



**Osano v Kenya Power & Lighting Co Ltd (Tribunal Case E017 of 2022)
[2024] KEET 392 (KLR) (Environment and Land) (26 March 2024) (Judgment)**

Neutral citation: [2024] KEET 392 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
ENVIRONMENT AND LAND
TRIBUNAL CASE E017 OF 2022**

D.K MWIRIGI, CHAIR, B.H WASIOYA & F.S IBRAHIM, MEMBERS

MARCH 26, 2024

BETWEEN

VITALIS OUMA OSANO PLAINTIFF

AND

KENYA POWER & LIGHTING CO LTD DEFENDANT

JUDGMENT

1. This suit was instituted by the Plaintiff herein through a Complaint dated 13th June 2022 against the Defendant. The Plaintiff is a businessman based in Kisumu City. He has brought his claim against the Defendant herein which is a public utility company listed in the Nairobi Securities Exchange with the mandate to plan for sufficient electricity supply capacity to meet demand and building and maintaining the power distribution and transmission network and retailing of electricity to its customers.
2. It is important to put out from the onset that this matter was referred to this Tribunal by the Environment and Land Court at Kisumu via its ruling dated 3rd September, 2021, in *Vitalis Ouma Osano v Kenya Power & Lighting Co. Ltd*, ELC Case No. 32 of 2020 where the Court made observation and order;

“I do find that this dispute revolves on development of Energy infrastructure namely Electricity Supply lines on the alleged Plaintiff’s land which is private land. The Plaintiff is aggrieved with the act of the defendant. Section 36 of the Act bestows the jurisdiction to hear and determine all the matters referred to it, relating to the Energy and Petroleum Sector arising under the Act to the Tribunal. The plaintiff has no option but to refer the dispute to the Tribunal. The Tribunal has the Jurisdiction to grant the orders being sought by the plaintiff.”



“In view of the above, this dispute ought to have been referred to the Energy and Petroleum Tribunal in accordance with the Act. The Preliminary Objection is upheld and the suit is struck out. Costs to the defendant.”

Background.

3. The Plaintiff in his Complaint avers that he is the registered owner of all that land parcel known as LR No. Kisumu/Kanyakwar “B”/135 (hereinafter referred to as “Suit Premises”) measuring approximately 4.0Ha which has been his/their ancestral home where he was born and lived for over 65 years and thus enjoys his rights to peaceful use and possession thereof as guaranteed by the provisions of the [Land Registration Act](#), No. 6 of 2012 and Article 40 of the [Constitution](#) of Kenya, 2010.
4. The Plaintiff states that the Defendant’s predecessor constructed 33kV lines from Kisumu to Kakamega through his parcel of land thus trespassing through his parcel and denying him peaceful use and possession of his premises.
5. Similarly, the Plaintiff avers that sometimes in March 2018 and August 2019, the Defendant’s agents, servant’s employees and or persons claiming through them, without notice or leave invaded the suit premises, cut down fully grown indigenous trees and erected new concrete high voltage power lines within the suit premises.
6. He contends that the Defendant placed the power lines parallel to each other and the new area occupied by the new power lines were illegally built thus the space in between the two power lines traverses a portion of his land measuring 235 meters in length and an average of 28 meters’ width translating to 0.66Ha or 1.6 Acres which was illegally exercised off from his premises and which he cannot put to any use.
7. The Plaintiff thus states that this was done irregularly and fraudulently without following due procedure and pleaded the following particulars of illegality:
 - a. Failing to obtain the Plaintiff consent to erect electricity poles within the suit parcel.
 - b. Failing to give notice or follow provisions of the Wayleaves Act.
 - c. Failing to obtain consent to cut down indigenous trees.
 - d. Trespassing into the suit premises without the Plaintiff’s leave or let in.
 - e. Failing to follow provisions of the Fair Administrative Actions Act and the *Constitution* of Kenya, 2010.
 - f. Acting whimsically and without due regard to the Plaintiff’s interest.
8. The Plaintiff contends that he thus requested the County Forest Officer to make an assessment of the damages done and vide reports dated 7th November 2018 and 11th September 2019, a cumulative valuation of Kenya Shillings One Million, Three Hundred and Ten Thousand Eight Hundred and Twenty-Eight (Kshs. 1,310,828/=), being the total value of the indigenous trees destroyed by the Defendant was made.
9. Furthermore, he instructed Chrisca Real Estates to value the area illegally excised off to which the same was valued at Kenya Shillings Twenty Million, Five Hundred and Eleven Thousand Eight Hundred and Eighty-Five (Kshs. 20,511,885/=).
10. The Plaintiff prays for judgment to be entered against the Defendant for:



- a. A declaration that the Defendant illegally and unlawfully trespassed into the suit parcel Kisumu/Kanyakwar “B”/135 in March 2018 and August 2019 and illegally cut down his trees and built overhead power lines.
 - b. Special damages for:
 - i. Trees cut down KShs. 1,310,828/=
 - ii. Value of portion of land illegally excised off KShs. 20,511,885/= plus interest thereon at court rates from date of filing until date of payment in full.
 - c. General damages for trespass.
 - d. Costs and interest of this suit.
 - e. Any other order this Honourable court may deem fit.
11. The Defendant filed its Statement of Defence dated 5th October 2022 denying the Plaintiff’s Claim. In the first place, the Defendant denies the averment by the Plaintiff as to the ownership and existence of the suit premises and the assertion that the same constitutes his ancestral land where he was born and lived for over 65 years.
 12. In the second place, the Defendant contends that the electric supply line was constructed wayback in 1964 when the Plaintiff was a minor devoid of any proprietary rights in the suit premises and that the same and the wayleave it occupies was granted by relevant authorities on application after all requisite legal requirements were met. In essence, the Defendant contends that it has not trespassed in any way on the Plaintiff’s land.
 13. Similarly, the Defendant denied that its agents, servants, employees and or persons claiming through it invaded the suit premises, proceeded to cut down trees and erect new concrete power posts directly within the suit premises.
 14. Lastly, the Defendant pleads section 28(i) of the [Land Registration Act](#), 2012 and reiterates that any purported acquisition of proprietary rights by the Plaintiff were subject to overriding interests of electric supply lines.
 15. The Defendant contends that the Plaintiff’s claims are fraudulent and a ploy and/or devise conjured up to facilitate his unjust enrichment and pleads the following particulars of fraud by the Plaintiff:
 - a. Seeking to obtain compensation by false pretenses.
 - b. Initiating and undertaking a scheme to defraud the defendant.
 - c. Deponing a false and scandalous Verifying Affidavit.
 16. The Defendant thus prays that the suit against it be dismissed with costs.
 17. The matter was set for hearing on 8th March, 2023 and 14th and 15th February, 2024. The Tribunal also visited the site on 13th February, 2024 together with the Plaintiff and representatives of the Defendant and their respective counsels. The Tribunal inspected the sites of the disputed poles and heard the testimonies of the Plaintiff, a Forest Officer who wrote reports for the Plaintiff when the Defendant and/or its agents allegedly cut down indigenous trees belonging to the Plaintiff in 2018 and 2019. The Tribunal also heard the testimony of a property valuer who testified on behalf of the Plaintiff. He stated that he inspected the property particularly the area by-passed by the powerlines which he stated to be 325m by 28m with an acreage of 0.65 Hectares or 1.6 acres. He stated that



he based his valuation of the part of the land mainly on an earlier compensation paid out by the National Land Commission when part of the Plaintiff's parcel of land measuring approximately 0.1118 Hectares was acquired for the expansion of the Kisumu-Kakamega Road and wherein the Plaintiff was paid Kenya Shillings Three Million Five Hundred and Sixty-Seven Thousand Five Hundred and Thirty (KShs. 3,567,530/=). He stated that it was on the basis of this award that he valued the land between the two parallel electric lines at Kenya Shillings Twenty Million Five Hundred and Eleven Thousand Eight Hundred and Eighty-Five (Kshs. 20,511,885/=) .

18. The Tribunal also heard the testimony of a senior surveyor and a wayleaves officer who are employees of the Defendant. It was their testimony that the powerlines were constructed on road reserves and therefore they did not require the consent of the Defendant. They stated that the old lines were constructed in 1964 and all approvals were given for the project. In cross-examination, the witnesses were asked how they identified the boundaries of the Plaintiff's property and the measurement of the road reserve. They stated that they took the boundary measurements from the fence of the neighbouring parcel of land and further stated they had not established the beacons of the Plaintiff's parcel of land. They were further asked to explain how the poles were on road reserves when they clearly did not follow the feeder road as the road turned. The Defendant's witnesses denied that any trees were cut.
19. After the conclusion of the oral hearing, parties were asked to file their respective submissions and the Judgement date was set for 25th March, 2024.

Parties Submissions.

Plaintiff's Submissions.

20. Counsel for the Plaintiff filed his Written Submissions dated 22nd February 2024 and stated that the issues for determination were whether the Plaintiff is entitled to an order that the Defendant has illegally and unlawfully entered upon the suit property and cut down trees and erected power lines, whether the Plaintiff is entitled to compensation in the form of special and general damages for trespass as sought in the Plaint and who ought to pay the costs of this suit.
21. On the first issue, counsel relied on the provisions of Section 24 of the [Land Registration Act](#) and Article 40 of the [Constitution](#) of Kenya 2010 and submitted that title to land is sacrosanct and cannot be taken away arbitrarily without compensation. Counsel also submitted that where land is thought to have been fraudulently and unlawfully acquired, the process of recovery must follow due process.
22. To buttress their assertion, counsel cited the case of [Hassan Mohamed Haji v Mohamed Keynan & another](#) [2019] eKLR, [Adan Abdirahani Hassan and 2 others v The Registrar of Titles and others](#) Nairobi Petition No. 7 of 2012 [2013] eKLR and [Evelyn College of Design Ltd v Director of Children's Department and Another](#) [2013] eKLR.
23. Counsel also submitted that the documents submitted by the Defendant's do not support the Defendant's assertion that the power lines in the suit premises were laid in 1964. To the contrary, the Plaintiff's counsel states that by 1974, the electric line to Kakamega had not been built and even though the land adjudication process was still continuing, land owners were largely known even if they did not have titles. The process merely registered existing land owners thus whether the electric line was built after or before registration, the Plaintiff was entitled to compensation.
24. Reliance was placed on the provisions of Section 171 and 173 of the [Energy Act](#), Section 3 of the [Trespass Act](#) and the case of [George Joseph Kang'ethe & Another v Kenya Power and Lighting Co. Limited](#) (2018) eKLR to assert the position that the Defendant's act constituted acts of trespass.



25. On the second issue, counsel relied on the two reports by the Forest Officer dated 7th November 2018 and 11th September 2018 which quantified the value of damaged trees at KShs. 1,310,828/= and the valuer's report dated 20th August 2018 of the portion of the suit premises rendered unusable at KShs. 20,511,885/= therefore claiming a total sum of KShs. 21,511,885/= as special damages he ought to be compensated by the Defendant.
26. While claiming general damages, counsel relied on the principles established in the case of *Dancun Nderitu Ndegwa v KP&LC Limited & another* [2013] eKLR, *Fleetwood Enterprises Limited v Kenya Power and Lighting Co. Limited* [2015] eKLR and *George Joseph Kang'ethe & Another v Kenya Power and Lighting Company Limited* [2020] eKLR and urged this Honourable Tribunal to arrive at a further figure of Kshs. 20,000,000/= as general damages for continuing trespass.
27. The Plaintiff thus prayed that he be awarded costs of the suit.

Defendant's Submissions.

28. On the other hand, the Defendant in its submissions dated 28th February 2024 argues that the power lines in question are the 33kV overhead (O/H) line from Kisumu to Kakamega which records show that the same was constructed on or about 1964 and was in existence and supplying electricity before the Plaintiff acquired the suit premises in 1984 and 11kV O/H line from Gambogi market which was constructed after the 33kV line on or about 1974 within the wayleave trace on the road reserve.
29. The Defendant's counsel argues that in respect to the 33kV O/H line, all necessary approvals from the Ministry of Works, Road Branch, Regional Government Agents for Central Nyanza and Nandi Districts, the Chief Engineer, Roads, the Commissioner of Lands for as at time the land had not been adjudicated were sought and that if there was any form of compensation to be paid, the same would have been paid to the municipality of Kisumu and not every subsequent individual land owner.
30. In respect to the 11kV O/H line, the Defendant submits that the same was constructed within the wayleave trace on the road reserve and that the Defendant sought approval from the Town Engineer of Kisumu Municipality.
31. In opposing the Plaintiff's argument that it had trespassed into the Plaintiff's land, the Defendant's counsel sought to rely on the provisions of Section 28 of the *Land Registration Act*, 2012, Sections 143, 144, 146, 147 and 148 of the *Land Act*, 2012 and Section 170 of the *Energy Act*, 2019 and stated that the Plaintiff made unsubstantiated claims that it had trespassed into his property. Guidance was also placed on the Court of Appeal case of *Mbuthia Macharia v Annah Mutua & another* [2017] eKLR and the case of *Omari Sefu Dzila v Kenya Power & Lighting Co. Ltd* Kwale ELC No. 36 of 2021.
32. It was also the Defendant's counsel submissions that it did not in any way invade the Plaintiff's parcel and cut down any of its trees. Be that as it may, it was its submission that if any trees were cut, the same would have been done within the wayleave trace in the access/feeder road on the road reserve within which the power lines lie and not on the Plaintiff's property.
33. Furthermore, it was the Defendant's counsel submission based on the surveyor's report that there was irrefutable proof that the power lines run within the feeder/access roads and on the road reserve and were not on the Plaintiff's property.
34. Having established that the Defendant is not a trespasser, it was the Defendant's position that the Plaintiff is not entitled to any of the reliefs sought and that it ought to be awarded costs.



Issues for Determination.

35. Having considered the Plaintiff's case and the Defence filed by the Defendant, the testimonies of the witnesses and the submissions of the counsels for both parties, we deem the following to be the issues to be determined by this Tribunal:
- a) Is the Plaintiff the rightful owner of the parcel on which the Defendant erected its power lines and whether the Defendant trespassed into the Plaintiff's land. b) Whether the Plaintiff is entitled to the reliefs sought.

Analysis And Determination.

Is the Plaintiff the rightful owner of the parcel on which the Defendant erected its power lines and whether the Defendant trespassed into the Plaintiff's land.

36. The Plaintiff's case is that he has at all material times been the owner of the parcel of land known as LR No. Kisumu/Kanyakwar "B"/135 measuring approximately 4.0 Hectares and that he built his house on the land sometime in 1978 when the land had no vegetation. He contends that the Defendant and its predecessor have constructed high voltage power lines without his consent and without following due process. He states that he has complained about this illegal action and the Defendant has ignored his complaints for compensation. He further states that the Defendant's main argument is that the high voltage power lines passing through his land were constructed well before he became the registered owner of the land in 1984 when he was issued with a title after completion of the adjudication process. He further states that the Defendant again constructed parallel power lines cutting through his land and because both lines are high voltage lines, the area between the two lines cannot be used by the Plaintiff for any economic purpose. He urged this Tribunal to find that the Defendant has trespassed and continues to trespass through his land and prays for various special damages as against the Defendant as per the reports of the Forest Officer and the Valuation Report and general damages for trespass as well as the cost of the suit and interest.
37. The Defendant has denied any wrongdoing in this matter. It has stated in its defence and the statements of its witnesses that the power lines complained of by the Plaintiff are on public road reserve and deny ever trespassing on the Plaintiff's property. Further, it is the Defendant's case that some of the power lines were constructed in 1964 before the Plaintiff had any proprietary rights in the land and that they obtained the necessary wayleaves for the area on which the power lines are constructed.
38. The crux of the Plaintiff's case before this Honourable Tribunal rests on whether the Defendant sought his consent and/or authority prior to installation of the three sets of power lines being the 33kV O/H, 11kV O/H power lines and the low voltage (LV) installed to provide electric power for street lights along the Kisumu – Kakamega road all of which are through the suit premises.
39. From our analysis of the evidence presented before this Honourable Tribunal and the Tribunal's site visit to the parcel in dispute, it is not in dispute that indeed the power lines were installed in the suit premises. It is also not in dispute that indeed the suit premises belonged to the Plaintiff herein as he has produced a copy of the title deed and an official search as evidence which evidence was never rebutted by the Defendant.
40. Though there is contestation as to ownership of the suit premises prior to registration and issuance of title to the Plaintiff in 1984, it is our position that non adjudication of land does not in essence extinguish the right of a proprietor. It merely confirms the boundaries and is a process leading to the confirmation of ownership and issuance of title.



41. What is in dispute therefore is whether consent was obtained prior to the erection of the said power lines on the suit land.
42. The Defendant on the other hand has rebutted the Plaintiff's position and contends that it sought and obtained relevant approvals from government authorities. It has attached several letters, being a letter from the Ministry of Works, Roads Branch dated 3rd January 1964, two letters from the offices of the Regional Government agents for Central Nyanza and Nandi dated 5th February 1964 and 20th February 1964, Chief Engineer Roads dated 10th July 1964 and the then Commissioner of Lands from the Department of Lands dated 16th July 1964. The issue we find with the approval letters relied on by the Defendant as evidence for having obtained the necessary is that none of those letters reference the suit property. The approvals seem to be for the whole project of constructing the high voltage lines along the Kisumu-Kakamega Road. It is important to note that the Defendant's lines can along this route pass through private land as is the case in this scenario and the Defendant is required by law to obtain the necessary consents from the owners of such parcels and provide suitable compensation before erecting the electric supply lines. However, none of these confirm consent from the owner of the suit premises. In our considered opinion, a wayleave is created over a private property only if the necessary procedure for acquisition of such wayleave has been followed. If the entity purporting to create a wayleave thus fails to follow the laid down laws, then such a wayleave is illegal and the Defendant cannot rely on it as ground for not compensating private land owners.
43. In the case of *John Kiragu Kimani v. Rural Electrification Authority* (2018) eKLR the Court held that:

“Following that evidence, it is clear from the record that no consent, authority or permission of the Plaintiff was ever sought and/or obtained. No notice was given to him of the impending project as contemplated by section 46 of the *Energy Act*. The irresistible conclusion is that the Defendant is guilty of trespass.”
44. It is evident from the photographs produced that the power lines were constructed in the suit premises and it is immaterial whether the Defendant or anyone with authority to provide consent was present when the said power lines were being constructed.
45. It is therefore our position that no evidence has been offered that indeed the landowner's consent was sought prior to installation of the electric power lines. The Defendant thus overlooked procedural laws in the construction of power lines on the suit premises as required under Sections 171 and 173 of the *Energy Act*.
46. Section 171 of the *Act* provides as follows:
 171. Permission to survey land for energy infrastructure
 - (1) A person who wishes to enter upon any land, other than his own to-
 - a. Undertake explanatory activities relating to exploitation of energy resources and development of energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, or drilling explanatory wells'
 - b. Carry out survey of the land for the purposes of paragraph (a), Shall seek prior consent of the owner of such land, which consent shall not be unreasonably withheld:

Provided that where the owner cannot be traced, the applicant shall give fifteen days' notice through appropriate mechanisms including public advertisement in at least two



newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks.

- (2) The Cabinet Secretary shall prescribe the forms and procedures for seeking and granting of the consent.

47. Section 173 of the Act on the other hand provides as follows:

173. Consent to proposal.

- (1) An owner, after receipt of a request for consent under section 171 may consent in writing to the development of energy infrastructure, upon agreement being reached with the applicant as to the amount of compensation payable, if any, and any consent 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 consent to the application except under this Act, shall be paid to the legal representative of the owner; and
 - 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 development of energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, drilling geothermal wells or coal long as the claim is made within three months after development. (2) No consent expressed in writing accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.
- (3) Where the owner of the land cannot be traced the applicant shall give thirty days' notice prior to the development of energy infrastructure on the land through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks:

Provided that no development shall commence unless the amount of compensation payable, if and as determined by the relevant government agency responsible for the management of that land, has been deposited into a special compensation fund held by the said agency.

48. It is thus our position relying on the evidence presented before this Honourable Tribunal that indeed the Defendant's actions amount to illegal entry of private property and therefore deemed as trespass within the meaning of section 3 of the Trespass Act which provides as follows:

- “(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.
- (2) Where any person is charged with an offence under subsection (1) of this section the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him.”

49. It is further evident that indeed the power lines have to date remained and continue to be on the suit premises. These actions thus indeed amount to continuous trespass.



50. Continuous trespass is defined in the [*Black's Law Dictionary*](#) 8th edition as, "A trespass in the nature of a permanent invasion on another's property."
51. In [*Isaack Ben Mulwa v Jonathan Mutunga Mweke*](#) [2016] eKLR, the Court of Appeal stated as follows in regard to a continuous trespass: -

"Each action of trespass constitutes a fresh and distinct cause of action. It is inconceivable that a claim based on an action for trespass committed in 2015 would be res – judicata simply because the same parties or their parents litigated over the same matter in 1985. It is well settled principle that continuous injuries to land caused by the maintenance of tortious acts create separate causes of action barred only by the running of the statute of limitation against each successive acts."
52. It is therefore our position that the Defendant's actions amount to continued trespass upon the Plaintiff's land until and unless the Defendant either compensates the Plaintiff and obtains his consent or removes the electric supply lines from Plaintiff's land the subject of this suit.

Whether the Plaintiff entitled to the reliefs sought.

53. The Plaintiff has sought for damages against the Defendant being special damages for trees cut down at Kshs. 1,310,828/=, value of portion of land illegally excised off Kshs. 20,511,885/= plus interest thereon at court rates from date of filing until date of payment in full including damages for trespass.
54. While addressing damages for trespass, the Hon. Lady Justice Christine Ochieng in the case of [*Eunice Nkirote Ringera v Kenya Power & Lighting Company*](#) [2020] eKLR. In the case of [*Fleetwood Enterprises Ltd v Kenya Power & Lighting Co. Ltd*](#) [2015] eKLR Justice Angote while dealing with an issue of quantum of damages in trespass held that,

"The award of damages for trespass is discretionary in nature. The discretion by the court should however be exercised judiciously and all relevant factors should be considered. The value of land is a determinant factor where parties consent that the power line should not be moved. In this case the Plaintiff wanted the power lines removed. He proceeded to further state that, "it is trite law that the value of land keeps on appreciating, and had the plaintiff developed the 16 parcels of land 5 years ago, they would have generated income from them. In the circumstances of this case, I would agree with the Plaintiff's advocate submissions that had the 16 plots been developed were it not for the connected electric line. The plaintiff would have earned at least Ksh. 5000 per month. However, due to the vagaries that come with such developments, I will reduce the said figure to an amount of Kshs. 4,000 per plot per month. The total payable damages to the defendant's acts of trespass over the 16 plots for a period of 5 years will therefore be Kshs 4,000*12*5*16= Kshs. 3,840,000." The Court of Appeal upheld the above decision, and dismissed the Appeal in *Kenya Power & Lighting Company Limited v Fleetwood Enterprises Limited* [2017] eKLR and stated that, "Trespass is proved as in this case, the affected party such as the respondent need not prove that it suffered any damages or loss as a result so as to be awarded damages. The court is under the circumstances bound to award damages, of course, depending on the facts of each case."

The Plaintiff testified that she suffered damages in respect to the old trees that were cut as well as the existence of the electricity posts and high voltage cables on the suit land because she was unable to develop it. With respect to general damages, the Defendant had conceded that the Plaintiff should be



awarded Kshs.100, 000.00. In the case of *Duncan Nderitu Ndegwa v KP& LC Limited & another* (2013) eKLR P. Nyamweya J. held that: -

“...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants’ trespass”

In so far as the Plaintiff did not provide evidence on the loss she had incurred due the Defendant’s acts of trespass but in associating myself with the decisions cited above and noting that the Defendant has been on the suit land from 2013 to date which is 7 years, I find that she is indeed entitled to Kshs. 2 million as general damages for the continuous trespass.

55. Guided by the above cited authorities, we therefore proceed to award the Plaintiff special damages as prayed by the Plaintiff and as evidenced by the two reports of the Forest Officer and the valuation report. These reports were in our opinion clear and the same were never controverted by the Defendant. No evidence has been tendered to the contrary by the Defendants and we proceed to award the Plaintiff special damages as prayed.
56. On the issue of general damages, having found that the Defendant’s action amounted to trespass and continued trespass, then the other matter for this Tribunal to determine is the quantum of general damages to be awarded to the Plaintiff. While the quantum of award for general damages is discretionary, this Tribunal is alive to the long-term nature of the Defendant’s actions and the continued denial of the Plaintiff’s right to enjoyment of his rights and further the long struggle the Plaintiff has had to endure to enforce his rights. Accordingly, this Tribunal awards the Plaintiff General Damages in the amount of Kshs. 500,000/= as against the Defendant.

Conclusion.

57. In the end therefore, having given due consideration to the pleadings, submissions and the law and considering the circumstances of this case, the Plaintiff’s claim is hereby allowed as prayed.
58. The Tribunal therefore makes the following orders:
 - a. A declaration be and is hereby issued that the Defendant has trespassed on the suit property without the Plaintiff’s consent and caused permanent and irreparable damages thereto;
 - b. General damages for the continuous trespass be and is hereby awarded at Kshs 500,000/=
 - c. Special damages be and is hereby awarded at Kshs 21,822,713/=
 - d. Costs of the suit is awarded to the Plaintiff.
 - e. Interest on (b), (c) and (d) above until payment in full.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MARCH 2024.

MS. DORIS KINYA MWIRIGI - VICE CHAIRPERSON

ENG. BUGE HATIBU WASIOYA - MEMBER

MR. FEISAL SHARIFF IBRAHIM - MEMBER

SIGNED BY: DORIS KINYA MWIRIGI

THE JUDICIARY OF KENYA.



ENERGY AND PETROLEUM TRIBUNAL

ENERGY AND PETROLEUM TRIBUNAL DATE: 2024-03-26 16:47:21+03

