



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL APPEAL NO. 100 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. 291 of 2016 delivered on 1st December 2016)

JUDGMENT

1. The appellant instituted proceedings against the respondent for the following orders *inter alia*:

- a. An order of specific performance directing the defendant to reinstate and reconnect power to the Plaintiff's Posho Mill on isolated Plot on land parcel No. Central Kitutu/Mwabosire/212;
- b. Special and general damages for loss of user and illegal disconnection.

2. He subsequently filed an application for reinstatement of power supply to his premises pending the determination of the suit. Before the interim application could be heard, the respondent raised a preliminary objection on the basis that the court lacked jurisdiction to hear and determine that matter pursuant to the provisions of **Section 59 (3)** and **Section 61(3)** of the **Energy Act No. 12 of 2006** (herein "The Act"). The trial court found the preliminary objection merited as the dispute was based on reconnection and charges due between the parties.

3. That decision is what occasioned the filing of this appeal.

4. The parties consented to having the appeal canvassed by way of written submissions. Having considered the record of appeal, the parties' pleadings and their 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. The appellant argues that the matter related to illegal disconnection without notice and therefore section 59 (3) and section 61 (3) of the Act did not apply. It is the appellant's contention that this is a case of breach of contract which the court has jurisdiction to determine.

8. On its part, the respondent argues that the appellant's case related to disconnection of power supply which was actuated by direct connection without metering. The respondent urged this court to uphold the trial court's finding that the dispute fell under the purview of the Energy Regulatory Commission.

9. In the defence filed before the trial court, the respondent admitted that it had disconnected the appellant's power supply. It stated that its agents had visited the appellant's premises and noted that the electric installations at the premises were defective as the appellant was consuming electricity without paying for the same as the electricity was not going through the meter.

10. 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 for determination by virtue of section 59 (3) and section 61 (3) (c) of the Act. The Act provides a specific 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."

11. 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