



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ENVIRONMENT AND LAND CIVIL CASE NO. 96 OF 2021

(FORMERLY ELDORET ELC CIVIL CASE NO 4. OF 2021)

KENYA ELECTRICITY TRANSMISSION CO. LTD.....PLAINTIFF/DEFENDANT

VERSUS

KIBII ARAP BIEGO.....1ST DEFENDANT

EMILY CHEPTOO MELI.....2ND DEFENDANT

JOHN KIBIWOT KIPLAGAT.....3RD DEFENDANT

PRISCILAH C.SIMOTWO.....4TH DEFENDANT

MARK KEMBOI LELEI.....5TH DEFENDANT

ASHA NAFULA.....6TH DEFENDANT

CHEGUGU STANLEY MAGRAY.....7TH DEFENDANT

ELIUD KIPKORIR.....8TH DEFENDANT

ROSEMARY CHELAGAT KOSKEL.....9TH DEFENDANT

KIPRONO ARAP CHESASUR & ALEX MWARABU AGUL.....10TH DEFENDANT

KIBIEGO ARAP TUWEL.....11TH DEFENDANT

KIBIWOT ARAP CHEMUIYWA.....12TH DEFENDANT

KIPSUGUT ARAP CHEPSISON.....13TH DEFENDANT

JACKSON KIBET SIREM.....14TH DEFENDANT

CHERUTO TABLELEI BIREN.....15TH DEFENDANT

AND

ELDORET HOLDINGS CO.LTD.....PROPOSED INTRESTED PARTY/APPLICANT

RULING

1. The Applicant, ELDORET HOLDINGS CO. LTD, has by its Notice of Motion Application dated 5.2.2012 sought orders to be joined into this suit as an interested party and upon such joinder to be granted leave to file its pleadings in the suit. The said application is premised on grounds, interalia, that the Applicant is the registered proprietor of **Nandi/Lessos /1024** and that the Plaintiff's transmission line and/or the wayleave corridor transverses the said property and that although the plaintiff cadastral map included the Applicants land nor offer for compensation has been offered to it.

2 The Application is supported by the supporting affidavit of Hassan Khalif Maalim, a Director of the Applicant. The said application is opposed by the Replying affidavit of Michael Otieno an Assistant surveyor with the Plaintiff. Parties agreed to proceed with by way of written submissions which were duly filed.

3. Before hearing of this application a Notice of Motion application dated 10.3.2021 for joinder of the 2nd Defendant which equally been slated for hearing but which was unopposed was allowed.

4. When the matter came up for mention on 5.10.2021 the court was notified of the demise of the 11th and 13th defendants, whose joinder had been challenged by their advocates and two notices of preliminary objection in respect of their joinder were filed by the plaintiff and the Administrators of their respective Estates. The court thus directed the 11th and the 13th Defendants to be struck out and the Administrators of their respective Estates are at liberty to apply to be joined in the suit if they so wish.

APPLICANTS SUBMISSION.

5. It Is the Applicants contention and submission that by their own cadastral map which the Applicant has annexed as ECM 2 the transmission line and/or way leaves corridors transverse through its parcels of land and consequently they ought to be joined in the proceeding.

6. The Applicant has annexed a copy of the title as well as a certificate of incorporation and a CR 12 showing the names of the shareholders and directors.

7. The Applicant filed a further affidavit deponed on 8th July 2021 in which they indicate that the plaintiff was either involved in guess work or was not diligent enough in its work. The Applicant however admits that it has no issue with re-routing and that their application was based on the cadastral map initially filed in court and that as a result is entitled to costs. The depositions in the Further Affidavit must have been provoked by the Respondent's Replying affidavit.

8. In its submissions the Applicant has framed two issues for determination, to wit,

i) whether the Applicant had a right to seek a joinder in the suit.

ii) whether the Applicant is entitled to costs.

9. In answer to the first issue the applicant places reliance on order1 Rule 10 (2) Of the Civil Procedure and submits that the said rule gave it a right to seek joinder in the suit and that the plaintiff assertion that it could have filed its own suit was thus erroneous. The Applicant further submitted on the principles of the law on joinder as an interested party and cited the case of **Meme vs Republic [2004]1 124**, which principles are;

- a) joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings
- b) joinder to provide a protection of a party who would otherwise be adversely affected in law
- c) joinder to prevent a likely course of proliferated litigation.

10. The Applicants submit that based on the filed documents on 18.1.2021 it had a right to file the application and is therefore now entitled to costs.

THE RESPONDENT'S SUBMISSION.

11. In its replying affidavit the Respondent through an Assistant surveyor deposes that the cadastral map relied on by the Applicants was rerouted and that the transmission line would not pass through **NANDI/LESSOS/1024** as had earlier been proposed. That there was now in existence a new map which was annexed as 'MO 1' showing the transmission line would not affect **NANDI/LESSOS/1024** thus the Applicant does not meet the threshold of joinder as explained in the case of **Meme vs Republic** cited above. In support of its submissions the Respondent has cited the Supreme court decision in **Communications Commission of Kenya & 4 others vs Royal Media services Limited & 7 others(2014)**

ANALYSIS AND DETERMINATION.

12. The Applicant sought for a joinder to these proceedings relying on a cadastral map by the respondent that showed that the transmission line and/or wayleave corridor was to transverse through **NANDI/LESSOS/ 1024**.

13. However as deposed by the surveyor for the respondent, Mr. Michael Otieno, whereas that was the position at the outset of the project, a resurvey was done necessitating the rerouting of the transmission line and/or way leave corridor such that the said transmission line will no longer transverse through **NANDI/LESSOS/1024**.

14. This being the position any interest for a joinder under the principles of joinder as set out in the case of **Meme vs Republic** on the part of the Applicant have now been extinguished. The Applicant seem to agree that this is the position in its further affidavit but nonetheless seeks costs ostensibly because it filed the present application while there was an interest at the said time.

15. Given that the transmission line and/or wayleave corridor has been rerouted and does not pass through **NANDI/LESSOS/1024**, It follows that the Applicant has not proven its interest that requires its joinder in the suit and consequently its Application has failed the requisite test as established in **Meme vs Republic** and the application thus fails and it is therefore dismissed.

16. The Applicant has submitted passionately on costs, submitting, *inter alia*, that the Respondent had filed an erroneous cadastral map as a result of which it made its application for joinder and that for the said reason.

17. Costs follow the event and even though the Application has been dismissed and the applicant would have been condemned to the costs, I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT KAPSABET THIS 27TH DAY OF OCTOBER 2021.

JUSTICE M.N. MWANYALE

JUDGE OF THE ENVIRONMENT AND LAND COURT



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