



IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/67104400/26

MARGRET WANJIRU KIMATA..... PLAINTIFF

VERSUS

RURAL ELECTRIFICATION & RENEWABLE

ENERGY CORPORATION RESPONDENT

DETERMINATION

A. BACKGROUND

1. The matter between Margret Wanjiru Kimata and Rural Electrification & Renewable Energy Corporation was first reported to the Authority via a letter dated 19th January 2026.
2. The Authority consequently advised the Plaintiff to properly file dispute documents and or submissions and serve the same to the Respondents via a letter dated 26th January 2026.
3. The dispute relates to alleged trespass on parcel of land known as [REDACTED]

B. PLAINTIFFS' CASE

4. The Plaintiff through her lawyer Mr. Peter Chege stated that she was the legal registered owner of the parcel of land known as [REDACTED], measuring approximately 4.33 hectares.

5. The Plaintiff averred that, around 1st February 2021, the Respondent encroached on her land, erected electricity transmission lines, and tapped into the installations without her authority or consent.
6. She asserted that the Respondent's actions amounted to illegality, trespass, and a gross violation of her privacy.
7. The Plaintiff indicated that she was seeking a permanent injunction to restrain the Respondent from trespassing or conducting activities on her property without consent.
8. The Plaintiff also sought compensation of Kenya Shillings Eight Hundred Thousand (Kshs. 800,000) for the illegal trespass, together with general damages, costs, and interest.

C. RESPONDENT'S CASE

9. The Respondent stated that the Plaintiff had filed a claim before the Authority alleging that the Respondent encroached on her land, erected electricity poles and tapped installations without her authority. The Respondent stated that it denied all the allegations and had prayed that the suit be struck out or dismissed.
10. The Respondent further submitted that the issues requiring determination were:
 - i. Whether the Claimant was entitled to Kshs. 800,000 as compensation for alleged illegal trespass and general damages;
 - ii. Whether a permanent injunction should be issued restraining the Respondent from the alleged trespass; and
 - iii. Who should bear the costs of the suit.
11. The Respondent stated that it is trite law that he who alleges must prove, citing Section 107(1) of the Evidence Act, which requires a party relying on certain facts to prove them.

12. The Respondent referred to David Bagine v Martin Bundi (CA No. 283 of 1996), where the Court of Appeal held that a Plaintiff seeking damages must prove the loss suffered and cannot merely assert it.
13. The Respondent averred that the Plaintiff had not produced any evidence before the Authority showing that encroachment or “tapping” of electricity installations had occurred.
14. The Respondent also stated that from the Plaintiff’s pleadings it was unclear what she meant by “tapping of electricity installations,” and that she had not disclosed particulars of the alleged tapping.
15. The Respondent further averred that the Plaintiff had not produced evidence to demonstrate how the figure of Kshs. 800,000 had been arrived at.
16. The Respondent argued that without proof of damages, the claim for compensation could not stand.
17. The Respondent cited Philip Ayaya Aluchio v Crispinus Ngayo [2014] KEHC 7055 (KLR), where the High Court held that the measure of damages for trespass is based on the value of the property before and after the trespass or the cost of reasonable restoration. The Respondent argued that the Plaintiff had presented no evidence to assist the Authority in assessing damages.
18. The Respondent therefore submitted that the Claimant was not entitled to the Kshs. 800,000 claimed as compensation.
19. The Respondent asserted that it had never trespassed on the Plaintiff’s property and therefore the Plaintiff was not entitled to any injunctive relief sought by the Plaintiff.
20. The Respondent concluded by submitting that the reliefs sought by the Claimant lacked merit.

D. DISPUTE RESOLUTION PROCESS

21. The matter between Margret Wanjiru Kimata and Rural Electrification & Renewable Energy Corporation was first reported to the Authority via a letter dated 19th January 2026.

22. The Authority consequently advised the Plaintiff to properly file dispute documents and or submissions and serve the same to the Respondents via a letter dated 26th January 2026.
23. The Respondent made its written submission on 23rd February 2026.
24. The Authority carried out a site visit on 6th February 2026 and subsequently invited parties for a virtual hearing on 5th March 2026, vide a letter dated 25th February 2026.
25. During the virtual hearing, the parties were directed to engage in consultations with a view to arriving at an amicable resolution, and thereafter to report the outcome of those engagements to the Authority.
26. However, parties did not give feedback prompting the Authority to issue a determination on the matter.

E. ISSUES FOR DETERMINATION

27. From the pleadings and evidence presented, the following issues arise for determination:
 - a) Whether the Respondent's electricity infrastructure unlawfully encroaches upon the Plaintiff's land parcel [REDACTED]
 - b) Whether the Plaintiff is entitled to the reliefs sought, including a permanent injunction and compensation for trespass.

F. ANALYSIS OF THE DISPUTE

- a) **Whether the Respondent's electricity infrastructure unlawfully encroaches upon the Plaintiff's land parcel [REDACTED]**
28. The Plaintiff alleges that the Respondent, without her consent, erected electricity transmission lines and associated infrastructure on her registered land parcel [REDACTED]. The Respondent denies the allegations and contends that the Plaintiff has failed to prove encroachment.
29. Section 107(1) of the Evidence Act, Cap 80, places the burden of proof on the party who desires the court to give judgment on a legal right or liability. It provides:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

30. The Plaintiff therefore bore the initial evidential burden to demonstrate that the Respondent's infrastructure physically occupies her land.
31. The Authority conducted a site visit on 6th February 2026 to verify the Plaintiff's assertions. The site visit confirmed the following:
- i. Transformer TX No. S108823 is situated at the subject location.
 - ii. An incoming 33 kV line feeds that transformer, with approximately fifty (50) metres of that line traversing the Plaintiff's land.
 - iii. Three outgoing low voltage lines emanate from the transformer, with combined visible sections totalling approximately three hundred and twenty (320) metres within the suit property.
 - iv. The total approximate visible line length within the Plaintiff's land is three hundred and seventy (370) metres.
32. These findings are not speculative. They are specific, documented, and corroborated by photographic evidence and geo-coordinates. The Respondent did not attend the site visit and presented no evidence to controvert these observations.
33. On the basis of the direct physical evidence, the Authority is satisfied that the Plaintiff has discharged her evidential burden. The existence of the Respondent's electricity infrastructure on the suit property is proved.
34. Once the physical presence of the Respondent's infrastructure on the Plaintiff's land was established, the evidential burden shifted to the Respondent to demonstrate that its occupation was lawful, authorized, and compliant with the statutory framework.
35. The Respondent produced no proof of consent from the Plaintiff or her predecessors in title. No wayleave documentation, survey plans, or evidence of compensation was provided. The Respondent did not avail itself at the site visit to point to any records that might justify the occupation.

36. The failure to discharge this evidential burden is material. In the absence of proof that the infrastructure was lawfully installed with the requisite consents and wayleave acquisition, the continued presence of the lines and transformer on the Plaintiff's land is an unlawful encroachment.

37. We are guided by the persuasive reasoning in *Philip Ayaya Aluchio v Crispinus Ngayo**[2014] KEHC 7055 (KLR), where the High Court observed that a claim for trespass is established once a Plaintiff demonstrates an unauthorized entry onto land in the possession of another. The Court held that the measure of damages for trespass flows from the fact of the unlawful intrusion itself.

b) Whether the Plaintiff is entitled to the reliefs sought

38. Having found that the Respondent unlawfully installed electricity infrastructure on the Plaintiff's property, the Authority must determine the appropriate remedies.

39. The Plaintiff seeks the following reliefs:

- i. A permanent injunction restraining the Respondent from trespassing on the suit property.
- ii. Compensation in the sum of Kshs. 800,000.
- iii. General damages for trespass.

c) Permanent injunction / regularization of wayleave

40. Where a licensee occupies private land without lawful authority, the landowner is entitled to seek cessation of the encroachment. Electricity infrastructure cannot remain indefinitely on private land without the lawful acquisition of a wayleave and payment of compensation.

41. The Land Act, 2012 provides the legal framework through which utilities may acquire wayleave rights over private land, including obtaining consent, undertaking surveys, and paying just compensation to affected landowners.

42. In the present case, no evidence was presented to demonstrate that this statutory process was followed.

43. However, the Authority also takes judicial notice of the public interest considerations associated with electricity infrastructure and the need to maintain continuity of supply to surrounding consumers.

44. In the circumstances, the Authority finds it appropriate to direct the Respondent to regularize its occupation of the suit property within a specified timeframe by either:

- a) Removing or relocating the infrastructure from the Plaintiff's land; or
- b) Initiating and completing the lawful wayleave acquisition process in accordance with the Land Act, including obtaining the Plaintiff's consent and paying just compensation.

d) Compensation for encroachment

45. The Plaintiff produced a valuation report dated 1st December 2021 assessing compensation arising from the installation of electricity infrastructure on the suit property. The report assessed the loss at Kshs. 800,000.

46. The Respondent did not produce a counter-valuation nor challenge the methodology or findings of the valuation report.

47. In assessing compensation for the occupation of private land by electricity infrastructure, Courts have considered factors such as:

- a) the extent of the land affected by the wayleave corridor;
- b) the restriction imposed on the landowner's use and enjoyment of the land; and
- c) the impact of the infrastructure on the value and utility of the property.

48. In *Kenya Power & Lighting Co Ltd v Fleetwood Enterprises Ltd* [2017] KECA 358 (KLR) the court recognized that compensation for electricity wayleaves must reflect the limitation imposed on the landowner's proprietary rights and the restriction on the use of the affected portion of land.

49. In the present case, the Authority's site visit confirmed that approximately three hundred and seventy (370) metres of electricity lines traverse the Plaintiff's property.

50. The Authority therefore finds that the valuation report provides a reasonable evidentiary basis for assessing compensation for the encroachment.

51. In the absence of any competing valuation or contrary evidence from the Respondent, the Authority accepts the assessed sum of Kshs. 800,000 as reasonable compensation for the occupation and restriction of use of the Plaintiff's land.

e) General damages for trespass

52. In addition to compensation for the encroachment, the Plaintiff seeks general damages for trespass.
53. It is well established in law that trespass to land is actionable per se, and a claimant is entitled to general damages once trespass is proved even where no specific loss is demonstrated.
54. The Court in Hosea Nyandika Mosagwe, Milton Ndege Onyancha & Martin Kapseri Onsase v County Government of Nyamira [2021] KEHC 1151 (KLR) quoted with approval, the case of Park Towers Ltd. Vs. John Mithamo Njika et al (2014) eKLR, where the High Court held that damages for trespass are intended to vindicate the landowner's right to exclusive possession of land. Similarly, the same Court relied on the decision in Philip Aluchio vs. Crispinus Ngayo [2014] eKLR, where the Court affirmed that damages flow from the wrongful intrusion upon land.
55. In the present case, the Respondent installed electricity infrastructure on the Plaintiff's property without lawful authority and continued to occupy the land without compensating the Plaintiff.
56. Taking into account: the nature of the encroachment, the duration of the occupation, and the inconvenience caused to the Plaintiff, the Authority finds that an award of general damages is warranted.
57. The Authority therefore awards general damages for trespass in the sum of Kshs. 200,000.

G. FINAL DETERMINATION

58. The Authority has considered the Plaintiff's and Respondent's case and based on the facts and evidence presented and investigations made, therefore makes the following determination:

- a) A declaration is hereby issued that the Respondent's electricity infrastructure, comprising Transformer TX No. S108823, an incoming 33 kV line, and three outgoing low voltage lines, unlawfully encroaches upon the Plaintiff's land parcel Nyandarua/Matindiri/542.
- b) The Respondent shall, within ninety (90) days from the date of this Determination, at its own cost relocate and remove the said electricity infrastructure from the Plaintiff's land and restore the affected portion of the land as nearly as practicable to its original condition.
- c) In the alternative, where the Respondent is unable or unwilling to relocate the said infrastructure within the period stated in paragraph (b) above, the Respondent shall, within the same ninety (90) days, commence and complete the lawful wayleave acquisition and regularization process in accordance with the applicable law, including obtaining the Plaintiff's consent or following the prescribed statutory acquisition procedure, and shall pay to the Plaintiff Kshs. 800,000 as compensation for the wayleave as prayed.
- d) The Respondent shall pay the Plaintiff general damages for trespass in the sum of Kshs. 200,000 (general damages) within thirty (30) days of this Determination.
- e) Each party shall bear its own costs of the dispute.
- f) This Determination is final and binding upon both parties.
- g) Parties are at liberty to exercise their right of appeal to this decision at the Energy and Petroleum Tribunal pursuant to the provisions of the Energy Act, Cap 314.

DATED AT NAIROBI THIS 25th DAY OF MARCH.....2026.


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CPA CYPARIAN M. NYAKUNDI
For: DIRECTOR GENERAL