



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MERU

MISCELLANEOUS APPLICATION NO. 39 OF 2016 (OS)

KENYA ELECTRICITY TRANSMISSION

COMPANY LIMITED (KETRACO).....PLAINTIFF

VERSUS

VALERIA HELEN WANGECHI KIGANO

FIONA JOYCE WAMAITHA KIGANO

JACQUELINE ANNE WAMUYU KIGANO

TRACY LUCY WAGUTHI KIGANO.....DEFENDANTS

JUDGMENT

1. The Applicant is a state corporation whose core business is to plan, design, build, operate and maintain electricity transmission lines and associated substations and is generally referred to as KETRACO. The Applicant is in the process of constructing Nanyuki – Isiolo Meru 132 KV Power Transmission lines which traverses several parcels of land including Land Reference Number 6986/4 measuring 2.057 Hectares (approximately 5.08 Acres), herein after referred to as the suit land.
2. This suit was filed by way of Originating Summons where the plaintiffs claim is for easements rights over LR No. 6986/ 4 Nanyuki Municipality (the suit land). Mary Wanjohi who is a land Economist swore an affidavit for and on behalf of the Applicant dated 18th May, 2016 and a supplementary affidavit dated 13th September 2016 in support of the applicant’s claim.
3. It is averred by the applicant that they undertook a feasibility study for the Nanyuki-Isiolo Meru 132KV Transmission Line Project on the appropriate route, where by the transmission grid was to traverse the suit land. The Applicant is ready to offer the Respondent compensation of Ksh.10,400,000/= for the easement to be created over the suit land which approximately affects 2.0097 Acres where the impact is about 40% of the suit land. A valuation report availed by a firm of valuers known as Realmast determined that one acre of the suit parcel is worth approximately Ksh.8,000,000. As per Applicant’s compensation policy, compensation is pegged at 30% of the value of the area affected by the wayleave trace where the Applicant is not taking over the entire land.
4. This suit is opposed via the Replying Affidavit of Valerie Helen Wangechi Kigano dated 12th April 2018 sworn on behalf of all the respondents. She contends that the transmission line which would be constructed is of high voltage power which makes it dangerous and is a health hazard, so much so as to render the remaining portion of the land useless. She further contends that the Kenyan constitution protects their right to property which should not be taken away without adequate compensation.
5. On 3.5.2018, the counsels for both parties agreed to adopt the orders given in Meru ELC NO. 46 of 2016 to the effect that the suit was to be heard by way of written submissions.
6. Having taken into consideration the affidavits, submissions and record in its entirety, the issue arising for determination is **whether to grant a right of way (an easement) in favour of the plaintiffs and whether respondents can adequately be compensated.**
7. According to the plaintiffs, the easement would affect 2.0097 acres of the suit land, whereby one acre of land was valued at Kshs.8,000,000 by Realmast valuers. As per the plaintiff’s policy, the compensation rate of affected land owners is 30% the value of the area affected by the way leaves trace. The basis of the policy is that this is not an acquisition or transfer of the land but it is acquisition of easement rights. Such compensation can only be granted after the easement has been executed in favour of the Plaintiff. On the other hand, the respondents are of the view that the compensation presented is not sufficient and infringes on their right to own land.

8. An individual's right to property is one which is protected by the Constitution. However, there are instances where this right will be superseded by public interest so as to promote public purposes.

9. Article 40 (3) (b) of the Constitution states as follows:

“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament”

10. Section. 149 of the land act provides that;

“In determining any question or dispute concerning the existence or effect of a public right of way, a court may make an order on any condition, which it thinks fit on all or any of the following matters—

(c) the extent of the use of the easement...

11. From the aforementioned provisions of law, it is clear that the right to own land is not absolute as it is subject to the provisions of article 40 (3) of the constitution, while easements rights are anchored under section 149 of the land Act. Further, I note that this is a case whereby defendants did not propose to have a valuation report of their own in respect of the suit land, hence, the court has no other option but to rely on the report availed by the Applicant.

12. In the case of **KETRACO Vs. James Kinoti M'Twerandu Meru ELC NO. 40 of 2016** , I stated that;

“The easement right does not imply that there will be transfer of Defendants' land to Plaintiff. The right will only enable the Plaintiff to carry out its mandate in line with the provisions of 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”.

13. I made a similar holding in the series of files ELC numbers 43, 44 and 45 all of 2016 and recently in ELC no.46 of 2016. I find no reason to deviate from these findings in the aforementioned cases and I hence allow plaintiff's claim.

14. Consequently I grant the following orders;

I. The right of way (an easement) is to be registered in favour of the plaintiff over parcel LR No. 6986/4 to cover 2.0097 Acres.

II. The plaintiff is granted right of entry into all that parcel LR No. 6986/4 for purposes of carrying on its work.

III. The plaintiff is to compensate the respondents a sum of Ksh. 10,400,000/= after the date of the registration of the easement.

IV. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 31ST DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Ndonye

Ojiambo holding brief for Wachira for plaintiff

Owang for defendant

HON. LUCY. N. MBUGUA

ELC JUDGE