



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 197 OF 2009**

**WAWERU KIRUKI.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO.....DEFENDANT**

**RULING**

The plaintiff claims in his plaint that upon a routine inspection of the electrical installation in his premises by the defendant's officers, those officers claimed that his electrical wiring was defective and thereafter demanded from him a sum of Kshs.118,162.73. Upon failure to pay the same within the period given the defendant disconnected the electric supply to his premises. That provoked the institution of this suit in which the plaintiff has prayed for a mandatory injunction to compel the defendant to restore the electric supply and a declaration that there-billing resulting in the defendant's demand for the said sum of Kshs.118,162.73 is null and void.

Contemporaneous with the filing of the suit the plaintiff applied for a temporary mandatory injunction to compel the defendant to restore the supply. I granted that application on terms. There being no complain on that issue I trust the plaintiff met the terms set out in my order of 16th July 2009 and got the supply restored.

Upon being served the defendant has through its counsel raised a preliminary objection challenging the competence of this suit. According to Mr. Wamaasa for the defendant, the plaintiff should have referred the dispute to the Energy Regulatory Commission under **Section 59(3)** of the **Energy Act No. 12 of 2006**. **Section 59(3)** of the **Act** provides:-

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

I do not agree with Mr. Kimani for the plaintiff that this is a case of mere breach of contract. The cause of the dispute has to be considered. The problem giving rise to this suit, as is clear from the defendant's notice to the plaintiff exhibited in the application for injunction, is the defective wiring in the meter box. That that is what the defendant's employees told the plaintiff is also clear from paragraph 8 of the plaint. It is that defective wiring that caused the meter to under record the amount of the consumed energy. Tampering with the wiring in the meter box is clearly interference with the meter. In the circumstances the matter falls within the ambit of the above provision and the dispute should therefore have been referred to the Commission. I therefore agree with Mr. Wamaasa that this suit is by virtue of

the above provision incompetent. Consequently I strike it out with costs.

**DATED and DELIVERED this 21st day of February, 2011.**

**D. K. MARAGA**  
**JUDGE**