



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND AT MILIMANI

ELC NO. 662 OF 2012

ROBERT KARANI.....PLAINTIFF

VERSUS

KENYA POWER COMPANY LIMITED.....DEFENDANT

RULING

1. Before this Court for determination is a Preliminary Objection dated 09/07/2021 seeking for the following Orders:

a. THAT this Honourable Court lacks jurisdiction to hear and determine this matter pursuant to the provisions of section 3 (1), 11(e), (f), (g) (k) & (l) and Section 36 of the Energy Act, 2019 together with Regulations 2 and 4 of the Energy (Complaints and Disputes Resolution) Regulations, 2012.

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. In the Suit herein, as per the Amended Plaint dated 24/06/2013, the Plaintiff is seeking the following reliefs against the Defendant:-

i. A declaration that the defendant by itself, its agents and or servants has unlawfully trespassed on the plaintiff's PLOT NO 103 OF 6485/182 EMBAKASI UTAWALA ESTATE.

ii. Mesne profits as from 4th November 2011 till the date the defendant shall vacate.

iii. General damages for trespass.

iv. An order for eviction from PLOT NO. 103 OF 6485/182 EMBAKASI UTAWALA ESTATE of the defendant by way of an order compelling it to forthwith relocate its high voltage power cables therefrom.

v. General damages for psychological and emotional pain and suffering.

vi. Special damages of Ksh.14,000.

vii. Costs of the suit.

7. It is the defendant's case that under the Energy Act, 2019, disputes listed under Sections 3, 11 and 36 of the Energy Act 2019 and

regulations 2 and 4 of the Energy (complaints and Disputes Resolution) Regulation 2012 become a matter to be determined by the Energy and Petroleum Regulatory Authority (“the Authority”).

8. From the pleadings herein, the Plaintiff’s complaint is basically that the Defendant’s, by laying electricity cables on a road reserve adjacent to his plot, leaned toward the plot and had high voltage electric power cables pass over his plot, are trespassers on his land.

9. It is however clear from the pleadings that the plaintiff is mainly seeking an order directing the Defendant to relocate the high voltage power cables from the suit property. This has been expressly stated and prayed for under order (d) in the Amended Plaintiff. It is the court’s view that the Plaintiff’s claim does not fall under the disputes that are a preserve of the Authority.

10. When all is considered therefore, the Objection raised cannot be upheld and the same is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY 2022.

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MOGENI J

JUDGE

IN THE PRESENCE OF:

Ms Jepkorir holding brief for Ms Maggie for the Respondent

Ms Mudibo for the Defendant/Applicant

Vincent Owuor Court Assistant