



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

CIVIL CASE NO. E307 OF 2021

CAPE SUPPLIERS LIMITED.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY PLC.....DEFENDANT

RULING

1. I have before me for determination a Notice of Preliminary Objection dated 17/09/2021 seeking for the following Orders:

a. ***THAT this Honourable Court lacks jurisdiction to hear and determine this dispute and suit pursuant to the provisions of section 3 (1), 10, 11(e), (f), (i) (k) & (l) and Section 23, 24, 36, 40, 42 and 224 (2) (e) of the Energy Act, 2019 together with Regulations 2, 4 and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 as read together with Article 159 (2) © and 169 (1) (d) and (2) of the Constitution of Kenya, 2010 and Sections 9 (2) and (3) of the Fair Administration Act, 2015.***

b. ***Costs.***

2. The Preliminary Objection was canvassed by way of written submissions. The parties submitted and a Ruling date was scheduled.

3. I have looked at the pleadings generally, the preliminary objection as raised and the rival submissions. I have had time to analyze the emerging issues therein. The main issue for determination is whether this court has jurisdiction to hear and determine this matter.

4. The issue of jurisdiction has substantially been dealt with in court of Appeal in the ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR*** where it was stated as follows on the question of jurisdiction of a Court of law.

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

5. That is why the issues of jurisdiction are usually raised at the earliest stage of the proceedings because without jurisdiction, the Court must down its tools.

6. It is the defendant's case that under the Energy Act, 2019, disputes listed under Sections section 3 (1), 10, 11(e), (f), (i) (k) & (l) and Section 23, 24, 36, 40, 42 and 224 (2) (e) of the Energy Act, 2019 together with Regulations 2, 4 and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 as read together with Article 159 (2) (c) and 169 (1) (d) and (2) of the Constitution of Kenya, 2010 and Sections 9 (2) and (3) of the Fair Administration Act, 2015 become a matter to be determined by the Energy and Petroleum Regulatory Authority ("the Authority") under the Complaints and Disputes Resolutions as provided for by Regulations.

7. From the pleadings herein, the plaintiff's complaint is basically that the defendant, has trespassed into Land Reference No. 36/IV/14 (20A) situated in Eastleigh Nairobi and erected electricity poles thereon with the objective of passing high voltage 66KV electricity lines without seeking consent or giving them notice. That the same has occasioned permanent and irreparable damage on the suit property. They therefore seek a declaration that the Defendant has trespassed on the suit property and seek damages for the same as per the reliefs sought in the Plaint dated 18/08/2021.

8. The key ground of preliminary objection is about the jurisdiction of this court to entertain this dispute. The preliminary object raises a key jurisdictional question. The question is whether the dispute in this suit falls outside this court's jurisdictional purview as donated by Article 162 of the Constitution and Section 13 of the Environment and Land Court Act.

9. It is noted that the plaintiffs' gravamen is that the defendant unlawfully entered into the suit properties without their consent and erected thereon electricity poles with the objective of passing high voltage 66KV electricity supply lines. Therefore, the plaintiff is seeking compensation for the illegal entry into its land and putting up unlawful developments on the suit properties. I understand this to be a grievance relating to alleged illegal entry onto and illegal use of land for the purpose of supplying electric power which is trespass. In my view, this is a dispute relating to occupation and use of land and one which consequently falls within the broad jurisdiction donated to this Court under Article 62 (2) (b) of the Constitution. Article 162 of the Constitution provides thus:

162. System of courts

1. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

a) employment and labour relations; and

b) the environment and the use and occupation of, and title to, land.

3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

4. The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

10. Similarly, Section 13 (1) and (2) of the Environment and Land Court Act confers upon this court jurisdiction to adjudicate all disputes relating to land. It provides thus:

13. Jurisdiction of the Court

1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes-

a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

b) relating to land administration and management;

c) relating to land administration and management;

d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

e) any other dispute relating to environment and land

11. In light of the broad jurisdictional framework set out in Article 162 of the Constitution and the elaboration spelt out under Section 13 of the Environment and Land Court Act, I do not agree with the defendant's contention that this court lacks jurisdiction to hear a dispute relating to entry onto and use of land for the purpose of supplying electric power.

12. It is however clear from the pleadings that the plaintiff is seeking compensation in general damages, compensatory damages and loss of income. These are matters of fact that will be deliberated at the hearing. This has been expressly stated and prayed for under order (b), (c) and (d) in the Plaint. It is the court's view that the Plaintiff's claim does not fall under the disputes that are a preserve of the Authority.

13. When all is considered therefore, the Objection raised cannot be upheld and the same is hereby dismissed with costs to the plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH 2022.

MOGENI J

JUDGE

IN THE PRESENCE OF:

Ms. Njoki Githogo for the Plaintiff

Ms. Walala h/b for Ms. Kirui for the Defendant

Mr. Vincent Owuor Court Assistant