



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 437 OF 2013

REUBEN WANJALA MWANZO.....PLAINTIFF

VERSUS

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

JUDGMENT

Reuben Wanjala Mwanzo, an adult male of sound mind hereinafter referred to as the plaintiff has sued **Kenya Power and Lighting Company**, a State Corporation that offers services related to electricity. The plaintiff claims he is the registered proprietor of 0.24 Ha of land parcel **No. Kakamega/Soy/1728**. The plaintiff avers that he has fenced the parcel of land with fencing posts and barbed wire and planted maize crops at the cost of Kshs.120,000.

It is claimed that on or about 2.8.2013, the defendant's agents trespassed upon his said land and destroyed fencing posts, his crops, trees all valued at Kshs.80,000. The defendant's actions were done without his consent and/or permission and that he got in touch with the defendants, who offered to replace the barbed wire fence and pay him Kshs.4,000 (Kenya Shillings Four Thousand Only) for compensation but he declined since the offer was too low.

The total amount he expected should have been more than Kshs.80,000 (Kenya Shillings Eighty Thousand Only) for the damage caused to the barbed wire fencing posts, the felled trees which destroyed his maize crops plus labour costs to bring everything back to what it was before the encroachment.

The plaintiff laments that after serving the defendant with a demand letter from his lawyer, the defendant sent their agents to rectify the situation but refused to compensate him for the damage caused.

The plaintiff prays for a permanent injunction barring the defendant, their servants and/or agents, from interfering with the plaintiff's parcel of land above mentioned without his consent and/or permissions

The defendants' actions were actuated by malice and intended to defraud him. The particulars of malice are cutting off the barbed wire fence on the plaintiff's parcel of land without his permission and consent and digging three holes on the plaintiff's parcel of land without his permission and consent. Erecting power poles on the plaintiff's parcel of land without his permission and consent and refusing/ignoring/neglecting to compensate the plaintiff the sum of Kshs. 80,000 (Kenya Shillings Eighty Thousand Only) for the damage caused on his parcel of land.

The plaintiff has as a result of the defendants' actions suffered mental torture and agony at the imagination of loosing his investment and he shall thus pray for general damages for mental torture and agony. That despite demand and notice of intention to sue, the defendant has refused to make amends. The plaintiff prays for judgment against the defendant for Special damages and General damages for the pain and agony, inclusive of mental torture the plaintiff has undergone as a result of the defendant's action.

The plaintiff further prays for a permanent injunction barring the defendants, their agents and or servants from interfering in any way with the plaintiff's parcels of land above mentioned without the plaintiff's prior permission and/or consent and any other remedy this court may deem fit to grant. Costs of the suit plus interest.

The defendant on his part denies all the allegations made by the plaintiff and puts him to strict proof thereof. He prays that the plaintiff's case be dismissed with costs.

The plaintiff testified that he lives in Kakamega County, Likuyani Location, Soy Sublocation. He is a farmer by profession. He has sued Kenya Power Company who entered his land without notice as he did not give them permission. He produced the title deed as evidence of ownership. He sued Kenya Power and not Rural Electrification Programme.

PW2, John Kiplagat Chesang'a, a Motor Assessor and property valuer states that he valued the damage done to the property of the plaintiff. He gave a fee note of Kshs. 5,000. He produced the report and the receipt. He did not produce any documentary evidence to show that he is a valuer. He did not measure the land but used the title to approximate the size. By the time he visited the land, the poles had been removed but he saw the holes. There were three holes of the power posts.

DW1, an employee of Kenya Power & Lighting Company and the Wayleaves officer states that 200 maize stems were destroyed by the Kenya Power and Lighting Company. The value was Kshs.2000. He was willing to pay Kshs.280 for 4 posts, Kshs.4,800 for barbed wire.

Mr. Kagunza, learned counsel for the plaintiff submits that the defendant trespassed on the plaintiff's land and caused damage and therefore should compensate the plaintiff in terms of special damages and general damages.

Mr. Momanyi for the defendant submits that the defendant erroneously entered, erected a power line on the plaintiff's parcel of land and upon realization of the error called the plaintiff on his mobile phone number 0723377640 remedying the error. He did an assessment and found that 200 maize stalks were damaged, fencing poles and one roll of barbed wire. The valuation report showed that a total of Kshs.7,080 was to be paid.

I have considered the pleadings, submissions and the evidence on record and do find that the plaintiff is the proprietor of parcel of land known as Kakamega/Soy/1728. His neighbor applied to be supplied with electricity in his home by the defendant. The defendants in supplying the said electricity, cut the plaintiff's barbed wire fence, dug three holes and cut branches of a tree belonging to a neighbor and damaged the plaintiff's maize crop. There was no notice to the plaintiff. The defendant admits having erred in entering the plaintiff's land and was willing to compensate.

The dispute is how much to be paid. I do find that Mr. Chesang went to the ground after the power poles had been removed but he saw the holes. The maize had been damaged but he did not count. He did not count the posts destroyed. It is not clear whether Mr. Chesang is a Motor Vehicle Assessor, a Valuer or an agricultural officer. He did not produce any document as evidence that he was either a Valuer or an agricultural officer and therefore, it is doubtful that he is a Valuer or an agricultural officer. Even if he is a Valuer, the task he undertook was the task of an agricultural officer and not a land valuer. Mr. James Oboiko, a Wayleaves officer did not demonstrate that he was an expert in valuing crops, trees and fencing posts.

However, having considered the evidence on record, I do find that 200 stalks of maize cut maturely was destroyed, 4 fencing posts and one roll of barbed wire was destroyed. I do award special damages of Kshs. 25,000. In respect of general damages, I do award Kshs.10,000. I do award a total of Kshs. 35,000 plus costs and interest.

Dated and delivered at Eldoret this 29th day of June, 2018.

A. OMBWAYO

JUDGE