



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 310 OF 2018

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED.....APPLICANT

VERSUS

MARULA ESTATE LIMITED.....RESPONDENT

RULING

(Application for injunction; principles to be applied; plaintiff wishing to construct power lines through land owned by defendant and offering compensation; level of compensation not agreeable to defendant; defendant stopping the construction works; no need to stop construction works because of a disagreement on level of compensation which can be resolved in court; order of injunction issued to stop defendant from interfering with construction).

1. This suit was commenced through a plaint which was filed on 21 November 2018. The plaintiff is generally engaged in the business of transmitting power through electricity supply lines and in the context of this case, it is currently constructing the Olkaria-Lessos-Kisumu transmission line, a project that is said to be funded by the World Bank and International Finance Corporation. The defendant owns the land parcel LR No. 11367 which is a significant parcel of land measuring about 25,000 acres. The plaintiff, wishes to have its power lines traverse this land and has sought a wayleave from the defendant and they are ready to pay for the same. The problem is that the two parties cannot agree on the level of compensation payable to the defendant. Whereas the plaintiff values the defendant's land at Kshs. 3,500,000/= per acre, and is willing to pay 30% of the acreage that will be affected, the defendant believes that the valuation ought to be at Kshs. 4,000,000/= per acre with compensation payable at 40% of the acreage to be affected. Owing to the deadlock, the defendant has blocked the plaintiff's servants from carrying on the construction works, which the plaintiff has now averred is causing huge losses, as they have to pay idling charges for the period that the construction will have stalled. The main prayer in the suit is for this court to make an assessment of what is just compensation payable to the defendant.

2. Together with the case, the plaintiff filed an application seeking to stop the defendant from interfering with the construction works, pending hearing and determination of this suit. In the supporting affidavit sworn by Matilda Mwamburi, the plaintiff's Senior Land Economist, it is deposed inter alia that what the plaintiff does is acquire a wayleave trace, creating a right of way, and does not compulsorily acquire the land. They thus compensate for the limited loss of use of the land. She has given a basis for their valuation of Kshs. 267,781,500/= that they are willing to pay to the defendant. She has further averred that they are now incurring huge costs owing to the stoppage of the works.

3. When the matter first came before me on 14 November 2018, I thought that the application was urgent, and I directed that it be served and it be heard inter partes on 21 November 2018. The defendant was duly served but had not entered appearance nor filed anything when the matter came up for inter partes hearing. The only material that I have is therefore that supplied by the plaintiff.

4. I have considered the same. Essentially, this is an application for injunction, to stop the defendant from interfering with the construction of the power lines pending the hearing and determination of this case. To succeed in such an application, one has to demonstrate a prima facie case with a probability of success, show that he/she stands to suffer irreparable loss, and where the court is in doubt, it will decide the application on a balance of convenience. These are the established principles as laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***.

5. In this case, it is clear to me that the only issue that is between the plaintiff and defendant is the level of compensation that is due to the defendant. There is no contention that the plaintiff deserves the wayleave sought and that the power lines will be constructed through the land owned by the defendant. There is therefore no reason why the construction of the power lines needs to be stopped so that the parties can agree on the compensation payable. If the parties cannot agree, that is a matter that can be determined by court and pending that determination, and given that the power lines will still be constructed anyway, there is no point in stopping the construction of the power lines. It has been demonstrated to me, and I am persuaded, that stopping the construction works will have serious financial implications on the plaintiff. Any such financial implications will of course inevitably be borne by the already overburdened tax payer, and it is only fair that this be avoided. I see absolutely no loss that the defendant is going to suffer if the works were to continue.

6. I am therefore persuaded to allow this application to the extent that it seeks orders to continue the construction works and stop the defendant from interfering with the same. The County Commander of Nakuru County, is hereby directed to ensure that this order is obeyed.

7. There was an order in the application for deposit of the sum of Kshs. 267,781,500/= in a joint interest earning account in the name of counsel for the plaintiff and defendant. Since the defendant appointed no counsel, all I can direct the plaintiff is to ensure that the said amount is available on call.

8. In so far as costs are concerned, the same shall be to the plaintiffs.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of November 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Ocheing' Opiyo for the applicant.

No appearance for respondent

Court Assistant : Nelima Janepher

Carlton Toroitich

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU