



**Mukora (Suing Through His Attorney Kenneth Maina Mukora) v
Kenya Power and Lighting Company (Environment and Land Case
E005 of 2024) [2025] KEELC 5652 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5652 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE E005 OF 2024**

**JO OLOLA, J
JULY 31, 2025**

BETWEEN

**CHARLES KABEGE MUKORA PLAINTIFF
SUING THROUGH HIS ATTORNEY KENNETH MAINA MUKORA**

AND

KENYA POWER AND LIGHTING COMPANY DEFENDANT

RULING

1. By a Complaint dated 27th February 2024, Charles Kabege Mukora suing through his attorney Kenneth Maina Mukora (the Plaintiff) prays for orders against Kenya Power and Lighting Company (the Defendant) for:
 - a. A declaration that the Defendant is not entitled to enter and/or erect over-head way leaves without consent or licence of the Plaintiff without reasonable compensation;
 - b. An order for the Defendant to vacate from occupation and/or entry and erection of way leaves on LR No. Gatarakwa/Gatarakwa Block1/1669 and 1670;
 - c. An order of permanent injunction restraining the Defendant whether by itself, its agents or servants or otherwise howsoever from entering, re-entering, erecting or re-erecting way leaves upon the LR Gatarakwa/ Gatarakwa Block 1/1669 and 1670;
 - d. Damages Kshs 660,000/=;
 - e. Exemplary damages;
 - f. Aggravated damages;



- g. Or alternatively, but without prejudice to the above prayers, an order for compensation upon valuation of the suit land; and
- h. Costs, plus interest.
2. The prayers arise from the Plaintiff's claim that he is the registered proprietor of the parcels of land known as Gatarakwa/Gatarakwa Block 1/1669 and Gatarakwa/Gatarakwa 1/1670. It is his case that the Defendant has trespassed and illegally erected electricity poles on his land without licence, notice nor the Plaintiff's consent. As a result, the Plaintiff contends that his use of the suit parcels has been disrupted occasioning him to suffer loss and damage.
3. In opposition to the suit and the prayers sought in the application, the Defendant has filed a Statement of Defence dated 15th April 2024 as well as a Notice of Preliminary Objection dated 14th June, 2024 which is the subject of this Ruling.
4. In its Statement of Defence aforesaid, the Defendant avers that the Plaintiff's suit is premature and denies that the Plaintiff was the registered proprietor of the suit properties. In addition, the Defendant denies the allegation that it did wrongfully enter the suit properties without a licence and that it had erected power lines thereon.
5. The Defendant avers that the prayers sought in the Plaint can only be issued by the Energy and Petroleum Tribunal under the powers donated to it by the [Energy Act, 2019](#) as read with the [Energy Complaints and Disputes Resolution Regulations, 2012](#).
6. Consequently, and by the Notice of Preliminary Objection dated 14th June, 2014, the Defendant urges the court to strike out this suit on the grounds that the court lacks the jurisdiction to hear and determine this dispute on account that it offends the following provisions of the law:
1. Section 3, 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. Sections 2, 4, 7 and 9 of the [Energy \(Complaints and Dispute Resolution\) Regulations 2012](#) as read together with;
 3. Article 159 (2) (c) and 169 (1) (d) and (2) of the [Constitution](#) of Kenya 2010 and
 4. Sections 9(2) and 3 of the [Fair Administrative Action Act, 2015](#)
7. Following directions issued herein on 17th September 2014, it was agreed that the Preliminary Objection be disposed of first by way of written submissions. I have accordingly carefully perused and considered the rival submissions and authorities placed before me by the Learned Advocates representing the parties.
8. It is the Defendant's submission that this case is purely concerned with wayleaves and that the issues raised by the Plaintiff are matters that ought to be dealt with under the [Energy Act, 2019](#) in the first instance. It is the defendant's case that under Section 9 of the [Energy Act, 2019](#), there is established the Energy and Petroleum Regulatory Authority and that the said Authority has powers under section 11 of the [Act](#) to deal with the complaints in the nature of the issues raised herein by the Plaintiff.
9. The Defendant has submitted that where there was a clear procedure for redress for any particular grievance prescribed by the [Constitution](#) or an Act of Parliament, the procedure should be strictly adhered to.



10. I have gone through the sections and sub-sections of the Energy Act cited by the Defendant. I have similarly read Articles 159 and 169 of the Constitution as well as Sections 9(2) and (3) of the Fair Administrative Actions Act, 2015. While the Defendant submits that the suit as filed herein offends the said provisions, I was unable to come to the same conclusion.
11. While the Energy Regulations Authority certainly has powers to investigate and determine complaints or disputes between parties and to grant certain equitable reliefs, there was nothing placed before me so far to demonstrate that this is a dispute that ought to be taken before the Authority for determination.
12. Section 3(1) of the Energy Act cited by the Defendant for instance states thus:
- “ 3 If there is a conflict between this Act and any other Act, this Act shall prevail
 (1) on the following matters—
- a. The importation, exportation, generation, transmission, distribution, supply or use of electrical energy;
- b. The exploration, production, transportation, distribution, and support of any other form of energy;
- c. All works and apparatus for any or all of these purposes.”
13. While the Defendants in their elaborate submissions cite the above as one of the sections offended by this suit, it was clear to me that the above provisions only apply where there is a transaction relating to supply of electricity or a dispute between licensees. The Defendants have not however placed anything before me to demonstrate that the Plaintiffs and the Defendants were in such a relationship.
14. Again while the Energy and Petroleum Tribunal created under Section 25 of the Energy Act has power under Section 36 of the Act to deal with certain complaints relating to energy and arising between a licensee and a third party or between licensees, absolutely nothing was placed before me to demonstrate that this is a dispute falling within the Energy Act 2019.
15. The preamble to the Energy Act, 2019 provides that it is:
- “An Act of Parliament to consolidate the laws relating to energy, to provide for National and County Government functions in relation to energy, to provide for the establishments powers and functions of the energy sector entities; promotion of renewable energy, exploration, recovery and commercial utilization of geothermal energy, regulation or midstream and downstream petroleum and coal activities; regulations, production, supply and use of electricity and other energy forms, and for connected purposes.”
16. From my perusal of the preamble to the Act and the provisions of the Act cited by the Defendant, I was unable to find anywhere where the jurisdiction of the Environment and Land Court to deal with a claim for trespass was either expressly or impliedly excluded.
17. As Sir. Charles Newbold P. pointed out in the oft cited case of *Mukisa Biscuits Manufacturing Company Limited –vs- West End Distributors Limited* (1969) EA 696:
- “A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does



nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

18. In the matter before me, it was clear to me from the citation of all sorts of provisions that the Defendant was merely engaging in a fishing expedition in the hope that the court may find that one of the provisions had been offended by the Plaintiff’s claim. I am afraid I did not find any.
19. In the premises, I did not find any merit in the Preliminary Objection. I dismiss the same with costs to the Plaintiff.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31ST DAY OF JULY, 2025

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J. O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Kibicho holding brief for Muhoho Advocate for the Plaintiff

Mr. Ododa holding brief for Ms. Kihara Advocate for the Defendant

