



Rogoi v Regional Manager Kenya Power & Lighting Co. Ltd Mt. Kenya Region (Environment & Land Case E009 of 2022) [2023] KEELC 17994 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17994 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E009 OF 2022**

**JO OLOLA, J
JUNE 16, 2023**

BETWEEN

EMILUS KIIRU ROGOI PLAINTIFF

AND

**THE REGIONAL MANAGER KENYA POWER & LIGHTING CO. LTD MT.
KENYA REGION DEFENDANT**

RULING

1. By his plaint dated May 6, 2022 as filed herein on May 13, 2022, Emilus Kiiru Rogoi (the plaintiff) prays for judgment against the Regional Manager, Kenya Power & Lighting Company Limited Mt. Kenya Region (the defendant) for:
 - (a) a) A declaration that the defendant company (KPLC) did a serious mistake for installing and connecting electrical wires in the plaintiff's land parcel No Gikondi/Gikondi/326 to a home of a stranger who illegally occupied a portion (of) this land without the permissions of the plaintiff;
 - (b) An order that he defendant company (KPLC) put electrical cables through the land parcel No Gikondi/Gikondi/326 to the land parcel No Gikondi/Gikondi/327 without a way leave signed by the company has been destroying the properties of the plaintiff where the wires pass on the land (parcel) No Gikondi/Gikondi/326 to Gikondi/Gikondi/327 registered in the name of Reuben Rogoi Gicheru and the plaintiff shall demand the compensation at 1 million per year from 1995 to date, and the removal of the wires which pass through the plaintiff's land Gikondi/Gikondi/326 without (a) signed way leave;
 - (c) The costs of this suit and interest at court rates; and
 - (d) Such better or other orders as this honourable court may deem fit and just to grant.



2. Those prayers arise from the plaintiff's contention that during the year 1995, the Kenya Power and Lighting Company Limited (KPLC) installed and connected electricity current to the house of a stranger by the name Susan Warau Muchiri who had illegally occupied a portion of the plaintiff's parcel of land. The said Susan moved out of the land in the year 2017.
3. It is further the plaintiff's case that in June 1995, the said KPLC installed electricity to the neighbouring parcel No Gikondi/Gikondi/327 without getting the plaintiff's authority for the electric wires to pass through the suit property thereby making it impossible for the plaintiff to make use of the land.
4. But in a statement of defence dated May 25, 2022, the defendant avers that the plaintiff's suit is *res judicata*, incompetent, incongruous, misconceived and an abuse of the court process.
5. The defendant denies that in 1995, it did install and connect electricity to the land parcel Nos Gikondi/Gikondi/326 and 327 without the plaintiff's consent. The defendant denies ownership of the power cables and asserts that the alleged loss and or damage caused to the plaintiff's property is nothing but mere speculation.
6. In the alternative, the defendant asserts that if any power lines were installed on the said parcels of land, then the same were lawfully installed on the properties pursuant to a grant of easement or overriding interest. In addition, the defendant avers that the plaintiff's claims are fraudulent and is a ploy and/or devise conjured up to facilitate its unjust enrichment.
7. By a notice of preliminary objection dated the same 25th day of May 2022, the defendant raised a preliminary objection that this court lacks jurisdiction to hear and determine this dispute and that the same should be struck out with costs as the same offends the provisions of sections 3(1), 10, 11(e), (f) (i), (k) & (l); 23; 24; 36; 40; 42 and 224 (2)(e) of the [Energy Act](#), 2019 together with regulation, 2, 4, 7 and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 as read together with article 159 (2) (k) and 169 (1) (d) and (2) of the [Constitution](#) of Kenya, 2010 and sections 9 (2) and (3) of the [Fair Administrative and Actions Act](#) 2015.
8. Following directions issued herein on September 27, 2022, the parties agreed to canvass the preliminary objection by way of written submissions. I have accordingly perused and considered the said preliminary objection as well as the submissions and authorities placed before me by the parties.
9. By their lengthy submissions herein, the defendant contends that section 5 of the [Civil Procedure Act](#), 2010 limits courts in the exercise of their jurisdiction and that pursuant to the provisions of the said section, the dispute at hand ought to be referred to the Energy & Petroleum Regulatory Authority or in the alternative to the Energy & Petroleum Tribunals "as the jurisdiction of this court is expressly barred by those provisions of the [Energy Act](#)."
10. I have looked at section 3(1) of the [Energy Act](#) 2019. The same provides as follows:

"3.

- (1) If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters –
 - (a) The importation, exportation, generation, transmission, distribution, supply or use of electrical energy.
 - (b) ...



(c) All works and apparatus for any or all of these purposes.

11. From my reading of the said section, I was unable to find anything that expressly bars this court from dealing with matters falling under its jurisdiction. I have similarly perused the other sections of the law referred to in the preliminary objection as well as the submissions and it was apparent to me that the defendant was completely misguided as to the cause of action in this suit.
12. As I understood it, the plaintiff accuses the defendant of trespassing upon his parcel of land Gikondi/Gikondi/326 and proceeding without his consent to install electric power therein as well as an adjacent parcel of land known as Gikondi/Gikondi/327. I was unable to find anything of relevance in the quoted provisions of the Energy Act to this matter. Nor was I able to find how article 159 of the Constitution and or the doctrine of exhaustion extensively submitted on by the defendant fits into this claim.
13. As I understood it, jurisdiction means a courts power to decide a case or issue a decree. In Kenya, the Environment and Land Court is a creature of article 162(b) of the Constitution. From a perusal of the preamble to the Environment and Land Court Act under which this court is created, it is clear that this is a superior court created to hear and determine disputes relating to the environment and the use and occupation of and title to land.
14. In the matter before me, the plaintiff is accusing the defendant of illegally, unlawfully and without his consent entering into his parcel of land. That is a matter that certainly touches on the right of the plaintiff to occupy and use the said parcel of land and I was unable to find anything in the plethora of provisions put forward by the defendant which oust the jurisdiction of this court to hear and determine the dispute.
15. As Sir Charles Newbold P. stated decades back in *Mukisa Biscuits Manufacturing Company Limited v West End Distributors Limited* (1969) EA 696:

“ ... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. the improper practice should stop.”
16. I cannot but agree that this is one instance where the preliminary objection has been improperly raised. The same is completely speculative and of no proper relevance to the matters before court. It is dismissed with costs to the plaintiff.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 16TH DAY OF JUNE, 2023.**

J. O. OLOLA

JUDGE

In the presence of:

Emulius Kiiru Rogoi – Plaintiff/Respondent present in person

No appearance for the Defendant/Applicant



Court assistant - Kendi

