



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 109 “B” OF 2015**

**HARISH RAMJI.....1<sup>ST</sup> PLAINTIFF**

**BHARAT RAMJI .....2<sup>ND</sup> PLAINTIFF**

**ASHVIN RAMJI .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO. LIMITED.....DEFENDANT**

**RULING**

1. In its Application dated 15<sup>th</sup> September, 2015 and filed under the provision of Order 2 Rule (1), (b), (c) and (d) of the Civil Procedure Rules, the Defendant is seeking for the following orders:

***a. That this Honourable Court be pleased to order struck out the suit herein.(sic)***

***b. That the Plaintiffs be ordered to pay costs of the suit to the Defendant tendering evidence.(sic)***

***c. That the costs of this Application be provided for.***

2. The Application is premised on the grounds that the suit does not disclose a cause of action against the Defendant; that the suit is scandalous, frivolous and vexatious and that the suit is an abuse of the process of the court.

3. According to the Defendant’s Legal Services Manager, the Plaintiff allegedly became the registered proprietor of land known as L.R. No. 11895/50 (*the suit land*) on 16<sup>th</sup> June, 2010; that the Defendant’s Power line over the suit property was constructed in the year 1956 pursuant to a Wayleave Grant by the Crown on 30<sup>th</sup> November, 1956 and that at that time, the suit land was known as Land Reference Number 3205 and 7548.

4. According to the Defendant, by the year 1971, the Power line had been ringed and powered and ran from its Juja Road Control Sub-station to the Athi River Sub-Station; that the Easement that was granted to the Defendant by the government has never been withdrawn and that the Plaintiff cannot sustain a suit for trespass against the Defendant over the suit land.

5. In response, the 1<sup>st</sup> Defendant deponed that the Plaintiffs were registered as the proprietor of the suit land in the year 2010 after purchasing it from the National Social Security Fund for consideration; that in the year 2011, the Defendant filed a suit in ELC. No. 615 of 2015 seeking for an order stopping Kings Collection Limited from interfering with the construction of the alleged Power lines over the suit land and that it cannot be true that the said Power line was constructed in the year 1956.

6. It is the Plaintiffs’ case that by its letter dated 27<sup>th</sup> July, 2010 to Kenya Railways, the Defendant confirmed that it had re-routed the Power lines for purposes of construction of a commuter rail network and that the alleged Wayleave does not make reference to suit land at all. According to the Plaintiffs, the purchase of the suit land in the year 2010 does not mean that they had acquiesced to any wrong by the Defendant.

7. The Plaintiffs and the Defendant’s advocate filed their written submissions which I have considered. I have also considered the filed authorities.

8. In the Plaint dated 7<sup>th</sup> April, 2015, the Plaintiffs averred that they are the registered proprietors of land known as L.R. No. 11895/50 which they acquired on 16<sup>th</sup> June, 2010; that on or about November, 2011, the Defendant unlawfully entered the suit property and erected Power

lines over it and that the Defendant's actions amounts to trespass.

9. The Plaintiffs finally deponed that prior to the entry of the Defendant and its agents on the suit property, the Defendant had intended to utilize the land for purposes of construction of storage go downs; that the area available for use by the Plaintiff has been extensively reduced by over 50% by the Defendants acts of trespass and that the Defendant should be evicted from the suit land and damages for trespass to be awarded at the rate of Kshs. 500,000 per day.

10. In its Defence, the Defendant deponed that it has occupied the suit land by way of its Power line since the year 1956 and that when the Plaintiffs purchased the suit land, they did so with all the existing encumbrances that were existing on the original grant which was issued to the National Social Security Fund Board of Trustees.

11. The Defendant has therefore admitted that its Power lines traverses over the suit land. The issues of whether the land was already encumbered by the time the Plaintiffs were acquiring it from the National Social Security Fund Board of Directors on 16<sup>th</sup> June, 2010 can only be determined at the hearing of the suit. In any event, the Defendant will have to show that indeed the Wayleave in respect of the Power line crossing over the suit land was acquired in 1956 and that the Plaintiffs are not entitled to any compensation or the orders of eviction.

12. Consequently, and in view of those contested facts, the Defendant cannot argue at this stage that the suit by the Plaintiffs is frivolous, vexatious or an abuse of the court process.

13. In any event, in its letter dated 27<sup>th</sup> July, 2010, the Managing Director of Kenya Railways informed the Defendant's Managing Director that it should "*re-route*" approximately 1,500 metres of the electricity Power line to the opposite side of the railway line to facilitate the construction of the railway. Therefore, the issue of whether this re-routing was ever done by the Defendant and the effect of the said re-routing, if at all, will be germane during trial.

14. Consequently, the Plaint filed by the Plaintiffs has raised triable issues which must proceed to trial. In the circumstances, the Application dated 15<sup>th</sup> September, 2015 is dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2018.**

**O.A. ANGOTE**

**JUDGE**