



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 993 OF 2012**

**(Formerly Eldoret Hccc No. 8 of 2012)**

**JOSEPH MUNG'AYA MAKOTSI.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING COMPANY LTD.....1<sup>ST</sup> DEFENDANT**

**RURAL ELECTRIFICATION AUTHORITY.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

On the 12.11.2014, the court directed the parties to enter into negotiations in good faith to agree on whether to relocate the second line to Mutaho Primary School from the plaintiff's land or whether to maintain it and pay fair compensation to the plaintiff. In the event, parties were to fail to agree on whether to relocate the line or the compensation payable, the court would make such further appropriate orders.

***Mr. Andambi learned counsel for the plaintiff*** submits that should the power line continue being on the plaintiff's land then the defendants should pay Kshs.10,000,000.00 because he cannot utilize the land as he wishes and that the line is a permanent nuisance and that the land is constantly trespassed on by the defendants. Mr. Andambi further submits that should the court order removed or relocated then compensation should be Kshs.2,000,000.00 as the line was constructed on 17.11.2010 and has been on the land for 7 years.

***M/s Nasiloli learned counsel for the 1<sup>st</sup> defendant*** argues that parties have failed to agree and therefore, the court should determine compensation. M/s Nasiloli argues that the 2<sup>nd</sup> defendant is liable and should be ordered to pay.

I have considered the submission by both parties and do find that the court found the plaintiff to be the owner of the suit land and that he has the prerogative of deciding how his land is to be used. He deserves to have the lines relocated as they were placed on his land without his consent and that he was not compensated. It was further held that the basis would be the size and value of the land affected by the power lines. Parties were given room for negotiation but never agreed. The defendants are trespassers and cannot be allowed on the premises without the plaintiff's consent. I do direct that the defendants relocate the power lines within the next five months. In my view, compensatory damages in a claim based on trespass are measured by either ***the diminished value of the land or chattels*** or the ***cost of repair or restoration*** or the ***reasonable rental value of the property*** or ***the mesne profits*** which is the benefit the person in wrongful possession derived from wrongful occupation. I do find that the defendants have been using the plaintiff's land to transmit power for a profit for a period of 7 years and therefore the plaintiff is entitled to mesne profits for that period, moreover the plaintiff is entitled for restoration and repair and reasonable rental value. On compensation for trespass, the plaintiff has not shown how he has arrived at the figure of kshs.2,000,000. However, considering that the defendants have made profit for 7 years in the transmission of power, I do find that the plaintiff is entitled to reasonable compensation of kshs.1,800,000.00, for trespass on the plaintiff's parcels of land thus IDAKHO/ 413 AND KAKAMEGA/SHIKULU/536 all measuring 7 acres, as general damages for trespass from the 17.11.2010 to the expiry of five months from today. Ultimately, I do give judgment for Kshs.1,800,000.00 (One Million Eight Hundred Thousand only). Costs and interest to the plaintiff.

**DATED AND DELIVERED AT ELDORET THIS 18<sup>TH</sup> DAY OF AUGUST, 2017.**

**A.OMBWAYO**

**JUDGE**