



**Jasiri v Kenya Power and Lighting Corporation & 3 others (Petition E457 of 2023)
[2025] KEHC 10615 (KLR) (Constitutional and Human Rights) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E457 OF 2023

EC MWITA, J

JULY 11, 2025

BETWEEN

KEVIN JASIRI PETITIONER

AND

KENYA POWER AND LIGHTING CORPORATION 1ST RESPONDENT

**ENERGY AND PETROLEUM REGULATORY AUTHORITY 2ND
RESPONDENT**

COMPETITION AUTHORITY OF KENYA 3RD RESPONDENT

**KENYA CONSUMERS PROTECTION ADVISORY COMMITTEE 4TH
RESPONDENT**

JUDGMENT

Background

1. On 24th April 2023 and 3rd October 2023, the 1st respondent interrupted electricity supply within the petitioner's area by uninstalling a step-down power transformer for repairs without notice to the local community or information when power would be restored. Power not restored until 26th April and 6th October, respectively.
2. After the reinstallation of the transformer, power supply interruption became regular as evidenced by six tickets issued by the 1st respondent for the period between 3rd October 2023 and 19th October 2023. Owing to this resurgence, on 17th October 2023 the petitioner wrote a demand letter to the 1st respondent requesting for a permanent solution. The petitioner also filed a complaint with the 3rd respondent.



3. On 18th October 2023 the 1st respondent's officer, one Ruth Kasera, called the petitioner asking for direction to the transformer which the petitioner did. After being shown the transformer, Ms. aser and her team surveyed the area and promised to share their findings with the relevant department for appropriate action.
4. On 19th October 2023, the 1st respondent's personnel went to the transformer cut off power supply affecting four rental buildings. The petitioner contacted the 1st respondent's customer care to inquire on the reasons for the action and talked to a gentleman called Jackson. Jackson informed the petitioner that disconnection of power to the buildings was a contingency measure to reduce transformer overload. The petitioner requested for an official statement but none was given, necessitating the petitioner to send an email but the 1st respondent remained unresponsive.
5. On 23rd October 2023 the petitioner notified the 2nd and 3rd respondents of the complaint through email and the 3rd respondent acknowledged receipt of the complaint. the 3rd respondent however advised the petitioner to seek redress from the 2nd respondent. On the other hand, both the 1st and 2nd respondents remained unresponsive.
6. The petitioner then served a notice of intention to sue on 24th October prompting the 1st respondent to reconnect the power supply to the buildings on the same day but did not reconnect electrical power for water pumping system to the buildings.

Petition

7. Based on the above background, the petitioner filed this petition arguing that the respondents' failure to discharge their mandate impedes and threatens his right and the local community of access to basic functional human needs and an opportunity to contribute to socio economic development. The disconnection of power to water pumping system deprived the occupants access to clean water and had the effect of affecting the landlord's economic interests and property reputation, thereby threatening the rights guaranteed under article 46 (c) read with article 60 (1) (b) and (c) of [the Constitution](#).
8. The petitioner contended that in line with the Energy Policy and pursuant to article 46(1)(b) of [the Constitution](#), the 1st respondent is required to publish on its website indicators of measuring reliability and quality of electricity it supplies to customers.
9. The petitioner asserted that the respondents violated the principle of legality by failing to meet the timeframe for restoring power for the period 24th April 2023 and 19th October 2023. The respondents also failed to ensure that electricity distribution service to the end users conforms to standards of a reliable and stable power supply and to issue notice to the local community before uninstalling the transformer.
10. The petitioner asserted that the respondents denied electoral supply to the local community on 19th October 2023 to 24th October 2023 without consent of the landlords; the 3rd respondent abdicated its statutory duty by failing to consider his complaint and in doing so, failed to comply with rule 34 (4) and (5) of the Competition Rules, section 9 (1) (b) and (m) and 57 (1) of the [Competition Act](#) and articles 73 and 232 (1) (a), (c), e) and (f) of [the Constitution](#).
11. The petitioner stated that 2nd respondent's delay in providing redress for his complaint violated its mandate under sections 131, 132, 137 and 138 of the [Energy Act](#). The petitioner argued that the respondents collectively violated several articles of [the Constitution](#), including articles 10 (2) (b) (c), 27 (1) , (2) and (3), 28, 29 (a) and (d), 33 (1) (a), (b) and (c), 35(1) (b),43 (b), (c), (d), (e) and (f), 46 (1)



- (a) and (c), 47 (1) and (2), 232 (1), (a), (b), (c), (e) and (f) and sections 136 (1) (c), 158 (1) and (2), 160 (1), 178 (3) of the *Energy Act*.
12. The petitioner posited that the 1st respondent's actions of uninstalling the transformer, power interruption and discriminative dower disconnection led to the loss of Kshs. 6,299.90, Kshs. 3,599.94 and 5,399.91 (GNI Per Capita Loss) respectively.
13. Based on the above assertions, the petitioner sought several declarations and orders to address the violations as follow:
- a. spent
 - b. spent
 - c. An order of mandamus be and is hereby issued compelling the 1st respondent to ensure uninterrupted electricity supply for all households and businesses in Telaviv Area- Embakasi, in strict compliance with section 136(2) of the *Energy Act* and further, to conduct all maintenance and repair works in manner that minimizes disruption in electricity supply, as mandated by sections 136 (1) (c), 158 (1 & 2), 160(1) and 178(3) of the *Energy Act*, 2019 and the National Energy Policy 2018 read together with article 21(1) of *the Constitution*.
 - d. An order of mandamus be and is hereby issued compelling the 2nd respondent to designate a systems operator who will ensure that the step-down transformer installed at Telaviv Area- Embakasi adequately meets the demand and requirements of all authorized consumers connected to it for electrical energy supply, without any limitation, as mandated by section 138 of *Energy Act*, 2019.
 - e. A declaration that the respondents' collective actions of negligence and ignorance in discharging their statutory mandate contravenes and violates the National Values and Principles of governance as enshrined in article 10, 232 (1) (a, b, c, e & f) of *the Constitution*.
 - f. A declaration that the 1st respondent actions has threatened and violated the Rights and Fundamental Freedoms of the petitioner contrary to provisions of article 27 (1, 2 & 3) 28, 29 (a & d), 33 (1) (a)(b) & c), 35 (1) (b), 43 (b, c, d, e & f) , 46 (1) (a, b & c) and 47 (1 & 2) of *the Constitution*.
 - g. A declaration that the 1st respondent actions has threatened and violated the rights and fundamental freedoms of the Local Community contrary to provisions of article 27 (1, 2 & 3) 28, 29 (a & d), 33 (1) (a)(b) & c), 35 (1) (b), 43 (b, c, d, e & f) , 46 (1) (a, b & c) and 47 (1 & 2) of *the Constitution*.
 - h. A declaration that the 1st and 2nd respondents jointly failure in discharging their duty has threatened and led to violation of the Rights and Fundamental Freedoms of the Petitioner contrary to provisions of article 27 (1, 2 & 3), 28, 29 (a & d), 33 (1) (a, b & c), 35 (1) (b), 43 (b, c, d, e & f), 46 (1)(a, b & c) and 47 (1 & 2) of *the Constitution*.
 - i. A declaration that the 1st and 2nd respondents joint failure in discharging their duty has threatened and led to violation of the Rights and Fundamental Freedoms of the Local Community contrary to provisions of articles 27 (1, 2 & 3), 28, 29 (a & d), 33 (1) (a, b & c), 43 (b, c, d, e & f), 46 (1)(a, b & c) and 47 (1 & 2) of *the Constitution*.
 - j. A declaration that the 1st, 2nd, 3rd and 4th respondents' collective indifferent actions in upholding public interest and prioritizing consumer welfare is tantamount to breach in public trust contrary to provisions of article 73 and 232 (1) (a, c, e & f) of *the Constitution*.



- k. A declaration that the 1st respondent acted ultra vires by unprocedurally disconnecting the four buildings from the electrical grid, disconnecting of the water pumping system, and uninstallation of the transformer, in violation of the provisions of section 136 (1) (c), 158 (1 & 2), 160(1) and 178 (3) of the *Energy Act*, 2019.
- l. An order of mandamus be and is hereby issued compelling the 4th respondent to propose, modify and update all appurtenant laws within 3 months of being served this order for establishment of a dedicated Consumer Protection Authority Body that will enforce the provisions of the *Consumer Protection Act*.
- m. The 1st, 2nd and 3rd respondents be and is hereby ordered to collectively and severally pay Kshs. 3,000,000 in damages to each of the affected individuals in their capacity as customers of the 1st respondent owing to threat and violation of their rights and fundamental freedoms under articles 27 (1,2 & 3) , 28, 20 (a & d), 33 (1) (a, b & c), 35 (1) (b), 43 (b, c, d, e & f), 46 (1) (a, b & c) and 47 (1 & 2) of *the Constitution*.
- n. The 1st respondent be and is hereby ordered to severally pay GNI Per Capita Loss premised on year 2003 Kenya's GNI value as shall be published by the World Bank based on the Atlas Method as compensation for loss owing outage occasioned by: Transformer Uninstallation; Power Interruption; and Discriminated Power Disconnection to each of the affected individuals in their capacity as customers of the 1st respondent for having been denied an opportunity to participate in socio-economic development, pursuant to section 166 (2) of the *Energy Act*, 2019 and article 46(1) (d) of *the Constitution*.
- o. The cost of this petition to be provided for.
- p. Such other order(s) as this Honourable court shall deem just.

1st respondent's response

- 14. The 1st respondent opposed the petition through a preliminary objection and replying affidavits sworn by Jones Obiria Mokua and Rashid Mwachikaha.

Preliminary objection

- 15. In the preliminary objection, the 1st respondent contended that this court lacks jurisdiction to hear and determine the petition on grounds that the petition offends, sections 3(1), 10, 11(e), (f), (i), (k) & (l); 23; 24; 25; 36; 40; 42; 159(3); 160(3) and 224(2) (e) of the *Energy Act*, 2019 together with regulations 2, 4, 7 and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 read with article 159 (2) (c) and 169 (1) (d) and (2) of *the Constitution* and sections 9(2) and (3) of the Fair Administration Actions Act, 2015. The essence of this argument is that there is an alternative dispute resolution mechanism that the petitioner should have exhausted before invoking the jurisdiction of this court

Replying affidavit

- 16. In the replying affidavit, the 1st respondent admitted receiving complaints of frequent power outages in the area. When investigations were conducted it was discovered that frequent power outage was caused by power overload on the transformer serving the area. The transformer was overloaded because of excess power consumption in the area than the contracted power supply between the 1st respondent and the customers connected to power in the area and specifically in the four buildings.



17. The 1st respondent stated that when owner of the buildings applied for electricity supply, they applied for a specific amount of power supply to the respective buildings and entered into contracts for the amount of power applied for. However, owners of the four buildings continued to make further developments which increased the amount of power consumption beyond the contracted power load.
18. It was also discovered that boreholes had been drilled and water pumps installed to pump water to the four buildings again increasing the amount of electricity consumption beyond the contracted power load leading to overloading of the transformer resulting in frequent power outages.
19. In order to reduce the strain on the transformer, the 1st respondent disconnected the four meters attached to the water pumping systems after explaining to the owners of the buildings what they had to do to address the problem. The owners of the buildings were specifically advised to apply for higher power loads supply which they had not done.
20. The 1st respondent maintained that it can only supply a transformer in an area based on specific demand for power load. The allegation that the disconnection of the meters attached to the water pumping system was calculated towards depriving tenants' access to clean water is unfounded. It was the 1st respondent position that this court lacks jurisdiction to entertain this petition on account of an alternative remedy by virtue of the mandate of Energy and Petroleum Regulatory Authority or the Energy and Petroleum Tribunal. According to the 1st respondent, the *Energy Act* 2019 read with Energy (Complaints and Dispute Resolution) Regulations, 2012 provide for procedures to be followed by a consumer who has such a dispute.

2nd, 3rd and 4th respondents' response

21. The 2nd respondent informed the court that it had filed a preliminary objection and a replying affidavit in opposition to the petition. The 3rd respondent similarly informed the court that it had filed a replying affidavit. These documents are not in the file or the CTS portal. The 4th respondent did not file any response to the petition.

Petitioner's rejoinder

22. The petitioner filed a response to the preliminary objections and the replying affidavits. Responding to the preliminary objection, the petitioner asserted that this court has jurisdiction to hear this petition. The petitioner cited articles 23 (1) and 165 (3) (a) and (b) of *the Constitution* to support the position that this court has jurisdiction.
23. In the supplementary affidavit, the petitioner reiterated his position that the petition is not only premised on disconnection of power to the specified four electric meters but on multiples electrical meters in the four buildings. The petitioner stated that the first building with water electrical Meter No. 14170137344 houses an additional 107 prepaid meters; the second building with water electrical meter No. 14170146238 houses an additional 129 prepaid meters; the third building with water electrical meter No. 54160118235 houses an additional 138 prepaid meters and the fourth building with water electrical meter No. 54400533540 houses an additional 13 prepaid meters and 30 post-paid meters. The fifth building which has no borehole system has 33 prepaid meters.
24. The petitioner stated that the specific zone the 1st respondent referred to is Tel Aviv in Embakasi and the transformer in issue serves a total of 1,122 prepaid meters and 31 Post-paid electrical meters. The petitioner maintained that section 136 (2) of the Act mandates the 1st respondent to ensure that the transformer operates with sufficient capacity and, if necessary, must have it augmented so as to fulfil requirements of all authorised electrical energy consumers connected to electrical energy supply.



25. Section 136 is on conditions on transmission licences. Subsection (2) states that unless otherwise provided in the licence, the licensee should ensure, as far as technically and economically practicable, that the transmission system is operated with enough capacity (and, if necessary, augmented or extended to provide enough capacity) to provide network services to persons authorized to connect to the grid or take electrical energy from the grid.
26. According to the petitioner, at no point did the 1st respondent install a check meter at the premises of the five buildings to ascertain the quantity of electrical energy being supplied. Further, section 159(1) of the *Energy Act* only mandates the 1st respondent to measure the quantity of electrical energy to ascertain the billable amount and not the voltage utilization hence it was a violation of section 158(1) and (2) of the *Energy Act*.
27. The petitioner maintained that the 1st respondent is responsible for reviewing and evaluating all electrical meter application requests to ensure that the intended purpose of the meters aligns with the established guidelines before authorising installation. The 1st respondent's approval for commissioning of the electrical meters serves as irrefutable evidence that it was aware of the subsequent load demand that would be placed on the transformer.

Submissions

28. The petition was disposed of through written submissions with brief oral highlights.

Petitioners' submissions

29. The petitioner highlighted his written submissions citing the decisions in *Rusu Investments Ltd v Kaisugu Ltd* [2021] eKLR and *William Muthee Muthami v Bank of Baroda* [2014] eKLR for the position that there exists a contract between him and the 1st respondent which entitles him (petitioner) to enjoy quality services as guaranteed by article 46 (1) (a) and (c) of *the Constitution*. The petitioner asserted that due to unreliable electricity supply, he sent a written request for transformer upgrade which the 1st respondent had consistently failed to act on.
30. Mr. Karanja, learned counsel for the , relied on the written submissions as well as all the materials filed in support and urged the court to allow the petition as prayed.
31. In the written submissions, the petitioner relied on section 135 (2) of the *Energy Act* for the position that the 1st respondent bears the responsibility of augmenting an overloaded transformer and ensuring that it operates a transmission system with sufficient capacity in compliance with section 136 (2) of the *Energy Act*. According to the petitioner, this role cannot be delegated without the authority of the 2nd respondent as it will violate section 124 (1) of the *Energy Act*. In performing this role, the petitioner argued, the 1st respondent is fulfilling its fiduciary duty to mitigate risks associated with transformer overload. The petitioner urged that the 1st respondent's constant disregard to fulfil that role caused significant distress to him and many other consumers who depend on uninterrupted functioning of the transformer to access electricity for use.
32. The petitioner relied on sections 5 (1) and (2), (5) (5) (a) and 136 (1) (c) of the *Energy Act* and section 1.2 No. 2 (m) page 17 of the National Energy Policy, 2018 which provides from whom transmission licensee should collect charges associated with operating and maintaining a transmission system and how those charges should be collected.
33. The petitioner again relied on section 165 (1) and (2) of the *Energy Act* for the contention that the 1st respondent's practice of imposing an application process for transformer augmentation with intent



to collect charges in ways contrary to retailing of electricity at retail tariff rate for purchase by eligible consumers is an illegality and an outright violation of section 136 (c) of the *Energy Act* and article 47(1) of *the Constitution*.

34. The petitioner relied on articles 22(1) and 22 (b) of *the Constitution* and the decision in Andrew Muma and Charles Kanjama trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others [2020] eKLR to argue that he had met the requirements for bringing a class action. The petitioner further cited sections 166 (2) and 177 of the *Energy Act* and the decision in Wekesa v Kenya Power and Lighting Company Ltd & another [2023] KEHC 2900 (KLR) and urged the court to award damages and compensation for loss suffered in terms of prayers (m) and (n) in the petition.

1st respondent's submissions

35. The 1st respondent submitted that the dispute in this petition relates to disconnection/reconnection of supply of electricity an issue that should be dealt with under the Energy and Petroleum Regulatory Authority and the Energy and Petroleum Tribunal. This court lacks jurisdiction over the matter. Reliance was placed on several decisions, including Phoenix of EA Assurance Company Limited v S.M Thiga t/a Newspaper Service [2019] eKLR; Kenya Ports Authority v Modern Holdings [E.A] Limited [2017] eKLR; David Ndii & 4 others v Attorney General & 3 others; Kenya Human Rights Commission & 2 others [2020] eKLR and Albert Chaurembo Mumbo & 7 others v Maurice Munyao & 148 others [2019] eKLR.
36. The 1st respondent further relied on articles 159 (1), 169 (1) (d) of *the Constitution*; sections 3, 9, 10, 11(e), (f), (k) & (l), 23, 24, 36, 40, 42, 159 (3), 160(3), 167, 168 and 224 (2) (e) of the *Energy Act* and Regulations 2, 4, 7, 9 and 21 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 on the jurisdiction of the Energy and Petroleum Regulatory Authority. Additionally, section 25 and 36 of the *Energy Act*, 2019 and the decision in Cyrus Komo Njoroge v Kiringa Njoroge Gachoka & 2 others [2015] eKLR on the jurisdiction of the Energy & Petroleum Tribunal.
37. Citing section 9(2) and (3) of the *Fair Administrative Action Act* and the decisions in William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslim for Human Rights & 2 others (Interested Parties) [2020] eKLR; Abidha Nicholus v Attorney General & 7 others; National Environmental Complaints Committee (NECC) & 5 others (Interested Parties) [2021] eKLR; Njoroge v Kenya Power & Lighting Company [2023] KEHC 1924 (KLR) and Kweri v Beehive Media Limited; Capwel Industries Limited (Interested Party) [2023] KEHC 2684 (KLR), the 1st respondent urged this court to allow the statutory bodies to exercise their jurisdiction over the matter.
38. The 1st respondent relied on the decision in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR) and Stephenson v Director of Public Prosecutions & 6 others [2023] KEHC 26465 (KLR) on the need for clear pleadings on constitutional litigation and submitted that in order to address the petitioner's concerns a determination has to be made on whether the disconnection was justified and legal. It is only after finding in the affirmative that electricity and/or meters were illegally disconnected and without justification that the issue as to whether the petitioner's rights and those of the local community were infringed can be canvassed.
39. The 1st respondent maintained that under sections 3(1), 10, 11 (e), (f), (i), (k) & (l), 23, 24, 25, 36, 40, 42, 159 (3), 160(3) and 224 (2) (e) of the *Energy Act* and regulations 2, 4, 7 and 9 of the Energy (Complaints and Disputes Resolution) Regulation, 2012, this court lacks jurisdiction to hear and determine a complaint on disconnection of electricity which falls within the purview of the Energy and Petroleum Tribunal thus, this petition is premature.



40. The 1st respondent relied on the decision in *S Woolman & M Bishop*, Constitutional Law of South Africa (2013) pages 3 to 21, and the decisions in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (supra) and *KKB v SCM & 5 others* [2022] KEHC 289 (KLR) for the position that the petition is barred by the doctrine of constitutional avoidance.
41. The 1st respondent asserted that the petitioner alluded to various constitutional violations but did not lead tangible evidence to prove the violations. Evidence alluded to a complaint on disconnection of electricity but did not prove violation of *the Constitution*. The 1st respondent relied on the decisions in *Anarita Karimi Njeru v Republic* [1979] eKLR; *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR; *Japheth Ododa Origa v Vice Chancellor University of Nairobi & 2 others* [2018] eKLR and *Cadama Builders Limited v Mutamba* (Suing as the administrators of the Estate of Philip Musei Ndolo) (Deceased)) [2022] KEHC 11029 (KLR) on the point.
42. The 1st respondent again relied on *Kenya Sugar Board v Ndungu Gathini* [2013] eKLR; *Jasbir Singh Tai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR and *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR to urge that the petition be dismissed with costs.

2nd respondent's submissions

43. Mr. Muchai, learned counsel for the 2nd respondent also relied on their written submissions and urged the court to dismiss the petition.
44. In the written submissions, the 1st respondent argued that the petition had been filed prematurely and therefore this court lacks jurisdiction because the dispute resolution mechanisms stipulated under the *Energy Act* and the Energy (Complaints and Dispute Resolution) Regulations had not been exhausted. The 1st respondent relied on regulations 7(1), 9, 10 and 11 of the Energy (Complaints and Disputes Resolution) Regulations
45. The 2nd petitioner submitted that under sections 25 and 36 (3) of the *Energy Act* there exists the Energy and Petroleum Tribunal mandated to hear and determine disputes and appeals arising from the energy and petroleum sectors. The 2nd respondent further submitted that no reasonable cause of action had been established against it and urged the court to dismiss the petition with costs.
46. The 3rd and 4th respondents did participate in these proceedings.

Determination

47. I have considered the petition, responses, arguments by parties and the decisions relied on. The issues that arise for determination are whether this court has jurisdiction and, depending on the answer to this issue, whether the petitioner's rights were violated.
48. The petitioner argued that the respondents' failure to discharge their mandate impedes and threatens his right and rights of the local community to access to basic human needs and an opportunity to contribute to socio economic development. That disconnection of power to water pumping systems deprived occupants' access to clean water and affected landlords' economic interests and property reputation, thereby threatening their rights guaranteed under article 46 (c) read with article 60 (1) (b) and (c) of *the Constitution* among other rights.
49. The petitioner contended that under the Energy Policy and article 46(1)(b) of *the Constitution*, the 1st respondent is required to publish indicators of measuring reliability and quality of electricity supply to customers. The petitioner asserted that the respondents violated the principle of legality by failing to meet the timeframe for restoring power. The respondents also failed to ensure that electricity



distribution to users conforms to standards of reliable and stable power supply and to issue notice to the local community before uninstalling the transformer.

50. The respondents on their part argued that the court lacks jurisdiction to hear and determine this petition as the petition offends, sections 3(1), 10, 11(e), (f), (i), (k) & (l); 23; 24; 25; 36; 40; 42; 159(3); 160(3) and 224(2) (e) of the Energy Act and regulations 2, 4, 7 and 9 of the Energy (Complaints and Disputes Resolution) Regulations as read with articles 159 (2) (c) and 169 (1) (d) and (2) of the Constitution and sections 9(2) and (3) of the Fair Administration Actions Act.

Jurisdiction

51. The 1st respondent argued that this court has no jurisdiction to hear this petition because there is another forum that should have been moved to resolve the dispute first, thus the petitioner did not exhaust the available alternative dispute resolution mechanism. The petitioner held a different view, contending that the petition concerns constitutional violations and therefore falls within the jurisdiction of this Court.
52. Jurisdiction is the power or authority given to a court to hear and determine disputes before it. Challenge to jurisdiction is a threshold and fundamental question that the Court has to determine as soon as possible. If the Court finds that it has no jurisdiction to hear the matter, that is the end. The Court should not take any further step. It must down its tools. (See Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited [1989] KECA 48 (KLR))
53. Jurisdiction of a court to hear a matter or not being a threshold question is to be determined based on the facts of the matter before it. Where the Court determines that it has no jurisdiction to hear a particular matter, it will have no power to proceed with the matter beyond that point.
54. Speaking on jurisdiction of a court in Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 others [2012] eKLR, the Supreme Court stated:
- (68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... without jurisdiction, the Court cannot entertain any proceedings...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.
55. In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011 [2011] eKLR, after referring to Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited (supra), the Supreme Court observed:
- [30] The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.
56. It follows that jurisdiction of a court must flow from the Constitution, statute or both. The court should only exercise jurisdiction as conferred on it by the Constitution or the law. It must not act without jurisdiction.



57. Section 6 of the Fair Administrative Act provides that a person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a court in accordance with section 8; or a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Subsection (2) provides for the decisions the tribunal may make in reviewing the administrative action. Section 8 states that an application for the review of an administrative action or an appeal under the Act should be determined within ninety days of filing the application.
58. On the other hand, section 9(1) provides that subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to by article 22(3) of *the Constitution*. Subsection (2) states that the High Court or a subordinate court under subsection (1) should not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
59. Under subsection (3), The High Court or a subordinate Court should, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct the applicant to first exhaust such remedy before instituting proceedings under subsection (1). Sub section (4) states that notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice, while subsection (5) provides that a person aggrieved by an order made in exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.
60. The import of section 9(2) is that a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to article 22(3) of *the Constitution* after being satisfied that alternative remedies have been exhausted. If not, the court should direct the person to first exhaust such remedies before instituting proceedings before it.
61. The petitioner' case is that the 1st respondent disconnected electricity and did not respond to the concerns raised by residents in the arear experience intermittent power failures and cannot have water after power to water pumping systems was disconnected. The action, he asserted, violated his rights and the rights of the members of the local community and his complaint to both the 1st 2nd and 3rd respondents was not sufficiently addressed.
62. The respondents argued that this court has no jurisdiction because there is an alternative forum for resolving the dispute under the *Energy Act* and therefore, section 9(2) of the *Fair Administrative Action Act* requires that alternative remedy be exhausted before approaching the court.
63. Sections 10 and 11 of the *Energy Act* are on the functions and powers of the Authority respectively. Section 23 is on decisions of the Authority while section 24 is on appeals from decisions of the authority. Appeals from decisions of the authority are to the Tribunal established under section 25 of the Act. Undersection 36, the Tribunal has jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under the Act or any other Act. Section 36 (5) confers on the Tribunal power to grant equitable reliefs including but not limited to injunctions, penalties, damages and specific performance.
64. The Authority and the Tribunal have mandate to resolve some disputes under the *Energy Act*. However, the respondents did not point out the specific provision of the Act to demonstrate which body, the Authority or the Tribunal has the mandate to resolve the dispute(s) or issue(s) the petitioner



has raised in the petition. The respondents only mentioned various provisions of the Act without pointing out specific provisions that apply the petitioner's concerns and show that the available alternative remedy is efficacious to render this petition premature.

65. The respondents did not also argue that the remedy that exists under the *Energy Act* was efficient and effective in the circumstances of the petitioner's case.
66. In *Union of India v. T.R. Vermai*, 1957 AIR 882, 1958 SCR 499, the Supreme Court of India stated that "when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ."
67. In *Albert Chaurembo Mumbo & 7 others v Maurice Munyao & 148 others* [2019] KESC 83 (KLR), the Supreme Court stated (at para 116) that "where there exists an alternative method of dispute resolution established by legislation, the courts must exercise restraint in exercising their jurisdiction conferred by *the constitution* and must give deference to the dispute resolution bodies established by statute with the mandate to deal with such specific dispute in the first instance"

(See also *Rajasthan State Electricity Board v. Union of India-Civil Appeal No.7337 of 2002*); *Abidha Nicholus v Attorney General & 7 others*; *National Environment Complaints Committee & others (Interested party)* [2021] eKLR)
68. I have considered the law on this issue and the decisions relied on. This Court is of the view, that where the controversy is on a purely legal issue or and calls for resolution of legal and constitutional questions and especially whether rights and fundamental freedoms in the Bill of Rights have been violated, infringed or threatened, the issue should be decided by this court instead of dismissing the petition on the ground of availability of an alternative remedy.
69. This view is informed by the fact that article 22 of *the Constitution* grants every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. Article 23 (1) then provides that the Court has jurisdiction in accordance with article 165 to hear and determine the application for redress of denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights; while article 23 (3) provides for the remedies the court may grant in respect of proceedings brought under article 22.
70. Under article 165(3) (b) this court has jurisdiction to determine the question whether a right and fundamental freedom in the Bill of rights has been denied, violated, infringed or threatened. And indeed, section 9(1) of the *Fair Administrative Action Act* acknowledges that original jurisdiction is conferred on this court by *the constitution*. In that regard, everything else, including exhaustion of alternative remedies that may be available is subject to *the Constitution* and not otherwise.
71. As the Supreme of India observed in *Godrej sara lee Ltd v the Excise and Taxation Officer-Cum-Assessing Authority & Others* (Civil Appeal No 5393 of 2010) (1stFebruary2023) "entertainability" and "maintainability" of a writ petition are distinct concepts. Availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition. The rule which requires a party to pursue the alternative remedy provided by a statute is a rule of policy, convenience and discretion rather than a rule of law.
72. In the circumstances, the respondents having not pointed out that the alternative remedy available to the petitioner would be effective, the argument that this court has no jurisdiction must fail. This is because the jurisdiction of this Court is donated by *the Constitution* and my reading of article 165(3) (b) on this court's jurisdiction to, among others, determine the question whether a right or fundamental



freedom in the Bill of Rights has been denied, violated, infringed or threatened; (d) (ii) “the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution” is not limited by any law.

73. Article 165(3) thus, confers on this court unlimited jurisdiction in criminal and civil matters except as limited by clause (5) regarding those matters reserved for other courts by article 162 (2) and restricted by clause (6). In that regard, the sweep of the constitutional authorisation given to this court should be viewed through the prism of article 165(3)(b) and (d). Any other claim that this court has no jurisdiction except as highlighted above does not find favour with article 165(3). This court can only decline to exercise jurisdiction so that parties can approach an available alternative statutory remedy but not for want of jurisdiction.
74. The petitioner having brought this petition claiming violation of *the constitution* and threat to violate rights and fundamental freedoms, the respondents’ argument that the petitioner could have invoked the available alternative dispute resolution mechanism cannot succeed. That is, the petition questions violation of *the constitution* and rights and fundamental freedoms occasioned by the respondents’ conduct. The petition is also brought against some of those who are said to have failed to act, and therefore, cannot resolve a dispute against themselves. I therefore find and hold that the issues raised in this petition fall within the jurisdiction of this court.

Violations

75. The petitioner argued that the respondents’ actions and inactions or omissions were not only a violation of the law but also are a threat to violate rights and fundamental freedoms in the Bill of Rights. The petitioner argued that the respondents denied electricity supply to the local community (on 19th October 2023 to 24th October 2023) without consent of the landlords; the 3rd respondent abdicated its statutory duty by failing to consider his complaint and in doing so, failed to comply with articles 73 and 232 (1) (a), (c), e) and (f) of *the Constitution*, sections 9(1)(b)(m) and 57 and *Competition Act* and rules (s. 9(1)(b) (m) and 57 and rule 34 (4) and (5) of the rules.
76. The petitioner asserted that 2nd respondent’s delay in providing redress for the complaint violated its mandate under the sections 131, 132, 137 and 138 of the *Energy Act*. It was the petitioner’s case that the respondents collectively violated several articles of *the Constitution* and sections of the *Energy Act* (ss. 136 (1) (c), 158 (1) and (2), 160 (1), 178 (3)).
77. The petitioner posited that the 1st respondent’s actions of uninstalling the transformer, power interruption and discriminative power disconnection led to the loss of Kshs. 6,299.90, Kshs. 3,599.94 and 5,399.91 (GNI Per Capita Loss) respectively. The petitioner did not however state the basis of these figures.
78. The 1st respondent admitted receiving complaints of frequent power outages in the area but stated that upon investigations it was discovered that frequent power outage was caused by power overload on the transformer serving the area. The transformer was overloaded because demand for power supply in the area was more than the contracted electricity supply between the 1st respondent and the customers connected to power in the area and especially in the four buildings thus, overloading the transformer.
79. According to the 1st respondent, when owners of the buildings applied for electricity supply, they applied for specific amount of power supply to the respective buildings and entered into contracts for the amount of power to be supplied. Thereafter, owners of the four buildings continued to undertake further developments which increased the amount of power consumption beyond the contracted power load.



80. The 1st respondent also discovered that boreholes had been drilled and water pumping systems installed to pump water to the buildings which increased electricity consumption beyond the contracted power load leading to overloading of the transformer resulting in frequent power outages. In order to reduce the strain on the transformer, the 1st respondent had to disconnect the four meters attached to the water pumping systems after explaining to the owners of the buildings and advising them to apply for supply of higher power load but they had not done so. The petitioner did not deny that the owners of the buildings had not been advised what to do to address the problem.
81. The 1st respondent maintained that a transformer can only be supplied in an area based on specific demands for power load. The allegation that the disconnection of the meters attached to the water pumping system was intended to deprive tenants access to clean water was therefore denied.
82. Article 22 of *the Constitution* grants every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. Once such proceedings are instituted, the Court exercises its jurisdiction conferred by article 23(1) as read with article 165 to determine the application for redress of a denial, violation or infringement of or threat to infringe or violate the right or fundamental freedom.
83. The claim that rights guaranteed in the Bill of Rights have been violated, infringed or are threatened with violation or infringement is first a question of fact. Once facts are established, it becomes a question of law that a petitioner has to prove to the required standard of the balance of probabilities.
84. I have considered the arguments by parties on the issue of violation of fundamental human rights, *the Constitution* or the law. Whereas the petitioner argued that the respondents' actions violated the law and are a threat to infringement of his rights and those of members of the community, the 1st respondent denied the petitioner's allegations and placed blame on the owners of the buildings for undertaking developments but failed to apply for upgrading of electricity which led to overloading of the transformer causing intermittent power outages.
85. The petitioner did not demonstrate to the court he is one of the owners of the buildings affected by power fluctuations in the area. The petitioner did not also deny the 1st respondent's assertion that the transformer was overloaded due developments that had been undertaken in the buildings without increasing contracted power supply to those buildings. The petitioner did not also deny the fact that water pumping systems installed in the buildings also contributed to overloading of the transformer or that the 1st respondent's advice to owners of the buildings to apply for higher electricity supply load was not followed.
86. Electricity supply to the buildings is the individual owners' responsibility. The owner of a building applies for electricity and indicates the amount of power supply he or she wants connected to his or her building. Any desire to upgrade electricity supply to a building is also the responsibility of the owner. The petitioner did not argue that he had a contract with the 1st respondent that had been breached even after taking the advice from the 1st respondent.
87. A claim of violation of rights and fundamental freedoms in the Bill of Rights is, as already alluded to, a matter of fact, and once facts establish violation, it becomes a question of law and a petitioner has to prove to the satisfaction of the court that indeed, there was violation of his/her rights or contravention of *the Constitution* and the law.
88. In *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, the Supreme Court pointed out that there is need for a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and manifestation of contravention



or infringement, which plays a positive role as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

89. What the Supreme Court was saying was that a party claiming violation of rights and fundamental freedoms, should plead with precision, the constitutional rights violated, the provisions infringed and demonstrate the manner of violation so that there is a link between the alleged violation, the rights infringed and the constitutional provisions contravened to put a respondent on notice over the petitioner's claim in order to respond appropriately.
90. In other words, a claim of denial, violation, infringement or threat to infringe rights and fundamental freedoms in the Bill of Rights should be demonstrated to be real and not a mere apprehension or conjecture. The claim should also be clearly stated and demonstrated in the pleadings brought before the court and proved to the required standard of the balance of probabilities.
91. In this petition, although the petitioner attempted to make the issue appear to be violation of the law and also constitutional rights, the issues raised are first contractual and if the terms of the contract are fulfilled any breaches can be addressed and may to some extent fall under social economic rights. However, owners of the buildings concerned must first address the concerns raised by the 1st respondent taking into account the advice given. The petitioner cannot blame the respondents when the problem is caused by owners of the buildings who failed to appreciate that they needed to apply for an upgrade of electricity supply in the buildings to take care of increased demand.
92. In the circumstances of this petition, having considered arguments by parties, *the Constitution* and applicable law, I am not satisfied that the petitioner has demonstrated violation of *the Constitution* or the law, let alone threat to violate rights and fundamental freedoms guaranteed in the Bill of Rights.
93. Consequently, and for the above reasons, the petition is declined and dismissed. Costs being discretionary and the petition having been brought in public interest, each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY 2025

E C MWITA

JUDGE

