



**Njiru v Nyaga & 7 others (Environment & Land Case E206 of 2023)  
[2023] KEELC 22340 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22340 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E206 OF 2023  
LN MBUGUA, J  
DECEMBER 14, 2023**

**BETWEEN**

**JOHN NGARI NJIRU ..... PLAINTIFF**

**AND**

**FRANCIS NYAGA ..... 1<sup>ST</sup> DEFENDANT**

**OSBORN ONYANGO ANJERE ..... 2<sup>ND</sup> DEFENDANT**

**BONIFACE LUGAN ..... 3<sup>RD</sup> DEFENDANT**

**WYCLIFFE OKELO OUMA ..... 4<sup>TH</sup> DEFENDANT**

**DILKUSH PATEL ..... 5<sup>TH</sup> DEFENDANT**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED  
(KETRACO) ..... 6<sup>TH</sup> DEFENDANT**

**KENYA POWER AND LIGHTING COMPANY (KPLC) ..... 7<sup>TH</sup> DEFENDANT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY OF KENYA  
(NEMA) ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. This suit was filed by a plaint dated June 9, 2023. The plaintiffs claim that the 1<sup>st</sup>- 4<sup>th</sup> defendants have entered into public land located within Embakasi in Tassia village where they have illegally connected power lines and started supplying power at a cost to persons residing in that village. This has attracted a high population in the area as a result of which permanent and temporary toilets have sprung up directing the waste to the Ngong river, thereby polluting the same.
2. The prayers sought in the plaint are:



- a. That the 1<sup>st</sup> - 4<sup>th</sup> defendants be ordered to stopped from any more grabbing of public land.
  - b. The 1<sup>st</sup>- 4<sup>th</sup> defendants be directed to disconnect all illegal power connections under them in Tassia village within Embakasi East Constituency in Nairobi County.
  - c. The 5<sup>th</sup> respondent be ordered to stop with immediate effect the illegal supply of power to the 1<sup>st</sup>-4<sup>th</sup> respondents.
  - d. The 6<sup>th</sup> and 7<sup>th</sup> defendants to be directed to disconnect illegal connections of power and demolish illegal structures constructed under wayleave.
  - e. The 7<sup>th</sup> respondent to estimate the amount of money which would have been paid since 2002 but was not, to the government by the 1<sup>st</sup>- 4<sup>th</sup> respondents and they be ordered to pay the whole amount now.
  - f. The 8<sup>th</sup> defendant to be directed to remove and close all toilets manned within Tassia Village in Embakasi Constituency which directs waste to Ngong River.
  - g. The 8<sup>th</sup> defendant be directed to stop further dumping of wastes into the river.
  - h. Any other orders, the court may decree fit to grant.
  - i. Cost of the suit be provided for.
3. The plaint was filed contemporaneously with an application of even date which is for determination before this court. The prayers sought therein are as follows:
- a. That the 1<sup>st</sup> - 4<sup>th</sup> respondents should stop with immediate effect any further illegal electricity connections until this matter is heard and determined.
  - b. That the 5<sup>th</sup> respondent should stop with immediate effect further supply of the stolen electricity to the 1<sup>st</sup> - 4<sup>th</sup> respondents until this matter is heard and determined.
  - c. That the 6<sup>th</sup> respondent should put measures in place to make sure those already living under the high voltage power lines are not harmed until this matter is heard and determined.
  - d. That the 7<sup>th</sup> respondent should put measures in place to make sure that the poor tenants who are being served by the poorly connected stolen electricity are not in any danger until this matter is heard and determined.
  - e. That the 7<sup>th</sup> respondent should disconnect all the illegal connections done by 1<sup>st</sup> - 4<sup>th</sup> respondents and their servants and employees on their posts in Donholm and other surrounding areas of Tassia.
  - f. That the 7<sup>th</sup> respondent should stop the 5<sup>th</sup> respondent from adding more illegal connections from his transformer until this matter is heard and determined.
  - g. That the 8<sup>th</sup> respondent should stop further discharge or sewerage and garbage into the river by the 1<sup>st</sup>, - 4<sup>th</sup> respondents or their servants and employees and any further buildings on the river bank until this matter is heard and determined.
4. The application is premised on grounds on the face of the application and on the supporting affidavit of the plaintiff. He contends that the 7<sup>th</sup> defendant (KPLC) had connected lawful power supply in the village, but the post were vandalized in year 2002. Nevertheless, every room in the village has electricity



- without any KPLC transformer, meter box, or token. This is because the 1<sup>st</sup> – 4<sup>th</sup> defendants are the ones who sell the electricity which has been sourced from the 5<sup>th</sup> defendant from Donhohm.
5. The plaintiff avers that the connection of electricity amounts to illegal activities and encroachment on wayleaves and to this end the defendants have conspired to commit crimes against the laws of Kenya with impunity.
  6. I did not see any responses by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.  
while the 8<sup>th</sup> defendant is not opposing the application. On July 26, 2023 the 6<sup>th</sup> defendant was removed from these proceedings by consent of the said party and the plaintiff. Thus the application is opposed by the 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> defendants.
  7. The 1<sup>st</sup> defendant has opposed the application vide his replying affidavit dated October 5, 2023. He denies the averments levelled against him averring that the jurisdiction of the matter lies with the Energy and Petroleum Tribunal.
  8. The 5<sup>th</sup> defendant opposed the application vide his replying affidavit dated July 21, 2023. He denies the claims made against him by the plaintiff averring that the application is devoid of merits and he intends to raise a preliminary objection challenging these proceedings. He contends that the application as filed is omnibus, lacks sufficient details, unduly grounded on generalities, conjunctures and suppositions.
  9. The 7<sup>th</sup> defendant has opposed the application vide grounds of opposition dated July 24, 2023 as well as a replying affidavit dated September 26, 2023. It avers that the court has no jurisdiction to entertain this matter in view of the provisions of the [Energy Act](#).
  10. I have considered the issues raised herein and the submissions of the plaintiff.
  11. An issue of jurisdiction has been raised and the court must deal with that question before delving into the merits of the application.
  12. The jurisdiction of this court relates to disputes on environment, use and occupation of and title to land as set out under article 162 (2) (b) of the [Constitution](#) and section 13 of the [Environment and Land Court Act](#). Jurisdiction is everything as was held in the case of [Owners of Motor Vessel "Lilian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] eKLR.
  13. Jurisdiction was defined in John Beecraft Saunders in "[Words and Phrases Legally Defined](#) Vol. 3" as follows:  
  
"By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way of its decision. The limits of this authority are imposed by the statute....."
  14. In [Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others](#) [2013] eKLR the court of appeal stated that that:  
  
"So central and determinate is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is a threshold question and best taken at inception. It is definitive and determinate and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cul-de-sac. Courts, like nature, must not sit in vain."



15. Going by the prayers sought in the application and in the plaint this court is not the appropriate forum to seek the reliefs sought. To this end the plaintiff ought to have exhausted the remedies available under the law.
16. In the case of *Nathan Ombati Soire & 7 others v Kenya Power & Lighting Company Limited* [2021] eKLR the court while dealing with issues relating to disconnection of power supply stated that:

“ Courts have consistently held that an aggrieved party must first exhaust all dispute resolution mechanisms provided under the law before proceeding to court.”
17. In the case of *Joseph Kinyanjui Mwai t/a Sandworth Printing & Packaging & Kenya Power & Lighting Co. Ltd* [2021] eKLR, the dispute resolution mechanisms relating to power supply was elaborated as provided under the *Energy Act*. An aggrieved person is required to lodge his claim with the electricity regulatory board/commission whereby an appeal thereof lies with the Energy Tribunal. Thereafter, the court can assume jurisdiction by way of an appeal.
18. Section 42 and 43 of the *Energy Act* gives the Commission a wide mandate in relation to inspection and investigation of power supplies, while section 6 (e) gives the Commission powers to renew, issue, modify, suspend or revoke licenses and permits of all undertakings and activities in the energy sector. Subsection (j) thereof gives the Commission powers to approve electric power purchase and network service contracts for all persons engaging in electric power undertakings.
19. The regulations under the *Energy Act* provides for the procedure of lodging a claim with the Commission which in turn has wide latitude in dealing with the dispute. For instance, the dispute can be referred to an expert or a dispute resolution panel.
20. Section 26 and 107 of the said Act makes provisions for appeals from the Commission to the Tribunal, while section 10 of the Third Schedule gives the Tribunal the mandate to hear and determine all matters referred to it under the *Energy Act*, with the exception of criminal offenses.
21. Nevertheless, the Act makes provisions for disputes relating to criminal liability under section 64 of the *Energy Act*.
22. Going by the legal framework set out under the statutes and case law it is clear that the first port of call in matters relating to electricity supply lies within the dispute resolution mechanisms set out under the *Energy Act*. It is also clear that the dominant claim herein relates to the issue of alleged illegal power supply in the village of Tassia.
23. In the case of *Okiya Omtatah Okoiti v Kenya Power and Lighting Company & 10 others* [2018] eKLR, the court struck out the suit and the application for conservatory orders on the basis of failure to adhere to the doctrine of exhaustion of remedies. Similarly in the case at hand, I find that the said doctrine is applicable. In the circumstances, both the application and the entire suit are hereby struck out. I discern that the suit was filed in public interest, thus each party shall bear its own costs of the suit and the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**



Ngari Njiru the Plaintiff

Ochieng for 1<sup>st</sup> Defendant

Grace Ndinda for 2<sup>nd</sup> -4<sup>th</sup> Defendants

Ochola for 5<sup>th</sup> Defendant

Maanzo for 7<sup>th</sup> Defendant

Court Assistant: Eddel

