Ndura & another v Kenya Power and Lighting Company Limited (Environment and Planning Civil Case E001 of 2023) [2024] KEELC 6693 (KLR) (1 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6693 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2023

FO NYAGAKA, J

OCTOBER 1, 2024

BETWEEN

PHILIP KARANJA NDURA ..... 1ST PLAINTIFF

BONFACE NDURA KOIMBURI ..... 2ND PLAINTIFF

AND

KENYA POWER AND LIGHTING COMPANY LIMITED ..... DEFENDANT

RULING

1. The Plaintiffs sued the Defendant vide a Plaint dated 24/10/2023. The 1st Plaintiff averred that he was the registered proprietor of all those parcels of land, Kitale Municipality/Block 18/ Bidii/1652 and Kitale Municipality/Block 18/ Bidii/1653. Further, on divers dated between the years 2017 and 2018 the Defendant, its employees, authorized agents and personnel, and without prior notice or consent of either of the plaintiffs, trespassed onto their parcels of land, dug holes and erected electric poles and thereafter installed electricity supply lines thereon. The 1st Plaintiff made several complaints to the Defendant about the trespass and the illegal installation of the electricity poles and supply lines. The Defendant through its employees promised and assured him that it would follow due process and remove the illegally installed electricity poles and supply lines from his parcels of land. Based on that assurance he began constructing rentals on his parcels of land in 2020 with the expectation of completing the same by February, 2022 and leasing the houses to tenants from that time onwards. However, the Defendant failed to remove the electricity poles and supply lines hence he could not complete the construction.

2. On 09/02/2022, the Defendant, without any colour of right, issued demand notice to the 1st Plaintiff to demolish his constructed houses in order to give way to the illegally installed poles and supply lines in default of which the Defendant would bring a legal action to the effect of demolishing the houses. He averred that he had lost much and was not able to complete the construction.

3. On his part, the 2nd Plaintiff pleaded that he was the registered proprietor of all that parcel of land known as Trans Nzoia/ Emoru/236 on which he established a nature conservancy known as Kitale Nature Conservancy/ Ndura Park.

4. On diverse dates in 2015, the Defendant through its employees or agents, and without any notice or consent from him, trespassed onto his parcel of land, dug holes, erected electricity poles and installed electricity supply lines. On 08/11/2022, based on the constant reporting by the 1st plaintiff to the Defendant and following the continued trespass by the said Defendant on the 2nd Plaintiff's land, the Defendant cut down and destroyed 56 indigenous trees of various species valued at Kenya Shillings 1,100, 190/=. Further, the tree's long-term value was for conservation of biodiversity, education, medicinal use, climate change mitigation, and cultural significance. As a result he had lost their long-term value of Kenya Shillings 35,047,003. 23. Further, that the Defendant had been in continuous trespass on the 2nd Plaintiff's land for a period of eight years, resulting in the suffering of loss and damage.

5. Both Plaintiffs prayed for:

    1. A declaration that the Defendant had trespassed onto the suit parcels of land.

    2. A mandatory injunction compelling and directing the Defendant to immediately remove the illegally installed electricity poles and electricity supply lines from their suit parcels of land.

    3. Permanent injunction restraining the Defendant and its servants, authorized personnel, employees and origins from entering into, using an existing, or installing any structures on the site or any other way interfering in any other manner with the plaintiffs' use, quiet possession and enjoyment of the suit parcels of and.

    4. Special damages from the lost rental income to the 1st Plaintiff in the sum of Kenya Shillings 2,352,000/= as at March, 2023 and Kshs. 12,000/= of the monthly rental income lost per housing unit until the determination of this suit.

    5. Special damages for the immediate value of destroyed trees of the 2nd Plaintiff in the sum of commissioning is Kshs.1,100,190/= and special damages to him for the sum of Kenya Kshs. 35, 047, 003. 23 assessed as per the valuation report dated 19th August, 2023.

    6. General damages for continued trespass onto the 1st and 2nd Plaintiffs' parcels of land from the years specified to date.

    7. General measures for emotional distress, psychological and mental anguish suffered by the 2nd Plaintiff due to the destruction of valuable indigenous trees in the Nature Conservancy on his land and costs of the suit together with interests on the above.

6. Upon the Summons to Enter Appearance being served the Defendant entered an Appearance dated 18/01/2024 the same date. Together with the Appearance, it filed a Notice of Preliminary Objection dated the same day. In the Preliminary Objection the Defendant pleaded that this Court lacked jurisdiction to hear and determine this dispute as against the Defendant and the same should be struck out for the reasons that it offended the following provisions;

    1. Selections. 3(1), 10, 11(e), (f), (i), (k) & (l) and 23, 24, 25, 36 40, 42, 159(3) 160(3) and 224 of the *Energy Act*, 2019 together with,

    2. Regulations 2, 4, 7 and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 as read with,

3. Article 159(2)(c) and 169(1)(d) and (2) of *the Constitution* of Kenya, 2010 and,

4 Sections (2) and (3) of the Fair Administration Act (sic), 2015.

7. It is worth noting that on 02/02/2024 the Defendant filed its Defence dated 26/01/2024. Since the matter is not due for hearing yet, this Court needs not detail the defence the Defendant put forth. Suffice it to say that it detailed the contents of the Plaint hereinabove because the Preliminary Object has to be weighed against the said pleading and the law. The Defence denies, besides the other averments of the Plaintiffs' claims, the jurisdiction of the Court along the similar lines as the Objection.

8. The Defendant filed written submissions 18/07/2024. On their part, the Plaintiff's relied on oral submissions made on 22/07/2024.

9. The plaintiff submitted that the Preliminary Objection was disingenuous. Further, by the Defendant arguing that the Court had no jurisdiction to try and determine the dispute as per the *Energy Act*, it was improper. They stated that for the Defendant to argue that the dispute lay for resolution before the Energy and Petroleum Tribunal or the Energy and Petroleum Regulatory Authority it was a misconception hence the argument was fundamentally flawed. Learned counsel submitted that Section 13 of the *Environment and Land Court Act* gave this Court's jurisdiction to determine issues relating to environment and land, including matters of trespass. Further, the issue hereon would be discerned from the 1st Prayer sought by the plaintiffs, which was for a declaration that the Defendant had trespassed onto the suit parcels of land. Thus, the Objection was insincere. The Defendant had on countless times, in other matters, raised similar objections and every other single time the courts had discussed the objection and dismissed it. He relied on the case of *Kenya Power & Lighting Company v Chonge (Environment and Land Appeal 2 of 2023*) [2024] KEELC 418 (KLR) (1 February 2024) (Judgment) in which his Lordship determined a similar objection as the instant one, and the issues therein were a carbon copy of the instant ones and the objection as this one. In it the Court held that the Environment and Land Court was the one that had jurisdiction over such matters and not the Energy Tribunal. It thereby dismissed the Preliminary Objection as trespass was not an activity regulated under the Act and given over to the Tribunal or Authority to determine. He submitted that the facts and Objection were similar to the one in that matter since Defendant herein had entered onto the plaintiffs' land, cut down trees, erected power poles and installed power lines without the Plaintiffs' consent. These acts constituted trespass which is an issue only this Court has jurisdiction over. He prayed that the Objection be dismissed.

10. On its part, the Defendant began its detailed elaborate submissions by giving the background of the suit. This Court need not repeat it. The long and short of the argument is: does the court have jurisdiction in this matter or its jurisdiction is ousted by virtue of their failure to follow the dispute resolution mechanisms, if any in regard to the instant claims, laid down by the *Energy Act*, 2019 and the Resolutions thereto, as read with Section 9(2) of the *Fair Administrative Action Act*, 2015?

11. The Defendant emphasized in its submissions that the *Energy Act*, 2019 provides for a clear dispute settlement mechanism while Section 9 of the Fair Administrative Act, 2015 deprives this Honourable Court the jurisdiction to entertain this suit at first instance. It relied on the case of Geoffrey Muthinja & Another v. Samuel Muguna Henry & 1756 Others [2015] eKLR in which the Court of Appeal dismissed an appeal for failing to adhere to the doctrine of exhaustion. It submitted that the Plaintiff's did not exhaust the mechanism of dealing with the dispute under the *Energy Act*, 2019. For that reason, it submitted that this Court lacked jurisdiction to entertain this matter at first instance.

12. Rather, the Energy & Petroleum Regulatory Authority was the one bestowed with jurisdiction to handle matters as regards the Defendant, and the Energy & Petroleum Tribunal clothed with

jurisdiction to grant equitable reliefs, including injunctions, penalties, damages and orders of specific performance. It argued that the prayers sought by the Plaintiffs could be issued by the Tribunal by dint of Section 36(5) of the *Energy Act*, 2019. It relied on the case of Thomas Schering v. Nereah Michael Said & 3 Others [2019] eKLR and James Mwaura Ndung'u v. Kenya Power and Lighting Co. Ltd [2016] eKLR.

13. The Defendant also relied on the case of Peter Muturi Njuguna v Kenya Wildlife Service NKU CA Civil Appeal No. 260 of 2013 [2017] eKLR, where the Court of Appeal reiterated the point that where there is a specific procedure as to redress of grievances, the same ought to be strictly followed. Also, it was the view of the High Court in *Njoroge v. Kenya Power & Lighting Company (Constitutional Petition E533 of 2021*) [2023] KEHC 1924 (KLR) (Constitutional and Human Rights) (10 March 2023) (Ruling). Further, it relied on the High Court in Mombasa decision in Elijah Mutahi & 10 Others v. Kenya Power & Lighting Company Limited [2020] eKLR and the High Court in Nairobi, in Justin Karionji Nyaga v Attorney General & 2 others [2021] eKLR.

14. Learned counsel argued that the 3rd respondent was a licensee within the meaning of Section 2 of the Act hence the dispute resolution forum Section 25 of the Act. He also relied on similar matters involving way leaves and/or rights of way in relation to the distribution and supply of electrical energy. These were the High Court in Kisumu in Vitalis Ouma Osano vs. Kenya Power and Lighting Company PLC [2021] eKLR, Gona & 56 Others *v Kenya Power & Lighting Company (Civil Suit E064 of 2022*) [2023] KEELC 16799 (KLR) (28 March 2023) (Ruling), also Richard Etyanga v Kenya Power and Lighting Company; Rural Electrification Authority (Third Party) [2019] eKLR, and Abidha Nicholus vs. Attorney General & 7 Others; National Environmental Complaints Committee (NECC) & 5 Others (Interested Parties) [2021] eKLR, and Bernard Murage v. Fine Serve Africa Limited & 3 Others [2015] eKLR in the following words, among many other authorities and issues. It prayed that its Preliminary Objection be allowed.

Issue, Analysis And Determination

15. I have considered the Preliminary Objection, the law and the submissions. I am of the view that the only issues that commend themselves to me for determination is whether the objection is merited and who to bear the costs of this same. Therefore, I embark on the determination by first underscoring the meaning of a Preliminary Objection.

16. The definition of a Preliminary Objection is well settled. In Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696 the Court defined it by giving the constituent elements which must be entrenched in a Preliminary objection in order for it to be sustained. It stated as follows:

> " A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion."

17. In a later decision of Bashir Haji Abdullahi v Adan Mohammed Noor & 3 others [2004] e KLR, rendered many years after, the same Court held that:

> " We are of the considered view that if a party wishes to raise a Preliminary Objection and files in Court a Notice to that effect and is subsequently served on other parties to the suit, the Preliminary points should be sufficiently particularized and detailed to enable the other side and indeed the court to know exactly the nature of the preliminary points of law to be raised. To state that „the application is bad in law? without saying more does not assist the other parties to neither the suit nor the Court to sufficiently prepare to meet the challenge. If it is only at the hearing that the Preliminary Objection is amplified and elaborated, it gets the other side unprepared and is reminiscent of trial by ambush."

18. Also, the learned High Court Musinga J as he then was, in SUSAN WAIRIMU NDIANGUI V PAULINE W. THUO & ANOTHER [2005] eKLR, held as follows:-

> " a preliminary objection should not be drawn in a manner that is vague and non-disclosing of the point of law or issue that is intended to be raised. It should clearly inform both the court and the other party or parties in sufficient details what to expect."

19. It is vital to remind all and sundry that jurisdiction is everything, as was enunciated in the Court of Appeal decision of the Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR that without jurisdiction, I must and will down my tools. Thus, the Court now proceeds to analyze and determine the Preliminary Objection raised.

20. The Defendant's contention is that this Court lacks jurisdiction to adjudicate this matter because it is supposed to have been placed before the Energy and Petroleum Regulatory Authority and the Energy and Petroleum Tribunal. It relied on the provisions shown in paragraph *6* above. On their part the Plaintiffs argue that the dispute is all about trespass committed by the Defendant through its agents and or employees by their actions of erecting electricity poles and supply lines on their parcels of land. What the Defendant does not dispute is that it is not the registered owner of the disputed parcels of land and the Plaintiffs are the acclaimed registered owners of the same. The Defendant then argues that the pleadings demonstrate that this court has jurisdiction as provided under Section 13 of the *Environment and Land Court Act* is ousted. They contend further that since the jurisdiction of the court is ousted, the Plaintiffs failed to observe the doctrine of exhaustion of remedies, as provided for under the *Energy Act*, 2019.

21. Courts all through the hierarchy of the legal system continuum have been clear and emphatic that where a dispute resolution mechanism has been established by a statute outside the conventional courts, it should be exhausted before the jurisdiction of the courts is invoked. For instance, the apex Court of Kenya, the Supreme Court explained the importance of observance of the doctrine of exhaustion of remedies in the case of Bernard Murage -vs- Fine Serve Africa Limited & 3 Others [2015] eKLR. It stated as follows:

> " Where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first."

22. Additionally, in the Nicholus v Attorney General & 7 others; National Environmental Complaints Committee *& 5 others (Interested Parties) (Petition E007 of 2023*) [2023] KESC 113 (KLR) (28 December 2023) (Judgment), the same Court held:

> " 91. On our part, in NGO*s Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019*) [2023] KESC 17 (KLR) (Constitutional and Human Rights) (24 February 2023) (Judgment) (NGOs Co-ordination Board) we outlined the doctrine of exhaustion of administrative remedies and adopted our finding in Albert Chaurembo Mumbo & 7 others v Maurice Munyao & 148 others; SC Petition No 3 of 2016, [2019] eKLR where we held that:
>
> "... even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi- judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute."
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> 92. In the above decision, we furthermore emphasized that, where there exists an alternative method of dispute resolution established by legislation, courts must exercise restraint in exercising their jurisdiction as conferred by *the Constitution* and must give deference to the dispute resolution bodies established by statute with the mandate to deal with such specific disputes in the first instance.
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> 93. This position was also adopted by the Court of Appeal in R v National Environmental Management Authority, CA No 84 of 2010; [2011] eKLR that we persuasively relied on in NGOs Co-ordination Board (supra). The Court of Appeal in doing so, observed that; "The principle running through these cases is where there was an alternative remedy and especially where parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it ..." [Emphasis ours]
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> 94. The principle, expressed in the above decision, which we agree with, is therefore that, where there is an alternative remedy, especially where Parliament has provided a statutory appeal procedure, then it is only in exceptional circumstances that the court can resort to any other process known to law."

23. Also, the Court of Appeal in the case of Geoffrey Muthinja & Another Vs Samuel Muguna Henry & 1756 others (2015) eKLR held that;

> ''the exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside of courts.'

24. Also, in the case of Speaker of the National Assembly vs James Njenga Karume (1992) eKLR where the Court of Appeal emphasized that where there is a clear procedure prescribed by *the Constitution* or by a statute for the redress of a particular grievance, that procedure should be strictly followed and exhausted before invoking the jurisdiction of the court.

25. The discussion above, as guided by the decisions cited, is clear that where there are existing legal mechanisms established for dispute resolution, outside of the conventional court system either completely or before one approaches it, unless the party approaching the Court observes the exceptions, if any, that may be created by law, a party has to approach first the body empowered to resolve the problem. To resolve the objection raised this finding has to be analysed vis-à-vis the Plaintiffs' pleadings. They allege that the Defendant laid electricity poles and supply lines on their parcels of land and has since then continuously trespassed thereon. That being the claim, it is a violation of their right ownership and interest in the suit properties, which is calls for a definition of trespass before finding whether it is an activity regulated under the *Energy Act*, 2019 and Regulations (2012) through the established dispute resolution mechanism.

26. This Court borrows the definition of trespass as given in Clerk on Law of Torts, 16th Edition para 23-01 as:

> " Every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues."

27. The above definition squarely refers to activities a replica of those complained by the Plaintiffs. The allegation is that the Defendant unlawfully occupation and uses the Plaintiffs' land from the time it is said to have moved onto the land, and caused damage, including destruction of some trees or threatening demolition of constructions thereon. It is not an activity placed under the regulation and resolution mechanism of the Energy and Petroleum Regulatory Authority or the Energy and Petroleum Tribunal. It is not a dispute between the Defendant and a licensee, under the Act. It is a dispute on the use and occupation of the land which is alleged to be trespass to be resolved by a body whose jurisdiction Article 162 of *the Constitution* and Section 13 of the *Environment and Land Court Act*, 2011 confers upon this court original and appellate jurisdiction to hear and determine.

28. In the Nicholus v Attorney General Case (supra) the Supreme Court held further:

> " This is because the provisions of EMCA or the *Energy Act* do not expressly oust the jurisdiction of the ELC in respect of the procedure for the determination of disputes that involve the management of the environment or issues of petroleum and energy. In the ordinary course of events, the ELC still has original jurisdiction over the matters that are handled by NEMA, unless such jurisdiction is specifically and expressly ousted in a constitutionally compliant manner. The same holds true for proceedings under the *Energy Act*.
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> 103. The other claim by the appellant is that KPLC trespassed on his property, dug holes, and erected electricity poles thereon without notice to him or his authority to do so.
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> 104. Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under articles 22, 23(3) and 162(2)(b) of *the Constitution* as read with Section 4(1) of the Environment and *Land Act*. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged

violations of *the Constitution*. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, JJ) stated:

"In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court." [Emphasis ours].

What must matter at the end is that a path is chosen that safeguards a litigant's right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer.

110. As we stated earlier, there is nothing that therefore bars the appellant, reading the plain provisions of the law above, from filing a claim before the ELC as he had two options available to him once NEMA was unable to enforce the stop order against the 2nd and 3rd respondents. The first option was to appeal to the NET, as was rightfully held by the Court of Appeal. The other option was to file a claim before the ELC, which the appellant did, as against both NEMA and KPLC for the claim under the *Energy Act*. The ELC was thereafter obligated to interrogate his claims on merit and render a determination one way or the other. By not doing so, it fell into error which the Court of Appeal failed to rectify."

29. This Court has had occasion to consider a similar Objection in the case of *Kenya Power & Lighting Company v Chonge (Environment and Land Appeal 2 of 2023)* [2024] KEELC 418 (KLR) (1 February 2024) (Judgment) Neutral Citation: [2024] KEELC 418 (KLR). It held as follows:

" In regard to the Energy and Petroleum Regulatory Authority, it is established under Section 9 of the Act, its functions enumerated under Section 10 and its powers Section 11. Appeals from the Authority lie to the Tribunal in terms of Section 36 of the Act.

42. As regards the establishment of the Energy and Petroleum Tribunal, Section 25 of the *Energy Act* is relevant. It provides as follows:

"25. There is established the Energy and Petroleum Tribunal, hereinafter referred to as the Tribunal for the purpose of hearing and determining disputes and appeals in accordance with this Act or any other written law."

43. The jurisdiction of the Energy and Petroleum Tribunal is established by Section 36 of the *Energy Act* 2019 in the following manner:

SUBPARA "36.

(1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.

(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.

(3) The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.

(4) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

(6) The Tribunal shall hear and determine matters referred to it expeditiously."

44. The foregoing provision is comprehensive on powers of the Regulatory Authority and the Energy Tribunal. Regarding disputes resolutions, the Energy (Complaints and Disputes Resolution) Regulations 2012 provide that a complaint is a dissatisfaction with the service rendered by, a practice of, any person carrying out any undertaking pursuant to a licence, permit or registration issued or granted by the Commission (now Authority) under the Act [emphasis mine]"

45. The claim in the lower Court was that the Respondent, through its servants and or agents trespassed onto his land. The question is: is trespass an activity, practice or service regulated under the Act? Not so. These are acts that are illegal and actually border on criminal liability. When a party does an act outside of the ones permitted by the Act, or indeed any other law, it is an illegality, Period! Can a party negotiate an illegality or move the Authority over an illegality? In my view that would not accord the Authority jurisdiction to handle. He can only move the proper forum that deals with determinations on illegalities, and that is the Court, except if the Authority had been specifically granted by the statute that created it that power to deal with it. This is a nuanced jurisprudential approach which a mind not keen may not discern. Therefore, the Respondents was right in moving the Court as he did and the Court had jurisdiction to deal with the matter."

30. The Court continues to hold the view that acts of trespass by the Kenya Power and Lighting Company do not fall under the original (and appellate) jurisdiction of another body than the Environment and Land Court. Thus, this Court is clothed with the jurisdiction to determine herein the allegations of trespass by the Defendant. The Preliminary Objection is wholly unmeritorious. It is hereby accordingly dismissed with costs to the plaintiffs.

31. The parties are given 30 days to prepare their trial bundles in accordance with Order 11 of the Civil Procedure Rules, 2010.

32. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 1ST DAY OF OCTOBER, 2024.

HON. DR. IUR F. NYAGAKA

JUDGE, ELC KITALE

In the presence of:

Muchai.....for the Defendant

Karanja.....for the Plaintiffs