



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO.122 OF 2009

SAMUEL MBORA GITONGA

(Suing as administrator of the estate of

MBURU GACHAGUA also known as

MBORA GACHAGUA.....PLAINTIFF

-VERSUS-

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT

RULING

1. The subject suit herein was filed in 2009. It is a dispute between Kenya Power & Lighting Company Limited and two of its customers, the plaintiffs over power consumption and payments that the defendant (KPLC) claims are unpaid that lead to disconnection of the power supply under its account No.351861501 (now account number 053609-01).

2. The plaintiffs sought special and general damages and damages for loss of income at Kshs.150,000/= per day from date of filing suit until electricity supply is restored, together with costs and interest.

Parties here in the past tried settlement out of court but no resolution was reached. However I am told that the Respondent (KPLC) is still desirous of pursuing out of court negotiations for the resolution of the dispute that is now 20 years old.

3. Under **Article 159 of the Constitution** parties as well as the court is mandated to explore alternative forms of dispute resolution including reconciliation, mediation and arbitration.

There is now court annexed mediation where parties are guided through a mediation process to arrive at an efficient, and cost cutting negotiating mechanisms for resolution of disputes.

4. I am persuaded that this is one such case that mediation may resolve.

I have considered the Preliminary Objection raised by the defendant that this dispute ought to have been referred to the Energy Regulatory Commission under **Section 61(3) of the Energy Act No. 12 of 2006**. The said commission, under **Section 6** has the power to investigate complaints of disputes between parties over the alleged illegal disconnection of power at the plaintiff's premises over alleged high electricity charges.

5. In the circumstances, with a view to save the parties further delays in having the case tried in a court formal of law with its procedures and work load, I find it fit and prudent to refer the dispute to the court annexed mediation.

6. Accordingly, this matter shall be mentioned before this Court's Mediation Registrar, who will take the necessary steps to appoint an accredited mediator who will, within a period of 60 days, bring the parties together and guide them through the mediation process.

7. In the meantime, proceedings in this suit are stayed.

To that end, the case shall be mentioned in court 75 days hereafter for compliance and/or further directions/orders.

Dated, signed and delivered this 11th Day of July 2019.

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J.N. MULWA

JUDGE