



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 235 OF 2016

HELLEN CHELEL MULAMA.....PLAINTIFF

VERSUS

KENYA ELECTRICITY TRANSMISSION

COMPANY LIMITED (KETRACO.....DEFENDANT

JUDGMENT

Hellen Chelel Mulama (hereinafter referred to as the plaintiff) has filed this suit against **Kenya Electricity Transmission Company (KETRACO Limited)** claiming that at all material times herein, the plaintiff was and still is the registered owner and proprietor of all that land comprised in the title No. Eldoret Municipality Block 15/1982 measuring 0.0900 hectares which she was allocated in 1992 but got registered on 28.9.2015 and that under the lease instrument, the plaintiff was entitled to develop shops, offices and flats for human dwelling in a commercial set up.

However, the defendant company without any colour of right or justification invaded the plaintiff's parcel of land known as L. R. Eldoret Municipality Block 15/1982 in 2016, surveyed the same and erected thereupon its transmission masts that dissected the plot into two thereby diminishing its value to naught. The plaintiff has suffered loss as a result of the defendant's actions.

The plaintiff has particularized the defendant's illegality as surveying the plaintiff's land without her consent and erecting thereupon its transmission masts without her approval and or consent. Laying its overhead cables across the plaintiff's plot thereby inhibiting all manner of development. Failing to offer any or any reasonable compensation to the plaintiff for the loss of her land and failing to heed to or take into account the plaintiff's protestation and the plaintiff has suffered loss as a result of the defendant's illegalities.

The particulars of loss suffered by the plaintiff are open market value of title No. Eldoret Municipality Block 15/1982 which is Kshs. 6,500,000. Valuation fees for the same prior to institution of suit Kshs. 25,000.

According to the plaintiff, the defendant's action of forcefully acquiring the plaintiff's land and remaining thereupon constitutes trespass and false detainer of land, which is unlawful illegal and unjustified and violates the plaintiff's constitutional right to hold and enjoy property. The plaintiff prays against the defendant for compensation in lieu of the land and the development so far undertaken. The cause of action arose at Eldoret Kipkaren estate within the jurisdiction of the Honourable court. That demand notice was made without any reaction or acknowledgment making the filing of this action necessary.

Reasons wherefore, the plaintiff precisely prays for an order for compensation for loss of Plot No. Eldoret Municipality Block 15/1982, Cost of valuation report, Costs of the suit and any other or further relief that the Honourable court may deem fit to grant.

The defendant admits that indeed she has constructed electric towers in the suit property while in the process of putting up the high voltage Eldoret-Kitale 132Kv transmission line which is meant to transmit power to Eldoret, Kitale and surrounding areas in achieving the country's objective of meeting its current shortfall and future demands for electricity nationally, in line with the Vision 2030.

The Defendant further avers that, in building the transmission lines, it does not compulsorily acquire the properties it traverses but creates and registers a right of way against the title of the property as provided for under the Land Act 2012.

The Defendant denies the allegation by the Plaintiff that she invaded the Plaintiff's property without any right and justification. The Defendant avers that she followed the laid down law in creating a right of way in the suit property as provided for under the Land Act 2012. The Defendant denies in toto the particulars of illegality and loss as stipulated under the said paragraph and puts the Plaintiff to strict proof thereof. The Defendant further avers, in response to paragraph 5 of the Plaintiff, that the suit property was derived from a subdivision of the initial Eldoret Municipality Block 15 which property belonged to the Government of Kenya and not the Plaintiff as at the time of the survey of the suit property by the Defendant. That under the Land Act 2012, the Defendant cannot compensate the Government of Kenya for right of wayleave acquired in Government's property.

The Defendant further avers that the Plaintiff got title to the suit property after the Defendant had constructed the transmission line on the suit property and the Plaintiff cannot therefore claim that the Defendant invaded the Plaintiff's property as the Plaintiff had no title to the property by the time the construction of the transmission line was completed.

The Defendant further states that upon realization that the Plaintiff had title to the suit property, the Defendant, through its agents, has made several efforts, including visiting the suit property, to negotiate with the Plaintiff on compensation to no avail. The Defendant avers that the Plaintiff has been deliberately avoiding negotiations with the Defendant to enable her file the instant suit and seek compensation for the wayleave trace at market value which is contrary to the law. Further, the defendant denies forcefully acquiring the Plaintiffs land and puts the Plaintiff to strict proof thereof. The Defendant avers that the suit against it does not lie and is an abuse of court process as the Plaintiff has occasioned the delay in compensation due to her by failing to present herself for negotiations with the Defendant's agents.

This matter proceeded by way of "case stated" There are only three issues for determination as it was admitted that the plaintiff is entitled to compensation, thus:-

(i) How much the plaintiff is entitled to for compensation.

(ii) Costs of the valuation reports.

(iii) Costs of the suit.

The plaintiff submits that the report by City Valuers placed the valuation of the affected area of 20% at Kshs. 6,000,000. The defendant filed a valuation report by Capital Valuers who placed the valuation of the affected area at Kshs. 800,000. The 3rd report which was to be done jointly placed the value of the land at between Kshs.800,000 and Kshs. 1,200,000.

The plaintiff argues that she is the registered proprietor of the parcel of land comprised in Eldoret Municipality Block 15/1982. The defendant has without color of right trespassed thereon and erected their electric towers while in the process of putting up the high voltage Eldoret-Kitale 132Kv transmission. As a result of the above, the plaintiff has lost use of her land. She prays for a reasonable compensation. She prays for an award of Kshs. 6,000,000.

The defendant on the other hand submits that the issue for determination is compensation to be paid. The affected land is one quarter of an acre. At the time of constitution of the power lines the property was bare with no structure or crops. That the suit valuation indicate that one acre would cost between Kshs. 3,000,000 to Kshs.3,600,000 and therefore, one quarter of the amount would be Kshs.1,000,000.

I have considered the rival submissions and do observe that every natural or legal person is entitled to the peaceful enjoyment of his property. No one shall be deprived of his property except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The Energy Act, CAP 314, Laws of Kenya. Section 46 thereof refers to the situation where a person trespasses on another person's land to lay power lines. The former requires the permission of the latter. The sections provide as follows: -

S. 46. Permission to survey and use land to lay electric supply 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.

The defendant has trespassed on the plaintiff's property and has installed power lines and therefore he is liable to pay.

There are three valuation reports to assist the court determine the extent of trespass in monetary terms and the level of compensation. I do find that the valuation report filed by the plaintiff, prepared by City Valuers indicating that the value of the property was Kshs. 6,000,000 is on the higher side whilst the report by Capital Valuers of Kshs. 800,000 and Kshs. 1,200,000 is on the lower side. I award a figure of Kshs. 1,800,000 as the property is 5 km from the Eldoret C.B.D. and 800 m of Kipkaren in Uasin Gishu. The farm is accessible through murrum roads and has a rich agricultural background. On cost of valuation, I do grant costs of Kshs. 22,500. I do also award costs of the suit plus interest. Orders accordingly.

Dated, signed and delivered at Eldoret this 27th day of July, 2018.

A. OMBWAYO

JUDGE