



**Juma v Kenya Power & Lighting Co. Ltd (Environment & Land Case  
9 of 2022) [2025] KEELC 114 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 114 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 9 OF 2022**

**BN OLAO, J  
JANUARY 21, 2025**

**BETWEEN**

**PETER OWINO JUMA ..... PLAINTIFF**

**AND**

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

**RULING**

1. Peter Owino Juma (the Plaintiff) moved to this Court vide his plaint dated 24<sup>th</sup> May 2022 and filed on 28<sup>th</sup> June 2022 in which he impleaded the Kenya Power & Lighting Company Ltd (the Defendant) seeking the main remedy that the Defendant has trespassed onto the land parcel No Marach/Bumala/2622 (the suit land) by erecting electricity power supply lines thereon and should be compelled to remove the same, be permanently enjoined from interfering with the suit land and pay him damages for trespass. The basis of his claim is that on or about the 14<sup>th</sup> November 2021, the Defendant through its employees, agents or servants and without notice or the Plaintiff's consent had encroached onto the suit land and connected High Tension (H.T) power line thereon.
2. The Defendant responded by filing a defence and Preliminary Objection both dated 20<sup>th</sup> July 2022.
3. In the defence, the Defendant pleaded that this suit is res judicata, incompetent, incongruous, misconceived and an abuse of the process of the Court and that a Preliminary Objection would be raised to have it struck out.
4. The Defendant denied having encroached onto the suit land and connected thereon the High Tension (H.T) line without the Plaintiff's consent and in the alternative, if any power lines were installed on the suit land (which is denied), then the same was done pursuant to a grant of easement and it is the Plaintiff who has trespassed onto the Defendant's wayleaves trace with impunity and continues to do so and has therefore committed an offence under Section 169(1)(a) of the [Energy act](#) 2019. The matters herein are the preserve of either the Energy & Petroleum Tribunal Or The Energy & Petroleum Authority



which derive their power from the [Energy act](#) 2019 as read together with the Complaints and Disputes Resolution Regulations 2012. The Defendant pleaded therefore that the Plaintiff's claim is fraudulent, conjured to facilitate unjust enrichment and should be dismissed with costs.

5. In its Preliminary Objection, the Defendant states that this Court has no jurisdiction to hear and determine this dispute. That this suit offends the provisions of Sections 3(1), 10, 11(e), (f), (i), (k), (l), 23, 24, 36, 40, 42 and 224(e) of the [Energy act](#) 2019 together with Regulations 2, 4, 7 and 9 of the Energy (complaints & Disputes Resolution) Regulations 2012 as read together with Article 159(2) (c) and 169(1)(d) and (2) of [the Constitution](#) and Sections 9(2) and (3) of the Fair Administrative Actions Act 2015.
6. The Plaintiff filed a reply to the defence and a replying affidavit in response to the Preliminary Objection.
7. The reply to the defence is dated 3<sup>rd</sup> January 2023 and the Plaintiff has pleaded, inter alia, that the power lines were unlawfully installed on the suit land and reiterated the averments of his plaint putting the Defendant to strict proof thereof. He added that this Court is seized of the requisite jurisdiction.
8. In the replying affidavit in response to the Preliminary Objection, the Plaintiff stated that this Court has both original and appellate jurisdiction to hear all disputes relating to the Environment and Land by virtue of the provisions of Article 162(2) (b) of [the Constitution](#). That this dispute touches on trespass to land which falls under the jurisdiction of this Court as per the case of Cape Suppliers -v- Kenya Power & Lighting Company Pll 2022 Eklr And Also The Case Of Swaminarayan Flats Ltd -v- Kenya Power & Lighting Company Plc Ltd & Others 2019 eKLR. That the Plaintiff did not consent as required under Section 47 of the [Energy act](#). The Preliminary Objection should therefore be dismissed with costs.
9. For some unexplained reasons, it was not until two (2) years later that the Preliminary Objection dated 20<sup>th</sup> July 2022 was placed before me on 24<sup>th</sup> September 2024. I then directed that the Preliminary Objection be canvassed by way of written submissions.
10. Submissions were subsequently filed both by the firm of M. Korongo & Company Advocates for the Plaintiff and by the firm of Joseph Muchai Advocate for the Defendant.
11. I have considered the Preliminary Objection, the replying affidavit and the submissions by consent.
12. The Preliminary Objection touches on the jurisdiction of this Court. It is therefore a proper Preliminary Objection as defined in the locus classicus case of Mukisa Biscuit Manufacturing Company Ltd -v- West End Distributors Ltd 1969 E.A 690. And as was stated in another locus classicus case of Owners Of Motor Vessel "lillian S" -v- Caltex Oil (kenya) Ltd, jurisdiction is everything and without it, the Court must down its tools. Does this Court have the jurisdiction to determine this dispute? That is what I shall now interrogate.
13. The Plaintiff's case is that the Defendant has trespassed onto the suit land and proceeded to install power lines thereon without his consent. The Defendant's Preliminary Objection and defence is that infact the power lines were installed with the Plaintiff's consent which amounts to a grant of easement and that in any event, this is a dispute to be resolved in accordance with the provisions of the [Energy act](#) 2019 as read with the Regulations therein as well as the Provisions of Articles 159(2) (c) and 169 (1) (d) and (2) of [the Constitution](#) and Section 9(2) and (3) of the Fair Administrative Actions Act 2015.
14. There is no doubt that this Court has the jurisdiction, under Section 13 of the [Environment and Land Court Act](#), to determine all disputes relating to the Environment and Land. That would no doubt



include a claim hinged on trespass to land and which is the fulcrum of the Plaintiff's claim as is clear from paragraph 4 of his plaint. Section 3(1) of the [Energy act](#) 2019 on the other hand provides that:

“If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters-

- (a) the importation, exportation, generation, transmission, distribution, supply or use of electrical energy;
- (b) the exploration, production, transportation, distribution, and supply of any other form of energy; and
- (c) all works and apparatus for any or all of these purposes”.

Section 2 of the same Act defines the term “works” to mean –

- (a) Electrical supply lines, machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the importation, exportation, generation, transmission, distribution, supply and use of electrical energy; or
- (b) Machinery, land, buildings, structures, earth works and water works, and includes any apparatus required for the production, importation, exportation, storage, transportation, distribution and supply of any other form of energy.

The term “distribution” is defined as the ownership operation, management or control of facilities for the movement or delivery of energy to enable supply to consumers.

15. Vide Regulation 4 of the Energy (Complaints and Dispute Resolution) Regulations 2012, the complaints and disputes which can be heard by the Energy & Petroleum Regulatory Authority (the Authority) which is established under Section 9 of the [Energy act](#) are set out as:

- a. Billing, damages, disconnection, health and safety, electrical installations, interruptions, licences practices and procedures, metering, new connections and extensions, reconnections, quality of services, quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmission, distribution, supply and use electrical energy.
- b. Any other activity and/or matter regulated under the Act.

It is clear therefore that the [Energy act](#) 2019 has its own regulations which provides for dispute resolution mechanism. The Court of Appeal considered this in the case of *Abidha Nicholus -v- Attorney General & 7 Others (respondents) & National Environmental Complaints Committee (nec) & 5 Others (interested Parties) C.a. Civil Appeal No 42 of 2021 [2023 KECA 34 KLR]* and stated the following at paragraphs 37, 38 and 40 of it's judgment on 3<sup>rd</sup> February 2023:

37: “The dispute resolution mechanism envisaged by the [Energy act](#) is three tiered. The first is to raise a complaint with the Energy and Petroleum Regulatory Authority (Epra), the successor of the Energy Regulatory Commission (ERC). The [Energy act](#), 2019 repealed the [Energy act](#) No. 12 of 2006 but notwithstanding the repeal are the transitional provisions of section 224(2)(e) which reads;

Notwithstanding the provisions of  
sub-section (1) - (a)



- (e) any subsidiary legislation issued before the commencement of this Act shall, as long it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act.”

The Court then went on to provide as follows in paragraph 38:

38: “One of the subsidiary legislations saved by these provisions is the Energy (Complaints and Dispute Resolution) Regulations 2012 which are the regulations still used by EPRA as the successor of ERC. Regulation 4 (a) provides:

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, transmission, distribution, supply and use of electrical energy. Emphasis mine.

In paragraph 40, the Court held thus:

“Given that the complaint by the appellant as against KPLC relates to a way leave for transmission, then the first forum for resolution of that dispute would be before the EPRA. A party dissatisfied with the decision of the authority can invoke the second tier which is a right of appeal to the Energy and Petroleum Tribunal whose jurisdiction is provided by Section 36 of the *Energy act*:

36. Jurisdiction of the Tribunal

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.”

Having cited the above provisions and others, counsel for the Defendant has submitted as follows under the paragraph headed “summation”:

“From the reading of the aforementioned sections of the *Energy act* 2019, it is evident that the Energy & Petroleum Regulation Authority is bestowed with jurisdiction to handle matters as regards the Defendant.



The Energy & Petroleum Tribunal is clothed with jurisdiction to grant equitable reliefs including injunctions, penalties, damages and orders of specific performance. In view of the foregoing, the prayers that the Petitioner seeks can be issued by the Energy & Petroleum Tribunal by dint of Section 36(5) of the *Energy act* 2019. That Section states as follows:

The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance”.

Finally, the Defendant made the following submission in the last paragraph:

“It is the Defendant’s humble submission that the suit herein as against the Defendant is one that exclusively falls under the jurisdiction of the Energy & Petroleum Regulatory Authority, in the alternative, the Energy & Petroleum Tribunal. As such the Plaintiff must pursue it’s claim there. The Defendant prays that the suit herein be dismissed with costs.”

16. On his part, however counsel for the Plaintiff has made the following submissions after citing the provisions of Section 13 of the *Environment and Land Court Act* and Article 162(2)(b) of *the Constitution*:

“A careful examination of the pleadings herein will bring to Court’s attention that the dispute before this honourable Court is one of trespass. The Defendant illegally entered onto my property and erected an electric supply line without my consent. Therefore, the subject matter of the dispute herein purely touches on the issue of trespass which squarely falls under the jurisdiction of this honourable Court as provided for in Section 13(2) (e) of the *Environment and Land Court Act* as per the case of Cape Suppliers -v- Kenya Power And Lighting Company Plc 2022 Eklr And That Of Swaminarayan Flats Limited -v- Kenya Power And Lighting Company Ltd & 3 Others 2019 eKLR.”

As I have already stated earlier in this ruling, the Plaintiff’s claim against the Defendant is hinged on trespass to the suit land. A claim of trespass is, by virtue of the provisions of Section 13(2)(e) of the *Environment and Land Court Act*, a matter within the jurisdiction of this Court. On the other hand, the Defendant has in paragraph 6 of it’s defence pleaded a grant of easement. The *Energy act* and the Regulations therein refer to EPRA as the body to handle disputes relating to way leaves, easements or rights of way. A way leave is defined in Black’s Law Dictionary 10<sup>th</sup> Edition as:

“A right of way (usu created by an express grant) over or through land for transportation of minerals from a mine or quarry 2 The royalty paid for such right.”

An easement is defined in Section 2 of the *Land Act* to mean:

“... a non-possessory interest in another’s land that allows the holder to use the land to a particular extent, to require the proprietor to undertake an act relating to the land, or to restrict the proprietor’s use to a particular extent, and shall not include a profit.”



A trespass is defined in Black's Law Dictionary 10<sup>th</sup> Edition as:

“an unlawful act committed against the person or property of another; esp, wrongful entry on another's real property.”

Therefore, whether one looks, at the dispute as one of trespass (as pleaded by the Plaintiff) or a grant of easement (as per the Defendant's defence), it is clear to me both from the provisions of the [Energy act](#) and the Regulations thereunder as well as the binding decision in the case of *Abidha Nicholus -v- Attorney General & Others* (supra), that the Plaintiff's first port of call in this dispute is in fact the Energy And Petroleum Regulatory Authority (EPRRA) and not this Court.

17. It is of course correct that this Court has the jurisdiction under Section 13(1)(e) of the Environment and [Land Act](#) to determine a dispute relating to trespass on land. However, a procedure having been laid out in the [Energy act](#) 2019 for the resolution of such a dispute, that procedure must be followed. If there was any doubt about that, it was laid to rest in the case of *Speaker Of The National Assembly -v- Njenga Karume* 1992 KECA 42 KLR where the Court of Appeal held thus:

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by [the Constitution](#) or any Act of Parliament, that procedure should be strictly followed”.

The Supreme Court has also stated that it is a sound legal principle that parties must first exhaust all the other processes available in law for resolution of their disputes before moving to the Court. In the case of *Albert Chaurembo Mumba & 7 Others -v- Maurice Munyao & 148 Others*, Petition No 3 Of 2016 [2019 Kesc 83 Klr, The Supreme Court stated at paragraph 118 that:

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

The same Court followed its decision in the above case and went on to add in the case of *United Miller Ltd -v- Kenya Bureau Of Standards, Directorate Of Criminal Investigations & Others* Petition (application) No 4 of 2021 KESC 72 at paragraph 27 that:

“We Emphasized 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 The Statutes With The Mandate To Deal With Such Specific Disputes In The First Instance.” Emphasis mine.

Guided by all the above, it is obvious that this Court must give deference to the dispute resolution mechanism established under the [Energy act](#) 2019 and allow the Plaintiff to exhaust the remedies set out therein before approaching this Court.

18. The up-shot of all the above is that this Court, having considered all the matters herein, makes the following disposal orders on the Preliminary Objection dated 20<sup>th</sup> July 2022.



1. The Preliminary Objection is up-held.
2. The Plaintiff's suit is struck out.
3. Costs to the Defendant.

**RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 21<sup>ST</sup> DAY OF JANUARY 2025.**

**BOAZ N. OLAO**

**JUDGE**

**21<sup>ST</sup> JANUARY 2025**

