



**Kenya Power and Lighting Company v Stephen (Environment and Land Appeal E007 of 2024) [2025] KEELC 4614 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4614 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL E007 OF 2024**

**JM MUTUNGI, J**

**JUNE 19, 2025**

**BETWEEN**

**KENYA POWER AND LIGHTING COMPANY ..... APPELLANT**

**AND**

**LUCIA NJERI STEPHEN ..... RESPONDENT**

*(Being an appeal from the Ruling of Honourable G.W Kirugumi, Principal Magistrate, delivered on 14th February 2024 in Kerugoya MCELC No. E116 of 2023)*

**JUDGMENT**

1. This Appeal is against the Ruling delivered on 14<sup>th</sup> February 2024 by Hon. G.W Kirugumi, Principal Magistrate, in Kerugoya MCELC No. E116 of 2023 on a Preliminary Objection raised by the Appellant. The Appellant had taken a Preliminary Objection that the Court lacked jurisdiction to hear and determine the dispute and the suit against the Respondent who was the Plaintiff in the Lower Court and prayed that the suit be struck out with costs. The Preliminary Objection was premised on the following grounds:-
  1. That the suit offended 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,
  2. Regulations 2, 4, 7 and 9 of the Energy (complaints and Disputes Resolution) Regulations, 2012 as read together with,
  3. Article 159(2) (c) and 169(1) (d) and (2) of *the Constitution*.
  4. Sections 9(2) and (3) of the Fair Administrative Act 2015.
2. The Learned Magistrate after hearing the Preliminary Objection ruled that the dispute concerned and related to use and occupation of land and specifically, an allegation of trespass, which in her opinion, did not fall within the jurisdiction of the Energy Regulatory Commission or the Energy and



Petroleum Tribunal, as established under the repealed Energy Act but rather was a dispute that fell to be determined under the ELC Act.

3. The Appellant, dissatisfied and aggrieved by the Learned Trial Magistrate's decision, has appealed to this Court against the Ruling on fourteen grounds set out in the Memorandum of Appeal. The grounds of Appeal can be condensed and summarized as follows:-
  1. The Learned Magistrate erred in both law and fact by failing to appreciate the factual and legal context of the dispute, particularly the nature of the issues which centered on wayleaves, rights of way, and energy infrastructure governed by the Energy Act, 2019.
  2. The Learned Magistrate erred in law and fact in mischaracterizing the dispute as a mere trespass claim, overlooking the applicable legal framework under the Energy Act and related regulations.
  3. The Learned Magistrate erred in law and fact by disregarding the requirement to exhaust statutory dispute resolution mechanisms.
  4. The Learned Magistrate erred in law and in fact when she failed to consider the Appellant's submissions, the relevant statutory provisions, and the jurisdiction of the Energy and Petroleum Regulatory Authority and Tribunal.
4. The Appellant in the Appeal sought that the Ruling by the Learned Trial Magistrate and all consequential orders be set aside, the Appeal be allowed and the Ruling be substituted with one that upholds the Appellant's Preliminary Objection dated 7<sup>th</sup> August 2023, and in the alternative, that this Court issue any orders it deems appropriate.
5. In order to determine whether or not the decision of the Subordinate Court was justified, the Court must reconsider and re-evaluate the evidence that was before the Subordinate Court. This being a first Appeal, the Court is under a duty to relook and re-evaluate the evidence afresh and it is not necessarily bound by any findings of fact that the Court below may have made. The Court can reach its own conclusions if upon evaluation of the evidence, the Court is satisfied the Lower Court applied the wrong principles in reaching the decision that it did and/or if any finding was not supported by the evidence. This principle was aptly established in the Court of Appeal Case of *Selle & Another –vs- Associated Motor Boat Co Ltd & Others* (1968) EA 123 where the Court stated as follows:-

“ --- this Court is not bound necessarily to accept the findings of fact of the Court below. An Appeal to this Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that the Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ----“
6. The Appeal was canvassed by way of written submissions. The Appellant's submissions were dated 12<sup>th</sup> November 2024, while those of the Respondent were dated 25<sup>th</sup> February 2025.
7. Having reviewed the pleadings, the Appeal record, and the evidence available before the Lower Court and considered the parties' submissions, it is clear that the Appeal turns on one ground: whether the Learned Magistrate erred in law and fact in holding that the Subordinate Court had jurisdiction to hear and determine the suit.
8. The Appellant hinged its Preliminary Objection on the claim that the Trial Court lacked jurisdiction to hear and determine the matter. It was the Appellant's position that the dispute was one that arose from actions undertaken pursuant to the provisions of the Energy Act, 2019 and there are established



mechanisms and institutions for resolving disputes arising from the [Energy Act](#) of 2019. The Appellant argues that it is a public entity licensed to carry out electricity distribution under the [Energy Act](#) and that the installation of electricity poles and wires on the Respondent's land was carried out for the purpose of distributing electricity, as regulated by the Act. Therefore, the Appellant contended, if there had been any violation, the relevant law to apply was the [Energy Act](#) and that the Respondent should have invoked the appropriate provisions for resolution of the dispute.

9. The Respondent argued that the Appellant had trespassed on her land by erecting electricity wires and poles over her private land. She sought their removal and prayed for compensation for the illegal trespass.
10. Under paragraphs 4, 5, 6, and 7 of the Plaint the Respondent pleaded as follows: -
  4. The Plaintiff avers that on diverse dates in January and March 2023, the defendant's agents trespassed on the plaintiff's land parcel No. Mutira/Kiaga/51 and erected power poles with high voltage power lines or power cable and/or wires across the Plaintiff's aforesaid land.
  5. The Plaintiff further avers that the said trespass and erection of power poles and high voltage power lines or cables and/or wire was illegal, unlawful and without the Plaintiff's consent of a way leave and has caused the Plaintiff to suffer irreparable loss and damage.
  6. The Plaintiff further avers that the Defendant's trespass onto land parcel No. Mutira/Kiaga/51 and its act of installing electric poles and power lines was contrary to Section 46 of the [Energy Act](#) Cap 314 Laws of Kenya.
  7. The Defendant's agent installed electric poles and power lines across the Plaintiff's land occupies a portion of 94 meters and 24 meters reserve from the center of the power lines on both sides. Hence  $94 \times 40 = 3760$  square meters which has caused the Plaintiff limited use and has restrained her from planting trees/crops and any construction of a building on the reserve area.
11. In prayer (a) of the Plaint, the Respondent prayed for an order compelling the Appellant to remove and relocate the electricity poles and power lines that are situated on her land and under prayer (c), she sought compensation for the reserved area of 3,760 square meters on land parcel No. Mutira/Kiaga/51.
12. The key issues were whether the Respondent's claim, framed as trespass, fell within the jurisdiction of the Lower Court or the claim ought to have been dealt with under the Dispute Resolution Mechanisms under the [Energy Act](#), 2019.
13. Section 13 of the [Environment and Land Court Act](#) elaborately provides for the jurisdiction of the ELC Court that;

“ 13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of [the Constitution](#) and with the provisions of this Act or any other law applicable in Kenya relating to the environment and land.
2. In exercise of its jurisdiction under Article 162(2)(b) of [the Constitution](#), the Court shall have power to hear and determine disputes.



- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b. relating to compulsory acquisition of land;
- c. relating to land administration and management;
- d. relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and(e)any other dispute relating to the environment and land.

14. The *Energy Act* establishes a specialized Dispute Resolution Mechanism under the auspices of the Energy and Petroleum Regulatory Authority (EPRA) and the Energy and Petroleum Tribunal (EPT). The Alternative Dispute Resolution Mechanisms under these bodies are mandatory and must be exhausted before approaching the Court. Section 11 of the *Energy Act* empowers EPRA to investigate and determine complaints or disputes between parties over any matter relating to licenses and license conditions. Section 36 of the *Energy Act*, 2019 provides as follows:-

- 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.

15. Regulation 3 of the Energy (complaints and Disputes Resolution) Regulations, 2012 has defined a complaint and dispute to include:

“complaint” includes a dissatisfaction with the service rendered by, or a practice of, any person carrying out any undertaking pursuant to a licence, permit or registration issued or granted by the Commission, under the Act;

“dispute” means a disagreement that exists, the parties acting in good faith have failed to reach an amicable resolution of a complaint after all due efforts have been made to resolve it;”

16. The issue raised by the Respondent in her Pleint was whether there was unlawful entry onto her land, the installation of electricity wires and poles, by the Appellant and whether the same ought to be removed on account of the Appellant having trespassed on her parcel of land without her authorisation or consent. These were matters that would fall to be dealt with by the Energy and Petroleum Regulatory Authority (EPRA) and the Energy and Petroleum Tribunal (EPT), as the *Energy Act* grants licensed entities the right to enter private land for purposes such as surveying, inspecting, or erecting infrastructure. Additionally, the Act regulates the specific conditions as to how,



when, by whom, and where entry to private land can occur, as outlined in Sections 170, 171, and 172 upon notice to the land owner.

17. The Court of Appeal in *Kibos Distillers Limited & 4 Others v Benson Ambuti & 3 Others* [2020]eKLR was categorical that where there was an alternative dispute Resolution Mechanism that procedure must be exhausted before the Courts jurisdiction can be invoked. The Court stated:-

“ Even if a Court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legitimately been mandated to hear and determine a dispute.”

18. The Court of Appeal further in the case of *Nicholus v Attorney General & 14 Others* [2023] KECA 34 (KLR) while outlining the three-tire Dispute Resolution Mechanism contained in the [Energy Act](#) stated that an aggrieved person first launches his complaint with the EPRA in the manner outlined in the Regulations under Regulations 4 and 7 which provide as follows;

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 service. Quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmissions, distribution, supply and use of electrical energy.

7(1) In the event that any complaint is not resolved to the satisfaction of the complaint, after exhausting the complaints handling procedures established pursuant to regulation 5, the parties may declare a dispute, and both or any one of them may refer it to the commission for recourse.

(2). A party to a dispute may refer to the commission in form S-2 as set out in the second schedule.”

Where a party is dissatisfied with the decision of EPRA, the second tier is a right to appeal to the EPT whose jurisdiction is provided in Section 36 of the [Energy Act](#) as follows;

- a. 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.
- b. The jurisdiction of the Tribunal shall not include the trial of any Criminal offence.
- c. The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.
- d. 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.
- e. The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.



- f. The Tribunal shall hear and determine matters referred to it expeditiously.”

The third and last tier involves right to appeal against a decision of the EPT to the ELC within 30 days of the decision on a point of law only. See Section 37 [Energy Act](#) which provides;

37.

- (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.
- (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a Court of law.
- (3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, Appeal to the High Court.
- (4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.”

19. It is now an established norm that when there is a statutory procedure for resolving a dispute, that procedure should be followed and fully exhausted before the aggrieved party considers going to Court. Under the doctrine of exhaustion of administrative remedies, a party must utilize all available administrative processes before seeking Court intervention. The relevant Administrative Officer should be given the opportunity to decide on the matter within their jurisdiction. Failing to exhaust these administrative remedies may affect the party’s legal standing, as these remedies represent a prerequisite that must be fulfilled before filing a case in Court. In the present matter it is patently clear that the Respondent ought to have lodged a complaint with EPRA and if not satisfied with their decision to Appeal to EPT and if again dissatisfied with their decision to come to this Court by way of Appeal.

20. In the case *United Millers Limited v Kenya Bureau of Standards & 5 others* [2021] eKLR, the Court of Appeal held: -

“In pursuit of sound legal principles, it is our disposition that the disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of the superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to the 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.”

21. The Learned Magistrate in this matter arrogated herself a jurisdiction that she never possessed and fell into error in dismissing the Preliminary Objection taken by the Appellant. The Preliminary Objection was justified and ought to have been upheld. The Appeal has merit and the same is hereby allowed. The Ruling by the Learned Magistrate is set aside and substituted with an order allowing the Preliminary Objection and striking out the Respondent’s suit before the Magistrate’s Court with costs. The Appellant is awarded the costs of the Appeal.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 19TH DAY OF JUNE 2025.**



**J. M. MUTUNGI**  
**ELC - JUDGE**

