

REPUBLIC OF KENYA

AT THE HIGH COURT OF KENYA IN BUNGOMA

CIVIL APPEAL NO. 15 OF 2020

KENYA POWER & LIGHTNING CO. LTD.....APPELLANT

VERSUS

MICHAEL BARASA MANGENI.....1ST RESPONDENT

FATUMA MOHAMMED ABDI.....2ND RESPONDENT

RULING

This is an application by way of Notice of Motion dated 20.2.2020 by the appellant Kenya Power & Lighting Co. Ltd seeking orders:

- 1. That this Honourable Court be pleased to issue an order for stay of proceedings herein pending the hearing and determination of this application.***
- 2. That this Honourable court be pleased to issue an order for stay of proceedings herein pending the hearing and final determination of the appeal against the ruling of the Hon. J.G King'ori delivered on 2nd January, 2020.***

The grounds for the application are that:

- 1. That the Appellant is aggrieved by the ruling of the Honourable J.G King'ori delivered on 2nd January, 2020 and the order issued thereto and has lodged an appeal.***
- 2. That the Respondent's application dated 8th November, 2019 was heard on 21st January, 2020 and the same was set down for ruling on 11th February, 2020 on which date the court was not sitting.***
- 3. That should the proceedings in Miscellaneous 369 of 2019 not be stayed, the Hon. J.G King'ori will proceed to make a final determination on the Respondent's application thus rendered this appeal nugatory.***
- 4. That the Appellant will be greatly prejudiced should this matter proceed in the form in which it is now since the issue of jurisdiction raised by the Appellant and which is the basis of the appeal goes to the substratum of the Respondent's application dated 8th November, 2019.***

Both parties have filed submissions in support of their positions. I have also perused the impugned ruling by Hon. King'ori CM annexed to the application. The main issue in this application is the applicant's contention that the chief magistrates court has no jurisdiction to hear and determine the issues in CM Misc. application NO. 369 of 2019 as the issues therein arise from the Energy Act which should first be heard by the Energy & Petroleum Tribunal established under the Energy Act.

As the issue is on whether the magistrates court has jurisdiction to hear and determine the application as ruled by the Hon. Magistrate, and challenged by the appellant, I find that the intended appeal is not frivolous. I therefore allow the application and order stay of proceedings in Bungoma CMCC Misc 369 of 2019 until the appeal is heard and finalized. The intended appeal be heard and finalized within 90 days. If an appeal is not heard and finalized within the 90 days from date of this ruling the orders of stay issued will lapse on the last day.

Dated and delivered at Bungoma this 11th day of February, 2021.

S.N RIECHI

JUDGE