



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 49 OF 2014**

**1. JOHN CHEGE NJOROGE**

**2. MARY WANGUI NJOROGE.....APPLICANTS/PLAINTIFFS**

**VERSUS**

**KENYA ELECTRICITY TRANSMISSION CO. LTD.....DEFENDANT/RESPONDENT**

**R U L I N G**

1. The applicants are the registered owners of LR NO Kakamega/Kongoni/805. The respondent is a limited liability company incorporated by the Government of Kenya and its function is to transmit electricity. On 17th of March, 2014, the applicants filed a notice of motion dated 17th March, 2014 in which they sought an injunction against the defendant, its agents and or servants and employees from trespassing, entering, undertaking any further or in any other way whatsoever, interfering with the applicants user of the land comprised in Title No. Kakamega/Kongoni/805.

2. The applicants contend that they do not reside on the suit property but that they have a neighbour who keeps watch over the same. On 11/3/2014 their neighbour Christopher telephoned the first applicant and told him that there were people laying bases for construction of steel poles on their land. He visited the land and found that the employees of the respondent had dug up deep permanent concrete bases on which the respondent intends to build steel power transmission poles.

3. The applicants contend that they never permitted the respondents to erect the poles on their land and that no permission was sought for that purpose and that they have not been compensated for about half an acre which the respondent has taken for purposes of erecting the steel poles for transmission of electricity. It is on this basis that the applicants are seeking an injunction to restrain the respondent from undertaking any activity on their land.

4. The application is opposed by the respondent through a replying affidavit sworn by Joel O. Nyamweya a land economist with the respondent. The respondent contends that in the year 2010, the Government of Kenya in conjunction with the respondent planned to construct a power line between Lessos and Tororo in Uganda so as to connect power to a number of Kenyans. Between 2010 and 2012 a survey was done in which it was found that over 600 parcels were to be affected. The properties to be affected included the suit property which was by then not in the names of the applicants. The owners of the properties were compensated for crops on the affected areas and any structures on the affected properties. As the suit property had no crops or structures the owner was not compensated. It was however agreed that the affected parcels were to be valued by the National Land Commission and the owners compensated later.

5. The respondent contends that the said valuation has not been carried out by the National Land Commission and that to ground the project on grounds that no compensation has been offered will lead to huge losses for this project which is donor funded.
6. In a further supplementary affidavit sworn by Stephen Njoroge Chege the applicants contend that the said Stephen Njoroge Chege is the previous owner of the suit property and that he is the one who transferred it to the applicants who are his children. He contends that he was never consulted either by the respondent or the National Land Commission over any compensation and that in any case, he should have been compensated before the respondent started erecting transmission lines on the land.
7. I have carefully gone through the applicants application as well as the opposition thereto by the respondent. I have also considered the submissions by the applicant and the respondent. Already the applicants had been granted an injunction exparte. The issue which arises for determination now is whether the injunction orders should be confirmed pending hearing and determination of the plaintiffs suit. In their statement of claim, the applicants are seeking general and exemplary damages for trespass to private land and a permanent injunction.
8. The principles for grant of interlocutory injunction are now well settled. First an applicant has to demonstrate that he has a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant might suffer injury which will not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide the application on the balance of convenience.
9. In the present case it is clear that the applicants acquired title to this property on 17th July, 2013. The previous owner of the property was Stephen Njoroge Chege the father of the applicants. Though the previous owner of the property contends that he was not notified of any acquisition of his land by the National Land Commission, I do not think that this was the case. It is mandatory that where any land is to be acquired by the Government for Public use, the National Land Commission has to notify those affected and start the process of compensating those affected. The Lessos – Tororo Power Transmission line affected a number of properties. Those affected were advertised and notified that they would be compensated accordingly. The mere fact that no such advertisement was annexed to the replying affidavit does not mean that no notification was issued. The court takes judicial notice of the fact that the National Land Commission has been putting up press advertisements informing affected land owners where transmission lines have affected individual land parcels.
10. There is no doubt that the applicants are the registered owners of the land in issue. There is also no doubt that there has been no compensation. The respondent has clearly stated that compensation will be given once valuation is done by the National Land Commission. The provisions for acquisition of land for public purposes are clear. The process is elaborate and there is guarantee that compensation will be paid. Once the process of compulsory acquisition is set in motion, no one can stop it. The affected land owner can only be compensated for the same in the manner provided by the law.
11. In the present case, the process of acquisition of land for construction of the power line has commenced. The respondent's agents have moved to the ground and started laying bases for the steel poles. The applicants have not demonstrated that they will suffer irreparable injury which will not adequately be compensated in damages. The affected land will be valued and the applicants will be compensated. Even the balance of convenience militates against grant of injunction. The project will be of great benefit to Kenyans in that additional power will be added to the National grid. It will be unfair and uneconomical to stop the respondent from proceeding with its work of laying transmission lines. I find that in the circumstances the injunction orders earlier on given should not be confirmed. The upshot of this is that the applicant's application for injunction fails. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th of July, 2014.

**E. OBAGA**

**JUDGE**

In the presence of Mr Kiarie for Plaintiff/Applicants. Court Clerk – Kassachoon.

**E. OBAGA**

**JUDGE**

**30/7/2014**