



REPUBLIC OF KENYA



Mzuri Sweets Limited v Kenya Power & Lighting Co. Ltd (Civil Appeal E068 of 2022) [2024] KEHC 10895 (KLR) (17 September 2024) (Judgment)

Neutral citation: [2024] KEHC 10895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E068 OF 2022
SM GITHINJI, J
SEPTEMBER 17, 2024**

BETWEEN

MZURI SWEETS LIMITED APPELLANT

AND

KENYA POWER & LIGHTING CO. LTD RESPONDENT

(Being an Appeal from the Ruling of Honourable J.Kituku – Principal Magistrate delivered on the 13th July, 2012 in Kilifi SRMCC No.442 of 2018)

JUDGMENT

Representation:

Mr Onyango Advocate for the Appellant.

Mr Okoko Advocate for the Respondent.

1. This appeal arises from the ruling delivered by Hon. J Kituku (PM) delivered on 13th July 2022 involving PO challenging the jurisdiction of the court to entertain the matter in the trial court. The PO was upheld and the matter was struck out.
2. Aggrieved with the ruling, the Appellant lodged the appeal herein on the following grounds;
 1. That the learned trial magistrate reached a decision that was against the Constitution, the [Energy Act](#), the [Civil Procedure Act](#), the [Magistrates Court Act](#), the [Judicature Act](#) and the [Energy \(Complaint & Disputes Resolution\) Regulations](#).
 2. That the learned trial magistrate improperly exercised his discretion and or duty by not taking into account matters which he ought to have taken into account and failing to take into account matters he should have taken into account.



3. That the learned trial magistrate erred in fact and law in upholding the Preliminary Objection raised by the Respondent in the primary suit.
 4. That the learned trial magistrate erred in fact and in law in striking out the Appellant suit.
 5. That the learned trial magistrate erred in law and fact in his learned interpretation of provisions of the Energy Act and the Energy (Complaint & Disputes Resolution) Regulatory 2012 and application of the same to the set of facts in issue.
 6. That the learned trial magistrate erred in law and in facts on his interpretation of the case law submitted by the parties and their relevance and application to the set of facts in issue.
 7. That the learned trial magistrate erred in failing to distinguish the facts and issues in dispute from those in dispute in the case law submitted by the Respondent.
 8. That the learned trial magistrate erred in failing to consider, distinguish and or respond to all the facts and submissions and case law submitted by the parties.
 9. That the learned trial magistrate erred in giving a ruling which was manifestly against the law, issues and facts before him.
3. The brief facts of the Plaintiff's case as per the plaint dated 17th December 2018 are that on 5th February 2016 at around 10:45pm, due to negligence, carelessness, recklessness, breach of its common law, statutory and or the contractual duty of care owed by the Defendant to the Plaintiff, an over-voltage occurred at the Defendant's electricity supply in and to the Plaintiff's premises which caused damage to the Plaintiff's Sigma Mixer machine and the plaintiff holds the Defendant liable for loss and damage suffered.

Disposition

4. The appeal was canvassed by way of written submissions. I have taken into account the submission by the parties as well as the authorities relied upon. The sole issue for determination in this appeal is whether the trial court misdirected itself in allowing the P.O.
3. The P.O in the trial court was in relation to the jurisdiction of the trial court to entertain the suit. An objection to the jurisdiction of the court has been cited as one of the preliminary objections that consists a point of law. The jurisdiction is challenged on the grounds that the dispute herein ought to have been referred to the Energy and Petroleum authority or the Energy and Petroleum Tribunal. Indeed, the locus classicus case on the question of jurisdiction is the celebrated case of Owners of the Motor Vessel "Lillian S" (supra) where the Court held:
 4. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."
5. The Energy (Complaints and Dispute Resolution) Regulations, 2012 enacted under the Energy Act 2006 remain in force pursuant to the provisions of Section 224 (1) (e) of the Energy Act 2019. Regulation 2 and 4 of Regulations provide inter alia that:
 2. These regulations shall apply to any person who has a complaint or a dispute regarding any license, permit, contract, code, conduct, practice, or operation of any party of any matter regulated under the Act.



4. These regulations shall apply to complaints and disputes in the following areas –(a)Billing, damages, disconnection, health and safety, electrical installations, interruptions, licensee practices and procedures, metering, new connections and extensions, reconnections, quality of services, quality of supply, tariffs, way leaves, easements or right-of-ways in relation to the generation, transmission, distribution, supply and use of electrical energy.(b)damages, adulteration and under-dispensing of products, licensee practices and procedures, health and safety in relation to the importation, refining, exportation, wholesale, retail, storage or transportation of petroleum products; and(c)any other activity and or matter regulated under the Act”.
6. The reliefs sought by the Appellant in their plaint are damages arising from over- voltage of electricity. In my view, this dispute is of damages as has been elaborated by the above provisions of the Energy Act. That said, it is my finding that Under the Energy Act 2019, the initial jurisdiction for entertaining the Respondent’s grievance in the first instance lies with the EPRA, and if aggrieved with EPRA’s decision, to prefer an appeal to the EPT and finally to this Court. Consequently, I find that the trial court was in order in upholding the PO. The appeal lacks merit and the same is hereby dismissed with no orders as to costs.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 17TH DAY OF SEPTEMBER, 2024.

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S.M. GITHINJI

JUDGE

In the Presence of; -

1. Miss Githinji holding brief for Ms Onyango for the Appellant.
2. Mr Okoko for the Respondent – absent

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S.M. GITHINJI

JUDGE

17/9/2024

