



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO. 42 OF 2016 (OS)**

**KENYA ELECTRICITY TRANSMISSION COMPANY**

**LIMITED (KETRACO).....PLAINTIFF/APPLICANT**

**VERSUS**

**DAVID KITHINJI MBIJIWE .....DEFENDANT/RESPONDENT**

**J U D G M E N T**

The Plaintiff/Applicant is a state corporation whose core business is to plan, design, build, operate and maintain new electricity transmission lines and associated substations. For purposes of this suit, the applicant will be referred to as KETRACO. The Plaintiff is in the process of constructing Nanyuki –Isiolo Meru 132 KV Power Transmission lines which traverses several parcels of land including parcel No. Ntirititi Settlement Scheme /1205 (formerly No. 1155) Meru measuring 0.80 hectares.

The Respondent was apparently served but he declined service and hence the Court directed that he be served via substituted service. This was duly effected on 10.4.17 (via the Standard News Paper). Still, no response was filed.

The suit was heard by way of Written Submissions.

**Determination.**

According to the Plaintiff, valuation was carried out and it was established that an acre in the area is priced at Sh. 600,000. As per the Plaintiff's policy, the compensation rate of affected land owners is 30% the value of the area affected by the way leaves trace. The basis of the policy is that this is not an acquisition or transfer of the lands but it is acquisition of easement rights.

It is further stated that the affected area on Respondents' land is 0.841 acres (43 % of the land) and compensation for loss of uses was pegged at Sh. 151, 380. The Plaintiff is however willing to pay the Respondent Sh, 190, 245. However, such compensation can only be paid when the grant of easement has been executed in favour of the Plaintiff.

The Plaintiff has relied on article 40(3) of the Constitution as well as Section 149 of the land Act 2012.

I am in agreement with plaintiff's submission that the public interest outweighs the private interest in this matter and to this end, the cited case of *Eldoret ELC No. 352 of 2015 Sylvia Wambui Kuria v Kenya Electricity Transmission Limited(Ketraco) e KR* is relevant.

I must point out that the services the Plaintiff seeks to provide stand to benefit not just the Respondent,

and the present generation, but even the future generation too. It is hence an intergeneration and intrageneration social economic right that plaintiff seeks to fulfill.

I therefore proceed to grant the following orders as follows:-

- 1) A right of way (An easement) is to be registered in favour of the plaintiff over parcel No. Ntirititi Settlement Scheme/1205 (formerly No. 1155) Meru owned by Respondent to cover 0.841 acres of the Suitland.
- 2) Plaintiff is granted right of entry into all that parcel No. Ntirititi Settlement Scheme/1205 for purposes of carrying on its work.
- 3) Plaintiff to compensate the Respondent a sum of Sh. 190, 245.51 within 30 days from the date of Registration of the easement failure to which interest will start accruing at Court's rate.
- 4) Each Party to bear their own costs of the suit

**DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 9<sup>TH</sup> DAY OF OCTOBER, 2017 IN THE PRESENCE OF:**

CA: Janet

Ojiambo for Plaintiff /Applicant present

**Hon. L. N. MBUGUA**

**ELC JUDGE**