



**REPUBLIC OF KENYA**

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

**E&L CASE NO. 993 OF 2012**

**FORMERLY HCC 8/2012**

**JOSEPH MUNG'AYA MAKOTSI.....PLAINTIFF**

**VS**

**KENYA POWER & LIGHTING COMPANY LTD.....1ST DEFENDANT**

**RURAL ELECTRIFICATION AUTHORITY.....2ND DEFENDANT**

**JUDGMENT**

**A. INTRODUCTION AND PLEADINGS**

This suit was commenced by way of plaint that was filed on 24 January 2012. In the plaint, the plaintiff has averred that he is the owner of 7 acres of land out of the land parcel Idakho/Shikulu/413 which is registered in the name of his deceased father, Michael Lwoyelo. He averred that out of his 7 acres, he planted 2,500 trees in February 2009, which he intended to sell upon maturity after 5 years. He pleaded that he also owns a land parcel Kakamega/Shikulu/536 which is of 2.8 acres. On this land, he pleaded that he planted 6,125 trees in February 2009 which he intended to sell in February 2014 upon maturity. He has averred that in total, he planted 8,625 trees from which he expected to realize an amount of Kshs. 21,562,500/= as he could sell the trees between Kshs. 2,500/= and Kshs. 5,000/= as electric poles. He has averred that he could in the alternative have sold the trees to timber millers at between Kshs. 2,500/= and Kshs. 15,000/=. He has pleaded that upon selling the trees, he would have planted more trees and earn the same amount of money.

It is pleaded that on 17 November 2010, the 2nd defendant working together with the 1st defendant, without any permission of the plaintiff, proceeded to erect a power line described as LV SUPPLY TO NT NO.60465979 to supply power to a neighbor of the plaintiff. It is pleaded that when they discovered that they had acted illegally, the 1st defendant sent an officer to seek consent from the plaintiff for a wayleave. The officer identified the trees affecting the power line and cut them. However, the 1st defendant only offered Kshs. 27,000/= as compensation, yet in the opinion of the plaintiff, the figure should have been at least Kshs. 600,000/=. It is pleaded that on 18 March 2011 and 31 March 2011, the defendants again cut down 651 trees and forcefully erected a power line towards Mutaho Primary School. This he has pleaded was illegal and he has asked that the defendants be compelled to pay him Kshs. 1,302,000/= as compensation for the trees. He has also asked that the defendants be compelled to relocate this power line failure to which they should compensate him for future harvests which he has computed at Kshs. 2,604,000/= together with loss of user for the land.

In summary, the plaintiff's claim is for :-

*(a) Special damages of :-*

*(i) Kshs. 1,865,900/= being the amount from the 1st harvest of the trees cut on 17th November 2010, 18th March 2011, and 31st March 2011.*

*(ii) Kshs. 30,000/= being amount spent on professional fees for survey and others.*

*(ii) Kshs. 3,731,800/= for 2nd and 3rd harvests should the defendant fail to relocate the power line from the trees cut on 18 March 2011 and 31 March 2011.*

*(b) General damages for the pain and agony, inclusive of mental torture the plaintiff underwent as a result of the defendant's action.*

*(c) General damages for loss of user for a period this court may deem fit, and appropriate, should the defendant fail to relocate the power line.*

*(d) A permanent injunction barring the defendants from interfering in any way with the plaintiff's parcels of land without his prior permission and consent.*

*(e) Any other remedy this court may deem fit to grant.*

*(f) Costs of the suit plus interest.*

The defendants filed separate defences and denied all matters raised by the plaintiff and put the plaintiff to strict proof.

## **B. EVIDENCE OF THE PARTIES**

The plaintiff is an education consultant based in the Middle East. He produced title to the land parcel Kakamega/Shikulu/536 which is in his name, and title to Idaho/Shikulu/413 which is in his father's name, which he said he has inherited from his father. These two parcels are adjacent to each other. He testified that in mid-2010, Kenya Power and Lighting Company (KPLC), the 1st defendant, erected a power line across the two parcels of land and as a result destroyed trees that he had planted on the land. He came to know of this when he made a trip home on 15 November 2010. He stated that he had planted eucalyptus trees for commercial purposes in the land parcel No. 536 whereas in the parcel No. 413, he had planted a variety of trees. He stated that the total number of trees felled were 238, to supply power to a Mr. Salamba. KPLC later sent a wayleaves officer who proceeded to assess the damage and fill in a form that the plaintiff was required to sign and did sign. The damage was assessed by KPLC at Kshs. 27,000/= which the plaintiff was of opinion that it is an undervalue. He expected at least Kshs. 536,900/= which was the assessment made by an officer from the Kenya Forest Service (KFS).

He testified that another cutting of trees was done on 18 March 2011 and 31 March 2011 for purposes of supplying power to Mutaho Primary School. This time, 651 trees were cut. According to the plaintiff, the value of these trees is Kshs. 1,302,000/=.

In cross-examination, the plaintiff admitted that he does not have a grant of letters of administration for the estate of his deceased father. He was not aware of any consent given by his mother to cut trees on the land parcel No. 413 and in any event he stated that his mother could not give consent to cut trees that were not her own. He stated that the number of trees cut in the land parcel No.413 was 199, and stated that the trees belonged to him and not to the estate of his late father. He did not know what happened to these trees that had been cut. He stated that he had given consent to cut the trees but did not leave instructions on what should happen to the trees once cut. He stated that the second cutting was done when he was not present. This was meant to supply power to the school. He stated that he had refused these trees to be cut but were cut when he was away. He stated that 651 trees were cut this time and he did not utilize the trees as most of them were stolen.

PW-2 was Herbert Amiani Nanjoli who is a forest officer with the KFS. He testified that he visited the site and valued the cut trees. He made several reports. One dated 24 November 2010 is a report showing a total of 238 trees of different varieties. The value placed is Kshs. 563,900/=. The second report is dated 7 July 2011 and is for 651 eucalyptus trees which are valued at Kshs. 1,302,000/=. In cross-examination, the witness was not very clear on whether or not he found the trees already cut or standing when he made his report. Indeed, I found the witness rather evasive. He however testified that he found the logs on the ground and the same could be sold. He stated that he valued the trees based on Kenya Gazette Supplement No. 12 of 28 September 2012. He stated that he projected the value to the time that they would mature.

PW-3 was Donald Musungu the Assistant Chief of the area. He testified that he is aware that the plaintiff planted trees and that some were felled. He stated that on 19 March 2011, 396 trees were felled. On 31 March 2011, 255 trees were felled. He found the trees felled and on the shamba but did not know where they went.

DW-1 was Alfred Misolo, an Assistant Wayleaves Officer with KPLC. He stated that when they fell trees, they prepare a crop damage report (CDR) which provides an assessment of damage caused. An assessment was done in this instance, but they could not agree with the plaintiff on the value of the damage. He testified that they do not compensate the owner for the value of the cut trees since they are left with him. He agreed that KPLC fell 228 trees of different species, but that they had the consent of the owner. They were supplying power to Mr. Salamba. He also stated that once power lines are erected the land owner will not be allowed to plant trees beneath them.

DW-2 was Caroline Ochich. She is the Senior Wayleaves Officer with the Rural Electrification Authority (REA). She is a land economist by profession having qualified from the University of Nairobi. She is also a member of the Institute of Surveyors of Kenya. She testified that the role of REA is to supply power to public institutions and facilities in rural areas. She gave an elaborate account of how they identify recipients of power and how they go about supplying the power. They do acquire wayleaves to put up lines on the route identified. They deal with KPLC to energize the lines. In this instance, they were supplying power to Mutaho Primary School. She personally visited the site on 15 June 2012 after the complaint raised by the plaintiff about his trees having been cut and assessed the damage. The trees were of various size, and according to her assessment, their value was Kshs. 178,040/=. She based her assessment on the diameter of the felled trees which varied from 2 to 7 inches. This is the amount she stated REA is ready to pay as compensation. She used rates from the Ministry of Agriculture not those of the Kenya Forest Service. She did not use the rates in Kenya Gazette Supplement No. 12 of 28 September 2012 because the diameter of the trees was small. She stated that they felled 320 trees to take power to the school. In cross-examination, she admitted that they had not received prior consent before felling the trees and they did not give notice before proceeding to cut them down.

### C. SUBMISSIONS OF COUNSEL

In his submissions, Mr. Andambi for the plaintiff, submitted that the plaintiff only gave consent to the first line, but that no consent was offered for the second line. He stated that the plaintiff should be compensated at commercial rates and cited the case of *KPLC v Josphat P. Kingara* where he stated that an amount of kshs. 5,000/= per tree was given. He also asked for loss of future earnings and relied on the case of *Joseph Njuguna Gachoka & 3 Others vs KPLC*. On the issue of locus, he submitted that the trees were planted by the plaintiff and belonged to him and not his father. On the issue that it was not clear how many trees were cut, he submitted that it is 228 in the first cut and 651 trees in the second cut. He stated that there was no evidence to support that it was 320 trees that had been felled as claimed by DW-2. He asked that I order compensation at Kshs. 5,000/= per tree hence Kshs. 4,395,000/=. He asked that I multiply this by 3 for three harvests hence Kshs. 13,185,000/=. He also asked for Kshs. 1 million as damages for shock and trauma.

Counsels for the 1st defendant argued that the plaintiff lacks locus standi as he holds no grant of letters of administration for the estate of his deceased father who is still registered as owner of the land parcel No. 413. They also argued that no proof was tendered that the trees were on the land owned by the plaintiff.

As to the amount of damages, it was submitted that since the assessing officer had not been paid, this amount cannot be claimed. It was also submitted that the claim for damages for mental torture was unproven. They also submitted that as to future damage, the land could be used for other economic purposes and that the same is a prospective loss which cannot be awarded. They also raised issue as to whether PW-2 ever visited the land.

Counsels for the 2nd defendant argued that it was not clear how many trees were felled. He pointed out the varying number of trees in different documents tabled by the plaintiff. He also raised issue as to the values used by PW-2 since they were for mature trees. They submitted that there was no reason for DW-2 to doctor the figures of the number of trees felled which were 320.

#### **D. DECISION**

I have given the matter due consideration.

The claim by the plaintiff is for compensation for the value of trees felled. Before I go further, I better deal with a preliminary issue raised, that the plaintiff cannot make a claim for the trees cut in the land that is registered in the name of his father. I think from the evidence, the plaintiff demonstrated that he is the one who planted the trees, and that they belong to him. I am of the view that he can claim for the trees since it was his investment. It cannot be alleged that by the plaintiff planting trees on the land of his late father constitutes intermeddling in an estate of a deceased person. Let us assume that person XYZ dies, and a close relative, say a son of the deceased, plants *sukuma wiki* ( a popular leafy vegetable) for his subsistence, in the farm registered in the name of the deceased, can it really be argued that this constitutes intermeddling in an estate of a deceased person ? I think not. What if a malicious fellow enters the land and uproots the *sukuma wiki*, whose *sukuma wiki* is it ? Is it *sukuma wiki* of the estate of the deceased or *sukuma wiki* of the son of the deceased ? I think we will all agree that it is *sukuma wiki* for the son of the deceased. It is the same situation here. The plaintiff planted some trees in the land of his late father. I am prepared to hold that the trees belong to him, unless the estate of his father comes to state otherwise, and he can claim if the same are destroyed. That, I believe should resolve the issue of whether or not the plaintiff can claim for the loss of the trees that he planted in his father's farm.

In my opinion, the issues that arise in this case, are covered by the Energy Act, CAP 314, Laws of Kenya. Specifically, sections 46, 47 and 56 are operative. They are drawn as follows :-

*S. 46. Permission to survey and use land to lay electric supply lines :-*

*(1) No person shall enter upon any land, other than his own—*

*(a) to lay or connect an electric supply line; or*

*(b) to carry out a survey of the land for the purposes of paragraph (a), except with the prior permission of the owner of such land.*

*(2) The permission sought in subsection (1) shall be done by way of notice which shall be accompanied by a statement of particulars of entry.*

*S. 47 Assent to proposal*

*(1) An owner, after receipt of the notice and statement of particulars under [section 46](#), may assent in writing to the construction of the electric supply line upon being paid such compensation as may be agreed and any assent so given shall be binding on all parties having an interest in the land, subject to the following provisions—*

*(a) that any compensation to be paid by the licensee giving notice to the owner, in cases where the owner is under incapacity or has no power to assent to the application except under this Act, shall be paid to the legal representative of the owner;*

*(b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the construction of the electric supply line, so long as the claim is made within three months after the construction of the electric supply line.*

*(2) No assent expressed in writing in accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.*

#### *55. Power to lop trees and hedges*

*(1) Where any tree or hedge obstructs or interferes with the construction by a licensee of any electric supply line, or interferes or is likely to interfere with the maintenance or working of any electric supply line, owned by any licensee, such licensee shall give a seven days notice to the owner or occupier of the land on which the tree or hedge is growing, requiring the person to lop or cut it so as to prevent the obstruction or interference of the electric supply line, subject to the payment by such licensee of the expenses reasonably incurred by the owner or occupier of the land in complying with the notice:*

*Provided that in any case where such a notice is served upon an occupier who is not the owner of the land on which the tree or hedge is growing, a copy of the notice shall also be served upon the owner thereof, if his address is known.*

*(2) If within twenty-one days from the date of giving such notice the owner or occupier of the land on which the tree or hedge is growing gives a counter-notice to the licensee objecting to the requirements of the notice, the matter shall, unless the counter-notice is withdrawn following consultations between the licensee and the owner or occupier, be referred to the Commission for determination and the Commission may, after giving the parties an opportunity to be heard, make such orders as it thinks just, and any such order may empower the licensee, after giving a seven day prior notice to any such person by whom the counter-notice was given of the commencement of the work as the order may direct, to cause the tree or hedge to be lopped or cut, and may determine any question as to what compensation, if any, and expenses are to be paid:*

*Provided that any party aggrieved by any decision of the Commission with regard to compensation may within thirty days after being notified of such decision appeal to the Tribunal.*

*(3) The licensee shall issue instructions to his servants and agents with a view to ensuring that trees and hedges shall be lopped or cut in a way that little damage as possible is done to trees, fences, hedges and growing crops, and shall cause the boughs lopped to be removed in accordance with the directions of the owner or occupier, and shall make good any damage done to land.*

*(4) Any compensation or expenses payable to the owner or occupier by the licensee under this section shall be a civil debt recoverable summarily.*

*(5) Where it is necessary to fell any trees, this section shall apply to the felling of trees mutatis mutandis as it applies to the lopping of trees.*

*(6) This section shall apply to electric supply lines owned or to be constructed by any licensee regardless of the type of licence he holds.*

It will be seen that under Section 46, permission of the land owner is required before entering such land and laying electric supply lines. Moreover, a notice is required to be given, which notice should be accompanied by a statement giving the particulars of entry. After the notice under Section 46, an owner may give assent and is entitled to compensation to be agreed. Under Section 55, where trees interfere with an electric supply line, a 7 day notice is required to be given to the land owner requiring such owner to lop or cut down the trees affecting the power line. Where trees have to be cut, the same should be done with as little damage as possible to trees, fences, hedges and growing crops. The boughs lopped should be removed in accordance with the instructions of the owner and any damage to the land has to be made

good. If trees have to be cut, the above applies, i.e notice first has to be given, removal has to be in accordance with the instructions of the owner, and there needs to be compensation for any damage.

From his evidence, the plaintiff contended that his trees were cut on two occasions. The first cutting occurred in the year 2010. This was meant to create a path to put up electricity supply lines to supply power to a Mr. Salamba, a neighbor of the plaintiff. The evidence of the plaintiff on whether or not he gave consent to this cutting is not clear, as the plaintiff on one hand seemed to suggest that he did give consent, and at times he seemed to suggest that he did not give consent. To resolve this conflict, I have gone through the documents that the plaintiff produced as exhibits. Exhibit No. 5 is a letter dated 15 September 2010. It is a complaint to KPLC stating that sometimes in April 2009 some 30 trees were felled and 60 uprooted. In the letter the plaintiff has mentioned that in September 2010, KPLC officials sought to fell about 800 trees which the plaintiff declined, for the reason that he had not been compensated for the felling that happened in the year 2009. Exhibit No. 7 is a letter dated 31 November 2011 (I take note that we do not have 31 November, but that is the date in the letter) again addressed to KPLC. It mentions that on 17 November 2010, KPLC sent an officer, a Mr. Odera to the ground, and that the two assessed the trees and had them cut in their presence. It seems therefore, for the cutting of November 2010, the plaintiff was present and had given consent to the trees being felled. He did give consent, but the problem was with the compensation.

It has been argued that it is not clear what number of trees were cut during this first felling. The plaintiff oscillated between 228 trees and 238 trees. I think the evidence overwhelmingly shows that they were 228 trees and not 238. This is from the Crop Damage Report, which was signed by the wayleaves officer and the plaintiff. The two counted the trees and by consensus came to the figure of 228 trees. This figure of 238 trees has come from PW-2, the forest officer, and I doubt that he got the figures correct. I honestly did not think much of PW-2 as a witness as he was quite a shifty character who at times found it difficult to respond to fairly simple questions. When cross-examined as to whether he found the trees standing or already cut when he made his assessment, he fluctuated from having found them cut, then having found them standing. Again when asked how many trees he found cut in this first incident, he gave the number 651. I was certainly not impressed by his demeanour.

I think the evidence shows that 228 trees were felled in the first cutting and that the plaintiff gave consent to this cutting. The only issue surrounding this is compensation. KPLC unilaterally computed the figure of Kshs. 27,000/=. That figure was of course inserted after the plaintiff had signed the CDR, not before, and it was not an agreed figure. I gathered that the practice of KPLC is to let you sign the document showing the damage to the crop which the person then signs and the figures for compensation are added later, when the document is already signed. One cannot purport that the signature therein was an affirmation of the quantification, for this is unilaterally added later. I do not know why KPLC can imagine that they can on their own motion, without giving any criteria, arrogantly thrust whatever figures they imagine to persons affected by their actions. I think it is time they got off this rather patronizing attitude and engaged in reasonable negotiations or else they will find themselves fighting litigation left right and centre.

Be as it may, the plaintiff has raised issue with this amount of Kshs. 27,000/= as compensation. He wants Kshs. 536,000/= which is the amount that was quantified by PW-2. On my part, I do not think that the plaintiff is entitled to this amount of Kshs. 536,000/=. He gave consent to the cutting of the trees and he must have derived value from the trees. He was present when the trees were cut and he must have, or at least ought to have, given direction on how these trees should be utilize as a way of mitigating his losses (if any). It has not been claimed that the first defendant did not fell the trees according to the direction of the plaintiff and did not dispose of them as advised. Neither did the 1st defendant fell the trees and leave them to be squandered by opportunists. The plaintiff was actually present and he at least ought to have directed how the trees are to be exploited. He had a duty to mitigate his losses. He cannot expect full value of trees that were left with him.

I also do not know how PW-2 quantified the figures for compensation. He stated that he used The Forests (Fees and Charges) , Rules, 2012 (Legal Notice No. 104 of 28 September 2012), but the amounts in this legal notice cover trees above a DBH (diameter at breast length) of 20 cm and above. The highest DBH

for the trees felled in this first instance was 16 as far as I can see. It follows that the use of the legal notice in this instance was misplaced for a moment that the legal notice could not have been used as it was not in force. I think PW-2 had to demonstrate what sort of assessment he utilized and why the basis for the quantification of his figures. I am therefore not convinced about the quantification of Kshs. 563,900/= raised by PW-2. For the reason that the plaintiff has not demonstrated what he did with these trees that were cut with his consent and in his presence, I will uphold the figure of Kshs. 27,000/= which the 1st defendant is ready to pay for the 1st cutting, in as much as their criteria is wanting. It is just that I cannot allow the plaintiff to benefit twice, for he already had the cut trees in his possession.

Let me now go to the second felling of the trees. The felling of these trees was for purposes of supplying power to Mutaho Primary School, a project of REA. For this felling, the 2nd defendant has confirmed readiness to take responsibility. They have conceded that they did not give notice and have stated willingness to offer compensation for the sum of Kshs. 178,040/= . According to the 2nd defendant 320 trees were felled. The plaintiff in his pleadings has contended that 651 trees were felled. I believe he has based this figure on the letter dated 7 July 2011 written by PW-2. That letter states that 651 eucalyptus trees have been felled and a value of kshs. 2,000/= per tree has been given. That letter refers to another of 5 April 2011, which states that on 18 March 2011, a total of 425 trees were cut and on 31 March 2011, 202 trees were cut. If I follow this totals, the figure will be 627 trees (425+202) and not 651. But again this figure completely different from the number of trees counted by PW-2 when making an assessment following survey pegs as placed by REA. In a letter dated 26 January 2011 (exhibit No. 14), he stated that 336 trees will be affected by the power line to Mutaho Primary School. The figures given by PW-3 are again different. He testified that on 19 March 2011, 396 trees were felled, and on 31 March 2011, 255 trees were felled. The plaintiff's evidence on how many trees were cut is irreconcilable.

I have already stated earlier that I was not impressed by the demeanor of PW-2. He in fact failed to answer the question of when he visited the ground after the second cutting incident. This was in complete contrast to the demeanor of DW-2 who appeared to me to be an honest witness with nothing to hide. She came across as a polished professional. I would take her word anytime over that of PW-2, and on this score, I believe her that she counted 320 trees as being the damaged trees. PW-2's report has no measurements of the trees in contrast to the assessment of DW-2 which has the diameter of the trees cut in inches. Her report (defence exhibit 1) demonstrates that the trees cut were between 0.2 inches to 0.7 inches. These diameters fall outside the values given in Legal Notice No. 104 of 28 September 2014 which gives values starting from 20cm diameter. PW-2 did not give the basis for his assessment of Kshs. 2,000/= per tree but DW-2 stated that she followed rates of the Ministry of Agriculture which are different for each tree depending on the size. Her report therefore quantifies the value based on the size of the tree in diameter. Again weighing whether to follow the quantification of PW-2 over that of DW-2, I opt to follow that of DW-2. The quantification is for the sum of Kshs. 178,040/= which I am prepared to award for the loss suffered to the plaintiff for the 2nd cutting.

The other issue is whether or not the plaintiff is entitled to loss of future earnings in the form of being compensated for the three harvests that he expected the trees to go for. I would have had no problem making an award for future loss if the same had been proved. However, no evidence was tabled before me that the land, without the trees, cannot be used for any other economic purpose, or that an alternative user of the land, will bring forth a lesser return than the return to be made from the trees, and if so, the amount of such reduced return. Without evidence to demonstrate this, I am afraid that I cannot engage in speculation and I therefore make no award on future loss of earnings. I also make no award for damages for mental anguish or mental torture for no evidence was led that the plaintiff suffered any such torture or anguish to an extent that an award of damages needs to be made.

There is the claim for Kshs. 30,000/= for professional fees. I am unable to make any award under this head as the same was not proved. No witness gave evidence that they have been paid or that they are demanding any fees which are payable. The claim therefore fails.

The other issue in the pleadings is the prayer by the plaintiff that the electricity supply line be relocated if the 2nd defendant does not pay compensation for future loss. First, I appreciate that the 2nd defendant trespassed into the plaintiff's land for no consent was sought before entering his land and placing the

electricity supply lines. The plaintiff is the owner of the land and he has the prerogative of deciding how his land is to be used. I think he deserves the order to have the lines relocated as they were placed on his land without his consent unless he is compensated. I however do not think that the correct basis for compensation is future projected harvest but rather the size and value of the land which is affected by the presence of the power lines. Since there is room for negotiations, for now, I will not make any order for relocation or compensation and the same is held in abeyance. Instead, I ask the parties to enter into negotiations in good faith and make a report within 30 days. If they agree, well and good; if they do not agree, the court will make the appropriate order for relocation or compensation. The outcome of this will also determine any need for the prayer for permanent injunction.

I believe the only other issue left is costs. The plaintiff was forced to file litigation because the 1st defendant could not provide the criteria for compensation and because the 2nd defendant trespassed into his land. Costs will therefore be to the plaintiff.

In summary, I make the following orders :-

- (a) I hold that the first cutting of November 2010 was done with the consent of the plaintiff.
- (b) The plaintiff to be compensated with the sum of Kshs. 27,000/= for the first cutting by the 1st defendant.
- (c) I hold that the 2nd cutting of March 2011 was done without the consent of the plaintiff and that 320 trees were affected.
- (d) I order the plaintiff to be compensated in the sum of Kshs. 178,040/= by the 2nd defendant for the 2nd cutting.
- (e) I direct parties to enter into negotiations in good faith to agree on whether to relocate the second line to Mutaho Primary School from the plaintiff's land or whether to maintain it and pay fair compensation to the plaintiff. A report on this be made within 30 days from today.
- (f) In the event that parties fail to agree on whether to relocate the line or to the compensation payable the court will make such further appropriate orders.
- (g) Costs to the plaintiff.

Judgment accordingly.

**DATED AND DELIVERED AT ELDORET THIS 12TH DAY OF NOVEMBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET.**

***Delivered in the presence of:***

***Mr. J.M. Kimani holding brief for Mr. Andambi for plaintiff.***

***Mr. M.K. Bett present for 1st defendant***

***Mr. H.K. Koros holding brief for M/s Kalya & Co Advocates for 2nd defendant.***