



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL APPEAL NO. 101 OF 2016

JOSHUA OCHANDA KIYONDI.....APPELLANT

VERSUS

KENYA POWER AND LIGHTING CO. LTD....RESPONDENT

(Being an appeal from the ruling of the Hon. J.M. Njoroge (C.M.) in Kisii C.M.C.C No. 443 of 2013 delivered on 1st December 2016)

JUDGMENT

1. The appellant filed C.M.C.C No. 443 of 2013 against the respondent for a declaration that disconnection of electricity to his residence and posho mill was illegal and unlawful. He also sought a permanent injunction restraining the respondent from disconnecting, interfering or in any other manner dealing with his account numbers [xxxx] and [xxxx].
2. In his plaint the appellant stated that upon disconnection of his power supply, he was informed by the respondent's agents that the disconnection had been done because his metre was not functioning properly. The appellant contended that the respondent's actions were fraudulent as it was not seized of authority to determine whether or not the appellant's metre was correctly measuring electric power consumption.
3. The respondent filed its defence and later on raised a preliminary objection on the basis that the court lacked jurisdiction to hear and determine the matter. The trial court was convinced that the matter was based on reconnection and charges due between the parties and found that the matter fell within the scope of disputes to be referred to determination by the Energy Regulatory Commission in line with **Section 59 (3)** and **Section 61(3)** of the **Energy Act No. 12 of 2006** (herein "**The Act**").
4. The appellant has preferred this appeal against the decision of the trial court. Directions were taken to have the matter disposed of by way of written submissions. Having considered the record of appeal, the parties' pleadings and the rival arguments before this court, I find that the main issue for determination is whether the trial court had jurisdiction to hear and determine the dispute between the parties.
5. The Supreme Court in ***In the Matter of Interim Independent Electoral Commission Constitutional Application No. 2 Of 2011 [2011] eKLR*** had this to say on jurisdiction:

"[29] Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in [Owners of Motor Vessel 'Lillian S' v. Caltex Oil \(Kenya\) Limited \[1989\] KLR 1](#), which bears the following passage (Nyarangi, JA at p.14):

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step."

[30] The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity."

6. **Section 59 (3)** and **section 61(3)** of the Act provide as follows:

59 (3) *If any dispute arises under this section as to recalculation of electrical energy supplied to a consumer or as to interference with any meter, such dispute shall be referred to the Commission for determination.*

61 (3) *If any dispute arises as to—*

(a) any charges; or

(b) the application of any deposit; or

(c) any illegal or improper use of electrical energy; or

(d) any alleged defects in any apparatus or protective devices; or

(e) any unsuitable apparatus or protective devices,

it shall be referred to the Commission.

7. From the parties' pleadings, it is evident that the dispute between the parties is a matter that falls under the purview of the Energy Regulatory Commission. According to the plaint, the reasons given by the respondent for disconnecting the appellant's power supply was that metre was not functioning properly and was therefore not measuring the electric consumption properly.

8. The question of whether or not there had been an interference with the meter was clearly an issue which should have been referred to the Commission by virtue of section 59 (3) and section 61 (3) (c). The Act provides a procedure for redress of grievances thereby ousting the court's jurisdiction. The Court of Appeal in ***Speaker of the National Assembly v James Njenga Karume Civil Application No Nai 92 Of 1992 (Nai 40/92 Ur) [1992] eKLR*** held as follows:

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

9. For the foregoing reasons, I uphold the trial court's decision that it lacked jurisdiction to hear and determine the suit. I find this appeal lacking in merit and hereby dismiss it with costs to the respondent.

Dated, signed and delivered at Kisii this 25th day of January 2019.

R.E.OUGO

JUDGE

In the presence of;

Mr. Nyangacha h/b Mr. Nyagwencha For the Appellant Respondent Absent

Rael Court clerk