



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCLA NO E048 OF 2024**

**RURAL ELECTRIFICATION AND  
RENEWABLE ENERGY CORPORATION ..... APPELLANT**  
**VERSUS**  
**WATSON MUTAHI MWANGI..... RESPONDENT**

***(Being an appeal arising from the Judgment and Decree of the Environment and Land Court dated and delivered on 10<sup>th</sup> July 2024 at Murang'a(Hon. Susan Mwangi) in ELC No E055 of 2024.***

## **JUDGMENT**

- 1) The Appellant seeks the following orders in this appeal.
- (i) That the judgment dated 10-7-2024 in Murang'a CM's case No. ELC E055/2022 be set aside.**
  - (ii) That in its place, this Court do allow the Appellant's appeal herein.**
  - (iii) That the costs be in the cause.**

- 2) There are six grounds of appeal.

The learned Senior trial magistrate -

- (i) erred in awarding Kshs 1,000,000/= in general damages and Kshs. 2,250,000/= in special damages which awards are inordinately high and wholly unsupported by the facts of the case, the evidence tendered by the parties, the principles of law, the applicable judicial precedents, therefore the same are erroneous and have occasioned a miscarriage of justice,**
- (ii) erred in law and in fact in awarding the Respondent general damages of Kshs. 1 Million which is inordinately high to constitute a miscarriage of justice in the circumstances of the case,**
- (iii) erred in law and in fact in awarding the Respondent Kshs. 2,250,000/= for special damages and failed to appreciate that no factual evidence had been tendered by the Respondent which in the circumstances constitute a miscarriage of justice,**

- (iv) **misdirected herself as to the facts of the case thus arriving at an erroneous decision,**
- (v) **erred in law and in fact in failing to put the Appellant's evidence and the case against the Respondent into consideration when making her determination,**
- (vi) **erred both in law and in fact in arriving at her decision.**

3) The facts of the case according to the Respondent who was the Plaintiff in the lower Court case are as follows. One, he is the registered owner of L.R. No. 20/Mirira/2427. Two, in the year 2012, the Appellant trespassed onto the Plaintiff's said land and erected high voltage power lines without his consent. In the process, the Defendant cut down approximately 45 indigenous trees the Plaintiff had planted on his land. Three, vide a letter dated 30-5-2013, the Defendant admitted to not obtaining wayleave consent from the Plaintiff and also felling the trees on the wayleave trace. The Defendant also expressed willingness to negotiate with the Plaintiff by way of providing him with electricity supply without any other compensation. Four, vide a letter dated 16-4-2015, the Plaintiff demanded that the Defendant removes the power lines from his land and compensates him. Again, on 13-2-2020, the Plaintiff demanded compensation for loss of use of the portion of his land measuring 5x200 metres which the Plaintiff had not used for 9 years. He also demanded compensation for the trees that had been cut and cessation of the trespass by relocating the high voltage power lines from the Plaintiff's land. Five, when his demands were not met, the Plaintiff filed the lower court suit seeking the following reliefs.

- a. **Compensation for the 45 trees that had been cut each tree valued at Kshs. 50,000/=**
- b. **Compensation for loss of use of the portion of land which the Plaintiff was not able to use for nine(9) years.**
- c. **An order compelling the Defendant to cease the trespass by relocating the high voltage lines from the Plaintiff's land.**

4) The facts of the case according to the Appellant are as follows.

Firstly, there are five high voltage poles which are along the road and they fall on the road reserve and not on the Plaintiff's land. Secondly, the line is operational and serving the Mirira Secondary, Kayuyu dispensary and the administration police post. Thirdly, there is no report on the alleged damaged trees because the project was in the year 2011 and the tree trunks could not be traced. The Respondent has no evidence of the type of the trees

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cut but the surrounding area has indigenous shrubs and small sized trees. He also has no evidence of any trees cut and if any were cut, they were along the road reserve.

- 5) In her judgment dated 10-7-2024, the learned trial magistrate found in favour of the Respondent.
- 6) Counsel for the parties filed written submissions dated 18-9-2025 and 30-1-2026. The issues raised in submissions include the following.
- (i) **Whether the special damages were unfair and unjust.**
  - (ii) **Whether the award by the trial magistrate amounted to unjust enrichment.**
  - (iii) **Whether the award of general damages by the lower court was inordinately high.**

- 7) I have carefully considered the appeal in its entirety including the record, the memorandum of appeal, the six grounds of appeal, the written submissions and the law cited therein. In addition to the three issues identified above, I find that there is a more fundamental issue that also needs to be determined.

**Whether the Respondent proved his case on a balance of probabilities.**

I frame this issue under **Order 15 rule 2** of the **Civil Procedure Rules** which provides as follows

“The Court may frame the issues from all or any of the following materials.

**(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of such parties;**

**(b) allegation made in pleading or in answers to interrogatories delivered in the suit;**

**(c) the contents of documents produced by either party.”**

- 8) On the first issue that I have identified, I find that the Respondent did not prove his case against the Appellant to the required standard for the following reasons. Firstly, there was no evidence filed by a surveyor or the Land Registrar showing the extent of the Respondent’s land and the trespass by the Appellant’s high voltage power lines. Such a report was necessary to prove that there was indeed trespass and that the power lines are not on the road reserve as alleged by the Appellant.

In addition to the report there should have been photographs showing the power lines if the report did not contain photographs. Without such a report there is no way of establishing exactly where the boundary between the Respondent's land and the road reserve is and where the power lines are passing through.

Secondly, the size of the trees, the species, the number of each of the species and the value of each tree is unknown. A report by a valuer or a tree specialist was necessary to prove that such trees actually existed and their value had been assessed by a qualified expert. Without such a report, the court would have no basis for assessing the damage alleged by the Respondent. It is quite curious that it took twelve (12) years to file this case because the trees are said to have been felled in 2012 and the suit was filed in 2024. The suit should have been filed when the cause of action was fresh so that even the experts could see the tree stumps or the freshly felled trees.

9) Regarding the first issue identified by the parties, I find that it is difficult for me to tell whether the special damages were unfair or unjust. Only a report by an expert would have been the basis of any determination on the special damages.

10) Coming to the second issue, it is again difficult to determine if the award by the Magistrate amounted to unjust enrichment. The basis for the award has been found to have been non-existent. I find that this finding covers the third issue as well.

11) For the above stated reasons, I find merit in the appeal which I allow.

Consequently I set aside the judgment of the lower court dated 10-7-2024 and I substitute it with an order dismissing the Respondent's suit contained in the plaint dated 6-12-2022.

Costs in the lower court and in this case to the Appellant.

**It is so ordered.**

**Dated, Signed and Delivered virtually at Murang'a this 22<sup>nd</sup> day of April, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of :-**

**Court Assistants – Anthony and Jackline.**

**Appellant's Counsel – Miss Odhiambo**

**Respondent's Counsel – Miss Waitere.**