



**REPUBLIC OF KENYA**

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

**ELC. MISC. APPLN. NO. 21 OF 2017**

**RAPHAEL KIOKO MASEKI .....APPLICANT**

**VERSUS**

**KENYA ELECTRICITY TRANSMISSION LIMITED-RESPONDENT**

**RULING**

1. In the Application dated 15<sup>th</sup> December, 2015, the Applicant is seeking for the following reliefs:
  - a. That pending the hearing and determination of this Application, the court may be pleased to grant an interim injunction restraining the Defendant jointly and or severally whether by themselves or acting through their agents, servants and or employees from carrying out any construction, development, using and or abusing, selling, disposing, transferring and or alienating all that parcel of land being a portion of Agricultural Plot No. 289 Kwa-Katheke - Konza Ranch situated at Konza Ranch in Machakos County (hereafter the suit property).*
  - b. That pending the hearing and determination of this Application, the court may be pleased to order the Defendant to provide the Plaintiff an alternative land in place of the suit property being Agricultural Plot No. 289 Kwa-Katheke - Konza Ranch situated at Konza Ranch in Machakos County in the event that the Defendant still want to pursue its project on the Plaintiff's land.*
  - c. An eviction order do issue against the Respondents to be executed under the supervision of the Officer Commanding Machakos Police Station.*
  - d. That the costs of this Application and the interest thereon be provided for.*
  - e. Any other and further relief that this Honourable Court may deem fit and just to grant in the circumstances.*
2. In the Application in support of the Application, the Applicant has deponed that in the year 2012, he bought a parcel of land known as Agricultural plot number 289 Kwa-Katheke -Konza Ranch measuring approximately 2.0 acres from the former allottee; that Konza Ranching & Farming Co-operative Society Limited transferred the land to him and that he has constructed on the said land a matrimonial home.
3. It is the Plaintiff's case that on 1<sup>st</sup> April, 2015, he received a letter from the Respondent informing him that the suit property was going to be affected by their project and that in the said letter, the Respondent intimated that it was to compensate him for his land to the tune of Kshs. 182,353.

4. In response, the Respondent's Senior Manager Project Services deponed that the Respondent is in the process of putting up power lines traversing several parcels of land; that the orders sought by the Applicant are final in nature and that the Applicant should have filed a suit if he was not satisfied with the compensation that the Respondent was offering him.
5. In the Further Affidavit, the Applicant deponed that the Respondent is attempting to acquire a part of his land at a ridiculous amount of Kshs. 180,000 when the said portion is valued in excess of Kshs. 600,000.
6. The parties filed written submissions which I have considered.
7. What is before the court is not only an interlocutory Application but also a substantive suit.
8. It would appear that one of the prayers in the Notice of Motion the Applicant is seeking is for an injunctive order "*pending the hearing of this Application*" while the other prayer is for eviction of the Respondent.
9. From the Affidavit of the Applicant, he has no objection with Respondent's acquisition of his land save that he should be adequately compensated.
10. The Applicant has annexed on his Further Affidavit a Valuation report in respect of part of Plot No. 289, showing the current market value of the plot that the Respondent intend to acquire to be Kshs. 500,000.
11. Considering that the Applicant is agreeable to be compensated for the portion that the Respondent has earmarked for acquisition, it follows that an order for injunction cannot issue.
12. In any event, and as I have already stated above, the Application before me is seeking for both the final orders and temporary orders.
13. The question of the payable compensation can only be dealt with by the court when a Plaint is filed and witnesses are called to testify, and not by way of a Miscellaneous Application.
14. Having commenced this suit by way of a Miscellaneous Application, which is the same Application that is before me, the court cannot be able to evaluate the payable compensation.
15. In the absence of a Plaint, on whose basis the issue of compensation can be ventilated, I find that the suit as instituted by the Applicant is incompetent. The Plaintiff should file a proper suit either by way of a Plaint or Petition for hearing and determination.
16. For those reasons, I strike out the suit with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**