC's valuation report placing his land at Kshs.

4,553,833.33 as P.Ex 9 and the Plaintiffs' reports from NLC contained at page 98-124 of the Plaintiff's bundle as P.Ex 10(i)-ix). He also produced correspondences from the Plaintiffs to the Defendant as P.Ex 11 (a), (b), (c) and (d), its responses as P. Ex 12, letter dated 20th July 2018 as P. EX 12 (b) and letter dated 22nd May 2018 as P.EX 13 respectively.

18. In cross examination, PW3 confirmed that he is the one who collected NLC's valuation reports from the Defendant and that he did not know whether correspondences and utterances of the Defendant's employees in meetings were made on behalf of the Managing Director or not.

19. He confirmed that he did not reside on his parcel of land, which had not brought him any income between 2011 and 2016. Further, that he had visited his land several times but he did not find out who was constructing thereon. He did not know the value of his land in 2011 but sought mesne profits of Kshs. 345,675.00 based on the expert's calculation though he would have put up a house if the power lines were not

there. In re-examination, he pointed out that NLC noted in its report that the value of the Plaintiffs' land had diminished due to the powerlines. He accepted NLC's proposal for compensation.

20. PW4 who was the 3rd Plaintiff confirmed she owned two parcels of land being **LR No. Mavoko Municipality Block 39(Afya) /139** and **LR No. Mavoko Municipality Block 39 (Afya) 140** respectively. It was her testimony that the Defendant had put up electricity poles over both parcels of land. She produced her Certificates of title as P. EX 17(a) and (b) and two letters of offers for compensation for both parcels dated 28th June 2016 as P. EX 18(a) and (b) respectively. She testified that her two parcels were valued by NLC in its report of 7th June 2016 at Kshs. 4,469,486.32 each. In cross-examination, PW4 stated that the Defendant started constructing on her two parcels of land in 2011. Further, that the said parcels of land were vacant with only grass. She further confirmed that both had been acquired

100% and she did not know the values of the two parcels of land in 2011.

21. PW5 who was the 4th Plaintiff confirmed that she owned **LR No. Mavoko Municipality Block 39 (Afya)/223**. She produced her title as Exhibit No.19, an offer letter dated 28th June 2016 as P. Ex 20 and NLC's valuation report of her parcel, dated 4th June, 2018 as P.Ex 20(iv), valuing her parcel at ksh.4,724,600/=. She also adopted the testimonies of PW2 and PW3 who represented the Plaintiffs in negotiations with the Defendant. During cross-examination, PW5 explained that figures contained in NLC's report of 4th June 2018 are for 2016 and 2017 and they are for the cost of the whole parcel. Further, that the Defendant had indicated that it was acquiring a wayleave corridor of 60 meters wide only. She claimed that she intended to put up her retirement home on the suit plot. Further, that during her last visit to the parcel in 2022, the pillars were in the middle of her plot. She could

not tell how much her property was worth in 2011 but confirmed to have purchased it at Kshs.65, 000/=.

22. PW6 who was the 5th Plaintiff in his testimony confirmed that the Defendant took over his land, **Mavoko Block 39 (Afyu)/237**. He produced his title as P. EX 21 and an offer letter dated 28th June 2016 from the Defendant as P. Ex 22. He also produced NLC' s valuation of his parcel dated 16th June 2018, which returned a value for his land at Kshs. 4,722,905 as P.Ex 20 (v). He also confirmed that he was part of the negotiations where PW2 and PW3 represented the Plaintiffs in a meeting with the Defendant. In cross-examination, PW6 stated that he acquired the suit plot for ksh.65, 000/= in 2001 and did not know its value as at 2011. Further, that he did not have receipts to prove mesne profits. He confirmed that the Defendant took 0.0954 acres of his parcel, which is basically 100% as the pillars cover 50% while power lines cover the whole land. In re-examination, he

stated that power lines have high voltage so no ordinary person can buy the land.

23. PW7 who was the 6th Plaintiff produced his title deed for Mavoko **Municipality 39(Afya) /243** as Exhibit 23, an offer letter dated 28th June 2016 from the Defendant as P. EX 24 and NLC 's valuation report of his land, which returned a value of ksh. 4,245,303/= as P. Ex 10(Vi). In cross-examination, PW6 stated that he purchased his plot at Kshs.65, 000/= in the year 2000. He denied knowledge of **CMCC No. 958 OF 2011.**

24. PW8 who was the 7th Plaintiff produced her title to parcel number **Mavoko Municipality Block 39/(Afya)/560** as P. Exhibit 25, the Defendant's offer letter for compensation of kshs.650,000/= as P. Exhibit 26 and NLC's valuation report as PEx 10 (VII) which valued her plot at Ksh.3,830,899.00 and urged the Court to rely on it. In cross-examination, PW8 stated that they were buying the suit plots at the same rate as members of Afya Housing, and that they were the same

size. She was not aware of **CMCC No. 958 OF 2011** filed by Afya Housing Scheme. She insisted that the valuation returned by NLC is inclusive of 15% statutory costs. In re-examination, she clarified that NLC indicated that her land is fully affected by the transmission line.

25. PW9 was the 8th Plaintiff. She confirmed that her land is **parcel number Mavoko Municipality Block 39 (Afya)/570**. She produced the title as P. Exhibit 27 and NLC's valuation dated 7th June 2018 as P. Exhibit 10 (viii) and letter dated 28th June 2016 offering her compensation as P.Ex 28. It was her testimony that NLC returned the value of her land at Kshs.3,915,074.00. In cross-examination, PW9 stated that when she purchased the suit property, there was no wayleave. She could not recall how she paid Dantu valuers to value her property. Further, that Dantu's valuation was done long after the one by NLC.

26. PW10 who was the 9th Plaintiff produced the title to **Mavoko**

Municipality 39 (Afya) /50 as P. Ex29 and the letter of

offer dated 28th June 2016 as P. Ex 30. It was her testimony that she declined the offer for compensation and was present in the meeting called by the Defendant in which they discussed the issue of compensation for her land. She produced minutes of the meeting dated 2nd May 2018 as PEX 31, NLC valuation of 15th May 2018 as P.Ex 10(IX) which valued her property at ksh.4,110,495.00. In cross-examination, she stated that the letter from the Defendant is dated 22nd May 2018 instructing NLC to conduct a valuation and it came after the valuation report by NLC had been issued. She confirmed contents of minutes No. 9 and 10 dated 2nd March 2018 and stated that the Defendant's staff (Mary Wanjohi) brought out the issue of using a valuation from NLC.

27. PW11 who was the 10th Plaintiff produced her title to **Mavoko Municipality Block 32 (Afya/245)** as Exhibit no.33 and a letter of offer dated 28th June 2016 as Exhibit 34 and NLC's valuation report returning a value of her parcel at

Kshs.4,724,600/= as Exhibit 10 (x). She confirmed that initially she had accepted the offer of kshs.650,000/= but later rejected it. In cross-examination, PW11 stated that her land is 100% occupied by high voltage lines. Further, that she is a member of Mavoko Afya Housing Association and was not aware that the said association negotiated with the Defendant on the value of compensation.

28. PW12 who was the 11th Plaintiff produced her title to **LR NO. Mavoko Municipality block 39 (Afya)/151** as P.Ex No.35, a letter of offer from the Defendant dated 28th June 2016 as P.Ex 36 and NLC's valuation report of 7th June 2018 which valued her parcel at ksh.4,704,600/= as P.Ex10(xi). It was her testimony that the NLC had indicated the extent of her land which had been seized as 0.0848 hectares while the measurements on her title are 0.0892 hectares. She confirmed that she is a member of Mavoko Afya Housing Association but was not aware if the said association negotiated with the Defendant on her behalf.

Case for the Defendant

- 29.** The Defendant's sole witness (DW1) was Johnson Muthoka, its Senior Manager-Wayleave Acquisition. He adopted his witness statement as his evidence in chief and produced the Defendant's list and bundle of documents dated 15th March 2019 as D. Exhibits 1-6.
- 30.** He confirmed that in the first quarter of financial year 2010/2011, the Defendant embarked on the construction of the Mombasa-Nairobi transmission line project which was a 462 km of 400kv transmission line from Rabai Substation in Mombasa through Isinya substation to Athi River. Further, that the construction was wholly financed by concessional loans while the wayleave acquisition was wholly financed by the Government of Kenya.
- 31.** He pointed out that the process of acquisition of the Wayleave Trace by the Defendant begins with compilation of the necessary cadastral data where its personnel walks through the proposed route of power line to determine the

ownership of the affected properties and in this case, the suit parcels were vacant. It was his testimony that the properties affected are valued for purposes of calculating the compensation payable to the land owners. Thereafter, the Defendant pays for limited loss of land use on the wayleave trace while the land owner retains title and can utilize the property subject to the restrictions indicated in the easement agreement, being that the land owner should not plant any trees/crops that will surpass twelve (12) feet height at maturity and that the land owner is not allowed to construct any structure under the wayleave trace.

32. He contended that the valuation report informs the project cut-off date thus in this case, it was 2010 and thereafter the Defendant calculates compensation payable in accordance with its resettlement policy framework and in this case, Defendant valued compensation of the suit parcels at ksh.600,000/= per plot.

33. He said that construction began in 2010 but the parcels affected by the project were part of **Mavoko Municipality Block 39**. Further, that the Government of Kenya had budgeted and set aside compensation sums of ksh.995,160,000.00 in accordance with Article 201 of the Constitution, but individual owners of the suit parcels were not paid since the parcels were the subject of a court dispute in **Machakos CMCC No. 958 of 2011** which was settled by consent vide the court order dated 3rd July 2012 and thereafter the Defendant has fully compensated majority of persons affected by the project.

34. He confirmed that there were no developments on **Block 39**, the landowners were absentee landlords but in 2012, the Defendant was informed that **Mavoko Municipality Block 39** was owned by Mavoko Afya Housing Association, whose members are current and former staff of Kenyatta National Hospital thus the Defendant contacted the association's

leadership to identify owners of parcels affected where they agreed upon the value per plot in the scheme and renegotiated to Kshs.650,000, which had been adopted in paying the majority of affected land owners.

35. He claimed that if the prayers sought are allowed, compensation sought will expose the Defendant and the Government of Kenya to claims from other land owners at the expense of tax payers' money. Further, that the Defendant has rejected the valuations done by NLC as the same were valuations for the years 2016 and 2017 yet the project cutoff date was the year 2010. He contended that the NLC's valuation is as a result of a letter of information dated 22nd May 2018 signed by the General Manager in the Defendant, yet it is only the Managing Director of the Defendant who was authorized to write to NLC. He was emphatic that only eleven (11) Plaintiffs herein remain unpaid.

36. In cross-examination, DW1 stated that the letter dated 22nd May 2018 from the Defendant is erroneous as it was signed by one Joseph Siror who had no authority to sign it. Further, that Mr. Siror was head of directorate but not in charge of valuation though valuation fell within his directorate. He confirmed that it is Mr. Siror who suggested the issue of NLC valuation together with the Plaintiffs since he attended the meeting of 20th May 2018 together with one Mary Wanjohi, who was a valuer at the Defendant. He also confirmed that the Defendant did not direct NLC to use cut of date of 2010 and that the Defendant received NLC's valuation on 10th June 2018. He stated that the Defendant did not write a letter to NLC disputing its valuation.

37. He averred that the Defendant rejected paying a higher valuation in the meeting of 21st May 2018. He admitted that the Defendant ought to have consulted land owners. He had no report to show that land owners were consulted. He also confirmed that the resettlement policy framework is dated

25th October 2011 and it came into effect after the cut off date. He urged the Court to rely on the Defendant's policy and its valuation report to determine compensation.

Submissions

38. The Plaintiffs submitted that the power of eminent domain allows the State, through NLC to acquire private land for public purposes, but only when public interest is established, and constitutional and statutory procedures are followed. Further that since the law confers on NLC the role of valuing "any interest in land", its valuations for the Plaintiffs parcel authoritatively informs this Court on compensation payable and the Defendant's actions constitute blatant violations of their constitutional rights, under Articles 40, 47, and 50 of the Constitution of Kenya, as read with Section 26 of the Land Registration Act and Sections 107, 110 and 112 of the Land Act.

39. They submitted that their land was taken in 2011 but it is only in

2016/2017 when offers were made to compensate them, contrary to the Defendant's own policy on compensation which mandates prompt and reasonable payment. They further submitted that they were not involved in the requisite consultations for Environmental Impact, Valuation and compensation, and the Defendant made a unilateral decision to value their parcels at Kshs 650,000.00 each regardless of the size. They argued that the decision to cut-off amount as of 2010 is not a reasonable compensation. They argued that since the Defendant admitted that it took 100% of their parcels, which carry 400 Watts Voltage, its actions resulted in the complete deprivation of their property. Further, that the Defendant's compensation framework for acquiring power-line/wayleave corridors for transmission lines which compensates the total area covered by the power line/way leave corridor at a rate of 70% or 30% of the current market value does not apply in their case considering that the parcels were taken over 100%. They also submitted that this matter cannot be referred to the Energy and Petroleum

Tribunal as suggested by the Defendant since it lacks jurisdiction to handle land and compensation disputes, as per its jurisdiction under the Energy Act. To buttress their averments, they relied on the following decisions: **Machareus Obaga Anunda v Kenya Electricity Transmission Co. Ltd [2015] eKLR, Patrick Musimba v National Land Commission & 4 others [2016] eKLR, Five Star Agencies Limited v National Land Commission (Civil Case 445 of 2014) [2022] KEELC 14745 (KLR) (10 November 2022) , Katra Jama Issa v Attorney General & 3 others [2018] eKLR; Christopher Ndarathi Murungaru v Kenya Anti-Corruption Commission & Hon. Attorney General [2006] eKLR; Gatere & another v Kenya Electricity Transmission Co Ltd (Environment & Land Case E039 of 2023) [2024] KEELC 4560 (KLR) (10 June 2024) (Ruling) and Nyabochwa Obiero v Kenya Power and Lighting Company Limited & another [2021] eKLR.**

40. On its part, the Defendant submits that wayleaves are not outright purchases of land and the land owner is compensated for the limited loss of land use occasioned to the land owner thus the Defendant did not compulsorily acquire the suit properties. Further, that negotiations were held between the Defendant and the respective land owners where it was agreed that the value per plot, and the compensation to be paid, was Kshs. 650, 000.00, value that has been adopted in paying the majority of the affected land owners. It pointed out that the Project construction began in the year 2010, which marked the project cutoff date, whose purpose was to prevent any further subdivision of properties affected by the Project in an attempt to either obtain more money as compensation or to frustrate the Project. It insisted that the valuations done by NLC were done in 2016 and 2017 respectively, well past the 2010 cutoff date and display the market value of the entire portions of the suit parcels in the respective years thus allowing them would be unjust and unfair on the Defendant as the Plaintiffs seek compensation

on the whole of the parcels instead of the limited loss of land use. To buttress its averments, it relied on the following decisions: **Kenya Electricity Transmission Company Limited v Kibotu Limited [2019] eKLR** and **Kenya Electricity Transmission Company Limited v Malicha [2023] KEELC 71 (KLR)**.

Analysis and Determination

41. Upon consideration of the Plaint, Statement of Defence, testimonies of the witnesses and exhibits, the following are the issues for determination:

- **Whether the Plaintiffs are entitled to 100% compensation for their respective portions of land acquired by the Defendant.**
- **Whether the Court should adopt the NLC valuation or Dantu valuation to compensate the Plaintiffs?**
- **Whether the Plaintiffs are entitled to mesne profits, special damages and punitive damages.**

I will deal with all the issues jointly.

42. The Plaintiffs case is that the Defendant seized their various parcels of land in 2010 without notice and compensation. They claim that in 2016/2017, about seven (7) years later, the Defendant offered each of them a blanket compensation of Kshs. 650,000.00 per parcel and refused to alter the same to NLC's valuation, which valued their parcels at approximately Kshs.4 million. They insist that the Defendant's actions does not satisfy the constitutional and statutory mandates for adequacy and promptness in compulsory acquisition.

43. On its part, the Defendant contends that it only acquired way-leaves or easements for construction of a power line. Further, that it offered compensation on loss of limited use of land as at the cutoff date of 2010 when construction of the project commenced. It explained that the government set aside funds for that purpose thus the same ought to be utilized in accordance with Article 210 of the Constitution.

44. The legal framework governing compulsory acquisition is contained in Article 40 (3) of the Constitution as read with Sections 107, 110 and 112 Land Act.

45. The Plaintiffs tendered evidence to demonstrate how the Defendant acquired their land, erected high voltage power lines and failed to compensate them adequately. PW2 upto PW11 insisted that the Defendant offered each of them Kshs. 650,000 only for their respective parcels of land as compensation. PW1 who was a Valuer, confirmed to that he undertook valuations of the parcels of land belonging to the Plaintiffs in 2016 and 2017 respectively and made a valuation report dated 6th November 2017. It was his testimony that since all the parcels were similar, he used the 6th Defendant's parcel as a sample. It was his testimony that renting or leasing a property in the location of the Plaintiffs' business /farming would earn between Kshs.120, 000/= - 150,000/= per acre per year. He stated that they valued each parcel at approximately Kshs. 4 million which was

closer to the NLC valuations ranging between Kshs. 4.24 million to Kshs. 4.72 million per parcel. However, in cross examination PW1 admitted that he conducted two separate valuations in respect to the suit plots, the first one in respect to the 6th Plaintiff's parcel was done on 6th November 2016 while second one for the rest of the Plaintiffs' parcels was undertaken on 6th November 2017. Further, that at the point of valuation, the 6th Plaintiff's parcel which was vacant was used as the baseline. He did not know the cost of each parcel of land but based his estimation on rent figures within the area. He also stated that when he visited the area, a few neighboring properties were in use, and that the Plaintiffs parcels were residential. He confirmed that the Defendant's power lines did not cover the whole of the 6th Plaintiff's plot.

46. DW1 in his testimony was categorical that individual owners of the suit parcels were initially not paid since the parcels were the subject of a Court dispute in Machakos CMCC No. 958 of 2011 that was settled by consent vide the Court order

dated 3rd July 2012 and thereafter the Defendant fully compensated persons affected by the project. He was emphatic that there were no developments on Block 39 as the Plaintiffs were absentee land owners. He explained that in 2012, the Defendant was informed that Mavoko Municipality Block 39 was owned by Mavoko Afya Housing Association whose members are current and former staff of Kenyatta National Hospital thus the Defendant contacted the association's leadership to identify owners of parcels affected, where the agreed upon value per plot in the scheme was renegotiated to ksh.650,000 that was adopted in paying the majority of affected land owners.

47. The Court of Appeal opined as follows on what amounts to just compensation in **Kenya National Highways Authority v Issa & 3 Others [2025] KECA 213 (KLR)**;

“The Constitution decrees “just compensation” which must be paid promptly and in full. The Constitution dictates that the compensation be

equitable and lawful when the word “just” is applied as according to Black’s Law Dictionary 9th Ed page 881 the word “just” means “legally right; lawful; equitable”. In our view, the only equitable compensation for compulsory acquisition of land should be one which equates restitution. Once the property is acquired and there is direct loss by reason of the acquisition the owner is entitled to be paid the equivalent. One must receive a price equal to his pecuniary detriment; he is not to receive less or more.”

48. In the case of **Patrick Musimba v National Land Commission & 4 Others [2016] eKLR**, a five judge bench held as follows:

“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 through compulsory acquisition....”

49. On the Defendant’s contention that it only acquired a wayleave thus it did not compulsorily acquire the Plaintiff’s parcels, in **Kenya Electricity Transmission Company Limited v Malicha [2023] KEELC 71 (KLR)**, the Court stated that:

“100% compensation is payable, yes, but only in deserving circumstances which in my view would deny the owner of the servient land all use thereof as in compulsory acquisition and not otherwise. it would take considerable argument to establish that in a case where the land owner will be left using any portion of his land after the wayleave acquisition is entitled to 100% market value of the servient land. I am of the firm view that only the percentage of land

affected and hence quantum of compensation would be subject to adjustment.....”

50. From the evidence tendered before Court, which I have highlighted above, I note the Plaintiffs were all members of the Mavoko Afya Housing Association that owned the original block of land being Mavoko Municipality Block 39 (Afya). Further, that the Mavoko Afya Housing Association is the one that actually negotiated the compensatory rate of Kshs. 650,000/= per parcel with the Defendant. It emerged that majority of the members from the said association had already accepted the Kshs. 650,000/= except the eleven Plaintiffs' herein.

51. The Plaintiffs claimed that they had declined to accept the amounts offered for their respective parcels of land as they deemed them too low. From their testimonies, they confirmed having purchased their respective parcels of land at Kshs. 65,000 between 2001 and 2002. Further, they

admitted that none of them had developed their respective parcels of land.

52. The Defendant explained that compensation payable to the Plaintiffs

was in accordance with their compensation Policy (Resettlement Policy Framework), which is pegged on the impact of the transmission line on the land. Further, that where the transmission line impacts more than 75% of the land, the land owner is paid at 100% value of the said land.

53. From perusal of the NLC valuation report which the Plaintiffs have sought to rely on, insisting that it is the government entity charged with valuation, I note it valued the whole parcels of land and not a wayleave or easement. Further, that the valuation was done in 2016 yet the project cut off date was in 2011.

54. The Defendant confirmed that it was only acquiring a wayleave and not the whole parcel of land and the parcels of

land remained the properties of the respective Plaintiffs. The question we hence need to ponder is whether the amounts proposed by the Plaintiffs are just compensation.

55. In the case of **Kenya Power & Lighting Company Ltd v Ringera & 2 Others (Civil Appeal E247 & E248 of 2020 (Consolidated)) [2022] KECA 104 (KLR) (4 February 2022) (Judgment)**, the Court of Appeal while dealing with an issue where Kenya Power acquired a wayleave over land that had been developed with houses, reduced the Award of compensation that the ELC Court had granted, terming it excessive.

56. All the Plaintiffs have laid a basis that they are ready to receive compensation as per NLC recommendation. I note the NLC proceeded to recommend Awards for the respective parcels of land way past the project cut off date. Further Dantu and NLC valuations were done after the Plaintiffs had rejected the offer. I opine that the two valuations should have considered the value of the land in 2011 at the point of

acquisition of the way leave and not after the project cutoff date. Further, valuation should not have been for the whole parcel of land but for the portion affected by the wayleave only.

57. In the process of compulsory acquisition, it is trite that the project cutoff date is a critical date as that is the date the market value of the property is assessed and any developments after this date are not considered. In the current scenario, the parcels of land were never developed with Mavoko Afya Housing Association having negotiated compensation for each of the plot at Kshs. 650,000. Further, over one hundred members of the Afya Sacco accepted and received their compensation except for the Plaintiffs.

58. From the foregoing, I find that the amounts sought by the Plaintiffs are excessive and will culminate in looting the public coffers. It is worthnoting that the Plaintiffs bought their land for Kshs. 65,000 in 2001 - 2002, never utilized them, were offered compensation of Kshs. 650,000 in 2010

but now demanding averagely Kshs. 4,000,000, yet only a way leave was acquired.

59. On the Plaintiffs' claim for mesne profits, I wish to refer to Section 2 of the Civil Procedure Act Cap 21 which defines it as follows: -

“mesne profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;’

60. From the evidence tendered in court, I find that the Plaintiffs have not provided proof of the basis for the demand of mesne profits as their properties were never developed. Further, there is no demonstration that the Defendant which is a public entity is receiving profits from the power lines traversing the suit parcels.

61. Based on the facts as presented while associating myself with the decisions quoted, I opine that even though the Defendant sent the respective offer letters dated the 28th June, 2016, to the Plaintiffs which was way past the project cutoff date, I find that the Plaintiffs are not entitled to 100% compensation for their respective portions of land but only for the way leave acquired by the Defendant. Further, I hold that the Court cannot adopt the NLC or Dantu Valuations as this did not take into consideration the value of the suit properties in 2011 but in 2016 and 2017. I hence find that the Plaintiffs have not proved their claim for mesne profits as they never utilized their land before the acquisition and will not award it. On the value of their land and since they received the offer letters late after project cut off date, I will award the Plaintiffs each Kshs. 800,000 as reasonable compensation for their respective parcels of land. For their claim for special damages, I find that they did not prove this to the required standard and will not award it.

62. As to whether they are entitled to award of damages for trespass, in the case of **John Kiragu Kimani vs. Rural Electrification Authority (2018) eKLR** the Court held that: **“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.”**

63. The Defendant has not denied that it constructed high voltage power lines which have traversed and remained on the suit parcels of land to date, yet the Plaintiffs’ are yet to be compensated for their land. In that regard, I find that the Defendant’s actions indeed amount to continuous trespass and will award the Plaintiffs’ Kshs. 100,000 each for exemplary damages for continuous trespass on their respective parcels of land.

64. In the foregoing, I find that the Plaintiffs have proved their case against the Defendant on a balance of probability and will enter judgement in their favour in the following terms:

a) The total of Kshs. 9,600,000 being the sum total amounts due on the 12 parcels belonging to the Plaintiffs being:

- i) Samuel G. Wanjohi -Kshs. 800,000**
- ii) Phyllis J Kisabei-Kshs. 800,000**
- iii) Emily Moraa-Kshs.800,000**
- iv) Kibet Kibii-Kshs. 800,000**
- v) Wycliffe Lisa Litsa-800,000**
- vi) Catherine Muriithi-800,000**
- vii) Josephine N Mackenzie-Kshs.800,000**
- viii) Alice Wairimu Njihia-Kshs.800,000**
- ix) Alice Wairimu Njihia - Kshs. 800,000**
- x) Mary Yatich-Kshs-Kshs.800,000**

xi) Beatrice Njeri Muchiri-Kshs.800,000

xii) Norah Kemunto-Kshs.800,000

**b) Exemplary damages for trespass at Kshs. 100,000
for 12 parcels**

**c) Interest on a and b above at Court rates from date
of
this judgement until payment in full.**

d) Costs of this suit

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 1ST
DAY OF DECEMBER, 2025**

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms Ngira for Defendant

Ms Waweru holding brief for Katwa for Plaintiffs

Court Assistant: Joan

ORIGINAL