



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.162 OF 2015

MOMBASA AUTO CARE LIMITED.....PLAINTIFF

=VERSUS=

KENYA POWER & LIGHTING COMPANY LTD.....DEFENDANTS

R U L I N G

[1] What is before me is the Application by the Plaintiff dated 27th July, 2015. In the Application, the Plaintiff is seeking for the following orders:-

(a) THAT the Defendant by itself, servants, agents, employees and or any other person acting on its behalf be by a temporary injunction be restrained from trespassing, encroaching and or in any manner erecting electric poles in plot no.123 Mtangani pending the hearing and determination of this suit.

(b) THAT the costs of the application be provided for.

[2] The Application is premised on the grounds that the Plaintiff is the registered proprietor of a parcel of land known as L.R.No.123 Mtangani measuring 96.01 acres; that the Defendants agents have with impunity encroached on the suit property and that the Defendants have started to dig holes on the suit property in order to erect electric poles.

[3] In response, the Defendant's Assistant Way Leave Officer deponed that it is not true that the Defendant has trespassed on the suit property; that the alleged encroachment on the suit property is by persons unknown to the Defendant and that the Defendant's security department has commenced investigations of the illegal activities.

[4] In the Further Affidavit, the Plaintiff's director deponed that one of the Plaintiff's representative visited the suit property on 20th July, 2015 and realised that the Defendant was in the process of erecting electric poles for purposes of pulling electric cables for distribution and supply of electricity to people living around the suit premises.

[5] It is the deposition of the Plaintiff's director that when he confronted the Defendant's Assistant Way Leave Officer, he informed him that the project was a world bank initiative seeking to light up every house; that it is only the Defendant who has a mandate of laying electric cables and electric poles and that it is not possible that anyone could erect the electric poles without the Defendant's instructions.

[6] The Defendant's Assistant Way Leave Officer also filed a Supplementary Affidavit in which he deponed that when he found illegal poles had been erected on the suit property by people who were not known to the Defendant, he had the poles removed.

[7] The parties' advocates filed brief submissions which I have considered.

[8] It is not in dispute that the Defendant is the registered proprietor of plot number 123 Mtangani.

[9] It is also not in dispute that one of the Defendant's mandates is to erect electric poles and lay electric cables for the purpose of supplying electricity to its consumers.

[10] The Plaintiff has annexed photographs showing electric poles that were erected on the suit property.

[11] In his Supplementary Affidavit, the Defendant's Way Leaves Officer has admitted that when he visited the suit property, he found "illegal poles" had been erected on the suit property by unknown people.

[12] Considering that it is only the Defendant or its agents who are mandated to erect electric poles, and in view of the fact that the Defendant agreed to remove the said electric poles without establishing the "unknown" people who had erected them in the first place, I find that the Plaintiff has established a prima facie case with chances of success.

[13] Unless the injunctive order is issued, it is likely that the Defendant or its agents may again erect electric poles on the suit property without the Plaintiff's consent.

[14] In the circumstances, I allow the Plaintiff's Application dated 29th July, 2015 as prayed.

Dated, signed and delivered in Malindi this 14th day of October, 2016.

O. A. Angote

Judge