

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 16 OF 2016

MICHAEL KAMAU KINGA.....PLAINTIFF

- V E R S U S -

KENYA POWER.....DEFENDANT

RULING

1) Kenya Power and Lighting Co. Ltd, the defendant herein, filed a preliminary objection dated 13.4.2017 alleging that this court lacks jurisdiction to hear and determine this suit pursuant to the provisions of the Energy Act, 2006 and the (Complaints and Disputes resolution) Regulations, 2012. Michael Kamau Kinga, the plaintiff herein, contended that the High Court has inherent power and jurisdiction to try all suits of civil nature pursuant to Article 165(3) and (6) of the Constitution of Kenya, 2010.

2) The plaintiff further pointed out that his claim was in respect of breach of contract and for general damages therefore the suit is competently before this court. The plaintiff also submitted that the issues raised in the suit can only be determined by the court since there is no valid reason why his electricity was disconnected and has never been reconnected upto date.

3) The documents filed in court together with the pleadings show that the plaintiff applied for installation of electricity to his premises standing on plot no. 128/129 Kiboko-Kyazari in Machakos county. Having complied with the conditions imposed, the defendant accepted the plaintiffs' application and eventually supplied electricity with a meter installed. The defendant later disconnected the electricity for an outstanding bill. The main issue raised vide the preliminary objection is whether or not this court has jurisdiction to entertain this suit. There is no doubt that the dispute revolves around the question of disconnection or reconnection of electricity. This is expressly stated in paragraphs 7 and 8 of the amended plaint dated 26th January 2017. A reading of Sections 3 and of 61(3) of the Energy Act clearly shows that such a dispute is a preserve of the Energy Regulatory Commission. The first port of call in the circumstances should be, the Energy Regulatory Commission which the plaintiff bypassed.

4) It is apparent that parliament in its wisdom wanted such disputes to be taken away from the mainstream courts to be handled by a specialised body known as the Energy Regulatory commission.

5) Having come to the above conclusion that this suit is incompetently before this court, the only available remedy is to order which I hereby do that this suit be struck out. In the circumstances of this case I am satisfied that a fair order on costs is that each party bears its own costs.

Dated, Signed and Delivered in open court this 18th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant