



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISCELLANEOUS APPLICATION NO. 46 OF 2016 (OS)

KENYA ELECTRICITY TRANSMISSION

COMPANY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

RACHAEL WANGECHI WATSON.....DEFENDANT/RESPONDENT

JUDGMENT

1. The Applicant herein is a state corporation with a mandate of building electricity transmission lines and associated activities. The Applicant's claim is for easements rights over Defendants Land parcel No, 6986/3 Nanyuki Municipality (the suit land) in Meru in order to construct the Nanyuki –Isiolo – Meru 132 KV Power Transmission line. Defendant avers that the applicant has not been reasonable on the issue of compensation hence this suit.
2. The entire suit land is 2.070 hectares equivalent to 5.115 Acres.
3. The suit was filed by way of an Originating summons on 24/5/2016. One Mary Wanjohi has identified herself as the land economist of the plaintiff and to that effect, she has sworn a supporting and supplementary affidavits dated 18th May 2016 and 13th September 2016 respectively. It is contended that the plaintiff is in the process of constructing the Nanyuki-Isiolo –Meru 132kV Power Transmission Line that transverses various parcels of land including the suit land.
4. The applicant negotiated with the land owners affected by the transmission line for purposes of acquiring easements over their land in consideration of payment of 30% of the market value of the land as compensation for the partial loss of use of their land. The project is at a crucial point and nearing completion, hence the applicant is ready to offer the respondent adequate compensation to the tune of Kshs. 1,068 600 for the easement to be created over the Suit Land. The affected area according to the plaintiff is approximately 0.2741 Acres of the Suit Land translating to an impact of approximately 5.5 %.
5. On 27/7/2016, leave was granted to the plaintiff to effect service upon the defendant through substituted service. This order was duly complied with vide the Standard Newspaper advertisement of 10/4/2017. Thereafter, a memorandum of appearance and the Notice of Appointment of Advocates were filed on behalf of the Defendant. An application was then filed on 15/10/2018 where Owang advocates were applying to cease acting for the defendant. That application was not prosecuted and was dismissed on 1/11/2018. The matter therefore proceeded ex-parte.
6. A valuation report by Realmast was prepared on 4/55/20155 under instructions of the plaintiff. It assessed the value of one acre of land in the area (not on the suit land) at shs.8,000, 000 per acre.
7. The plaintiff relied on the case of **Sylvia Wambui Kuria v Kentraco [2016] eKLR**. It also cited the provisions of Article 40 (3) (b) of the constitution and section 149 of the Land Act.
8. **Article 40 (3) (b) of the Constitution** states as follows:

“(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament”

9. Section. 149 of the land act provides that;

“In determining any question or dispute concerning the existence or effect of a public right of way, a court may make an order on any condition, which it thinks fit on all or any of the following matters—

(c) the extent of the use of the easement...”

10. In the case of **KETRACO Vs. James Kinoti M’Twerandu Meru ELC NO. 40 of 2016** , I stated that ;

“The easement right does not imply that there will be transfer of Defendants’ land to Plaintiff. The right will only enable the Plaintiff to carry out its mandate in line with the provisions of law. I am therefore inclined to believe that the compensation policy of the Plaintiff which is pegged at the rate of 30% of the value of affected land is grounded on sound principles of law”.

11. I made a similar holding in the series of files ELC numbers 43, 44 all of 2016 and very recently ELC NO. 45 of 2016.I find no reason to deviate from these findings in the aforementioned cases and I hence allow plaintiff’s claim.

12. **Final Orders;**

- a. A right of way (an easement) is to be registered in favour of the plaintiff over Title Number 6986/3 Nanyuki Municipality to cover 0.2741 Acres of the Suit Land.**
- b. Plaintiff is granted right of entry into all that Title Number 6986/3 Nanyuki Municipality for purposes of carrying on its work.**
- c. Plaintiff is to compensate the defendant a sum of Kshs. 1.068,600 after the date of registration of the easement.**
- d. Each party to bear their own costs of the suit.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17th DECEMBER 2018 IN THE PRESENCE OF:-

C/A: Kinoti

Ojiambo for Wachira for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE