



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 172 OF 2016

ANTHONY MWAU WAMBUAPLAINTIFF

VERSUS

KENYA POWER AND LIGHTING CO. LTDDEFENDANT

RULING

1. In the Application dated 27th October, 2016, the Plaintiff is seeking for the following orders:

a. That the Defendant be ordered to compensate the Plaintiff forthwith the sum Kshs. 31,040,380/= being the quantified amount for the damages caused by the fire since he is now forced to incurred additional costs to cater for his dairy cattle as the pasture was burnt and being that he wholly depends on his commercial forestry as his source of income.

b. That pending the hearing of this Application inter parties and subsequently until this Application is heard and determined, that this Court do grant an order compelling the Defendant/Respondent, their servant or agents requiring them to remove the electric cables/wire up until that time an agreement will be reached between them and the Plaintiff/Applicant for the use of his land for transmission of electricity.

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

2. In support of the Application, the Plaintiff deponed that he has been away in the USA; that when he came back to Kenya, he found electricity cables and a transformer passing through his land being parcel of land known as Wamunyu/Kilembwa/273 and that the Defendant never sought for his consent before the said installation.

3. It is the Plaintiff's case that he has been practicing commercial forestry and dairy farming on the suit land; that on or about 18th August, 2016, due to an electric fault, the live electricity transmission cables burst into flames causing damages to his property and that he received an assessment report showing the damage to his property.

4. In her Replying Affidavit, the Defendant's Insurance Officer stated the Plaintiff does not have the *locus standi* to file an Application in respect to the suit land; that there was a wayleave agreement between the Defendant and the owner of the suit property and that the Plaintiff was not a party to that agreement.

5. It is the Defendant's case that the alleged fire outbreak was not due to electric fault or negligence on its part and that in any event, the suit ought to proceed to full trial for the parties to ventilate the issues

therein.

6. The parties appeared before me and made brief oral submissions which I have considered.

7. In the Plaint dated 27th October, 2016, the Plaintiff is seeking for special damages to the tune of Kshs. 31,040,380 for the alleged fire outbreak that was allegedly caused by an electric fault which destroyed his property on the suit land.

8. The Plaintiff has pleaded in the Plaint that parcel of land number Wamunyu/Kilembwa/273 is registered in his name while plot number 253 is registered in his father's name.

9. Although the Plaintiff's claim is in respect to special damages and for an order compelling the Defendant to remove the transformer and all electric appliances on his land, he wants those orders to be issued at an interlocutory stage.

10. It is trite that special damages must be pleaded and proved.

11. The Plaintiff can only prove that indeed he incurred losses amounting to Kshs. 31,040,380 due to the fire that broke out on the suit land at trial and not by way of an Application.

12. In any event, there is no document, professionally or otherwise, to show that indeed the Plaintiff incurred losses of Kshs. 31,040,380 due to the negligence of the Defendant.

13. For those reasons, I dismiss with costs the Application dated 27th October, 2016.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE