



**Kigunda v Kenya Power & Lighting Company (Environment and Land Petition
E024 of 2021) [2025] KEELC 7919 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7919 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E024 OF 2021
MN KULLOW, J
NOVEMBER 13, 2025
IN THE MATTER OF; ARTICLE 20(1) AND (2) OF THE CONSTITUTION OF
KENYA
2010
AND
IN THE MATTER; CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLE 6(3), 10, 20, 22,27,46,47 AND 232 OF THE
CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF BREACH OF THE RIGHT TO FAIR ADMINISTRATIVE
ACTION
AND
IN THE MATTER OF RULES 3,4(1) & 10 OF CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOM) PRACTICE &
PROCEDURE RULES 2013
AND
IN THE MATTER OF SECTIONS 142, 143, 144, 145, 146, 148, 149 AND
150 OF THE
LAND ACT NO. 6 OF 2012
AND
SECTIONS 170, 171, 173 AND 178 OF THE ENERGY ACT 2019
BETWEEN



ROBERT JAMES KIGUNDA PETITIONER

AND

KENYA POWER & LIGHTING COMPANY RESPONDENT

JUDGMENT

A. Introduction and Background

1. This Petition was commenced by way of a Petition dated 5th July 2021 by Robert James Kigunda (hereinafter “the Petitioner”) against Kenya Power & Lighting Company Plc (hereinafter “the Respondent”).
2. The Petitioner sought various declaratory, injunctive and compensatory reliefs for alleged violations of his constitutional rights under Articles 6(3), 10, 12, 20, 22, 27, 40, 46 and 47 of *akn ke act 2010 constitution the Constitution* of Kenya, 2010, arising from the Respondent’s alleged unlawful erection and upgrade of electricity power lines over his parcels of land known as L.R. Nos. 14969 38, 14969 39 and 14969 40, situated in Kasarani, Nairobi County, without his consent or compensation, and the subsequent disconnection of power supply to his residence. In support of the Petition, the Petitioner swore a Supporting Affidavit of even date, annexing documents marked “RJK-1” to “RJK-7”, including copies of the relevant title deeds, correspondence, photographs, and other evidentiary materials.
3. Upon service, the Respondent entered appearance and filed a Notice of Preliminary Objection dated 7th November 2021, contending that this Court lacked jurisdiction to entertain the Petition on account of the doctrine of constitutional avoidance, asserting that the dispute related to wayleaves and electricity connection and therefore fell within the exclusive mandate of the Energy and Petroleum Regulatory Authority (EPRA) and or the Energy and Petroleum Tribunal (EPT) established under the *akn ke act 2019 1 Energy Act*, 2019.
4. The Court, after hearing both parties on the said Preliminary Objection, rendered its Ruling on 28th February 2022, finding that the issues raised by the Petitioner went beyond the ordinary regulatory or technical disputes contemplated under the *akn ke act 2019 1 Energy Act*, and instead raised constitutional questions on the alleged violation of fundamental rights, including the right to property. Consequently, the Preliminary Objection was dismissed with costs.
5. Following that determination, the Respondent filed its Replying Affidavit dated 13th September 2022, together with witness statements and a bundle of documents, and later filed its Written Submissions dated 5th July 2025, opposing the Petition on both factual and legal grounds.
6. In the course of proceedings, the Respondent further filed a Notice of Motion dated 18th July 2023 seeking review of the Court’s Ruling of 28th February 2022, arguing that a subsequent decision of the Court of Appeal in *Nicholus -Vs- Attorney General & 14 Others; NECC & 5 Others (2023) eKLR* had clarified that disputes relating to wayleaves and energy infrastructure fall within the original jurisdiction of the Energy and Petroleum Regulatory Authority and Tribunal, and not the Environment and Land Court. The Respondent therefore prayed that the earlier ruling be reviewed, set aside and substituted with an order upholding its Preliminary Objection.
7. The Petitioner opposed the said application through a Replying Affidavit sworn on 15th August 2023, arguing that the Respondent had not discovered any new and important matter to warrant a review,



and that the reliance on a subsequent Court of Appeal decision amounted to raising a point of law, which is properly a ground for appeal, not review.

8. Upon hearing both parties, the Court delivered its Ruling on 20th December 2023, holding that the Respondent's application did not meet the threshold under Order 45 Rule 1 of the Civil Procedure Rules. The Court reaffirmed its earlier position that the Petition raised purely constitutional and property rights questions, and that the subsequent Court of Appeal decision did not constitute a "new matter" for review as contemplated under the law. Consequently, the Application for Review was dismissed with costs to the Petitioner.
9. Following the dismissal of the review application, the matter proceeded for full hearing on merits. Before the commencement of the hearing, and with the consent of both parties, the Court conducted a site visit (*locus in quo*) on the suit properties known as L.R. Nos. 14969 38, 14969 39 and 14969 40 situated in Kasarani, Nairobi County, for purposes of appreciating the subject matter of the Petition. The visit was attended by the Petitioner, representatives of the Respondent, and learned counsel for both parties. A record of the visit was duly taken and forms part of the proceedings herein.

B. Hearing

The Petitioner's Case

10. The Petitioner, Mr. Robert James Kigunda, testified as PW-1 and adopted his Supporting Affidavit sworn on 5th July 2021, together with all annexures marked RJK-1 to RJK-7, as part of his evidence-in-chief. He produced as exhibits copies of his title deeds for L.R. Nos. 14969 38, 14969 39 and 14969 40 (Exhibit RJK-1), the letter addressed to the Respondent dated 29th November 2002 requesting the realignment of power lines (Exhibit RJK-3), and several photographs showing the power lines traversing his property and the low-hanging cables (Exhibits RJK-2 and RJK-4). He also produced photographs of the disconnected power supply to his home (RJK-5), copies of letters of complaint addressed to the Respondent (RJK-6), and SMS printouts of electricity bills sent to him after disconnection (RJK-7).
11. In his testimony, PW-1 stated that he is the registered proprietor of the suit properties, which he acquired and developed as his family residence. He entered into a Power Supply Agreement with the Respondent in 1984 under Account No. 1098817, where the Respondent supplied electricity to his premises through a single-phase domestic line drawn from the nearby D.O.'s line transformer. To facilitate this connection, he allowed the Respondent to place a single pole and overhead wire across a small portion of his land, which he said was done solely for his household connection. He explained that he never executed any formal wayleave agreement, nor did he receive any form of compensation for the use of his land, as the arrangement was purely to serve his home.
12. He further testified that in 2001, after subdivision and sale of portions of his land, he wrote to the Respondent asking that the existing line be realigned to the newly created road reserve, since the original line now cut across interior parcels. The Respondent, however, allegedly ignored his request and instead extended the line to supply power to neighbouring plots. According to him, in 2002, the Respondent upgraded the line from single-phase to three-phase without his consent, and this caused the cables to sag dangerously low.
13. He stated that the line now serves commercial users beyond his property. He told the Court that as a result, he has been unable to use or sell the land due to the danger posed by the wires. He further testified that in May 2019, when he persisted in demanding that the Respondent reroute the line, his power supply was disconnected without notice, yet he had no outstanding bills. Despite that, he



continued receiving bills from the Respondent. He described this act as punitive, discriminatory, and a violation of his constitutional rights under Articles 27, 28, 29, 40, 46, and 47.

14. On cross-examination, PW-1 denied ever signing a formal Wayleave Agreement in 1984 and maintained that if one existed, the Respondent should have produced it. He confirmed that his letters of 2002 sought rerouting of the line, and he reiterated that the Respondent's insistence that he pay Kshs. 161,449 for relocation was unfair since the trespass was of their own making. He insisted that the upgrading from single-phase to three-phase constituted a new use requiring fresh consent under Sections 170, 171 and 173 of the *akn ke act 2019 1 Energy Act, 2019*. He closed his testimony by emphasizing that the continued existence of the line on his land was a continuing trespass and prayed for removal of the same, compensation for loss of use, and general damages.

The Respondent's Case

15. The Respondent, Kenya Power and Lighting Company Plc (KPLC), called two witnesses in support of its defence RW-1, Mr. Marvin Mutembei Kithinji, a Wayleaves Officer, and RW-2, Mr. John Okello Zangi, an officer in the Respondent's Distribution Department. The Respondent produced its bundle of documents dated 16th February 2024, which was marked as Exhibit D-1. The bundle contained, among other documents, the Kenya Power Distribution Standards and Guidelines Manual, Issue No. 1 of June 2021, internal service printouts from the Incident Management System (INCMS) evidencing the Petitioner's complaint of 20th February 2019, and the system-generated quotation of Kshs. 161,449 for relocation of the Petitioner's service line. It also included a set of photographs showing Respondent's employees attending to the power lines and the Petitioner allegedly confronting them on site.
16. RW-1, Mr. Kithinji, testified that the Respondent and the Petitioner entered into a valid wayleave arrangement in 1984 at the time of the Petitioner's first electricity connection. He explained that while the physical copy of the agreement could not be retrieved from the Respondent's archives, the existence of the wayleave was acknowledged by the Petitioner himself in paragraph 6 of his Petition and in his Supporting Affidavit. He stated that the line erected was a low-voltage line, and that the conversion from single-phase to three-phase did not alter the voltage, hence no new consent was required. He further relied on Clause 5.2 and 5.3 of the Distribution Guidelines Manual (Exhibit D-1) to explain that the size of the wayleave corridor is determined by voltage, not the number of phases, and that both the single and three-phase lines in question fall under the low-voltage category requiring the same clearance.
17. On cross-examination, RW-1 maintained that the Petitioner's consent granted in 1984 covered the existing line and its maintenance. He denied that the Respondent's actions amounted to trespass and asserted that upgrading the number of phases is a standard technical process within the same category of voltage. He also stated that the Respondent's officers visited the site several times to address the Petitioner's concerns, but the Petitioner was uncooperative and on occasions chased them away, hindering maintenance efforts.
18. RW-2, Mr. John Okello Zangi, adopted his witness statement and confirmed that he was part of the team that inspected the site following the Petitioner's complaint of power failure in February 2019. He testified that upon inspection, they found the service conductors to the Petitioner's house broken. However, the service line crossed a neighbour's property, and the said neighbour refused to grant access for repairs due to a personal dispute between the two. He explained that the Respondent therefore advised both parties that the only solution was relocation of the line, for which quotations were issued. The Petitioner's neighbour paid for relocation and was reconnected, while the Petitioner refused to pay the quoted amount, hence the delay in his reconnection.



19. RW-2 further testified that when officers later found the Petitioner had illegally reconnected power to his house using an unapproved line, they disconnected it for safety reasons as required by law. He emphasized that such illegal connections are dangerous and constitute a criminal offence. He denied that the Respondent acted with malice or discrimination and stated that the disconnection was done purely for safety and regulatory compliance under Section 176 of the *Kenya Electricity Act, 2019*.

C. Submissions:

Petitioner's Submissions

20. The Petitioner filed their submissions dated 20th June 2025 and submitted that the Respondent's erection and subsequent upgrade of electricity infrastructure across L.R. Nos. 14969 38, 14969 39 and 14969 40 (Kasarani) was done without prior written consent, contrary to Sections 170, 171 and 173 of the *Kenya Electricity Act, 2019*, and without compensation as contemplated under Section 173 (consent and compensation) and Section 177 (liability to compensate for damage or loss). It is urged that Section 170 permits development of energy infrastructure only "subject to this Act and relevant written law," hence compliance with the consent and compensation regime is mandatory.
21. The Petitioner relies on the Respondent's Kenya Power Distribution Standards & Guidelines Manual, Issue No. 1 (June 2021), particularly Clauses 5.1-5.5, which define wayleaves as rights of way easements requiring legal acquisition, set objectives to ensure quality wayleave agreements and payment for property damage, and outline the wayleave officer's responsibilities and content of a valid agreement. The Petitioner cites a NOTE at page 7 of the Manual to the effect that while a wayleave acquired serves the new line and future maintenance, if a line is upgraded to a higher voltage, fresh wayleave consents must be obtained due to the extended trace. It is contended that there is no evidence of a fresh consent upon upgrade.
22. As to facts, the Petitioner points to photographic material produced by both parties depicting low-lying cables; and to admissions by RW-2 identifying himself in the photographs. The Petitioner submits that even on the Respondent's own standards, lines built without proper wayleaves are illegal, and that the continued presence after the alleged upgrade to three-phase constitutes continuing trespass, impeding meaningful use of the land. It is further submitted that when the Petitioner sought rerouting, the Respondent issued a relocation quotation of Kshs. 161,449, and thereafter disconnected his supply on 12th May 2019, actions said to be punitive and in breach of Articles 27, 40, 46 and 47 of *Kenya's Constitution* and Sections 136, 140 and 142 of the *Kenya Electricity Act, 2019*.
23. In support, the Petitioner cites *Wilfred Juma Wasike & 11 others v Ministry of Interior* [2022] eKLR (due process and compensation in acquisition), *Nasela & Mukakaik Ltd v KURA* [2023] KEELC 21544 (trespass and damages), and *Mwandogho v KETRACO* [2022] KEELC 3923 (entry without consent amounts to trespass). On relief, he prays for declarations, a mandatory order to remove reroute the lines, general, punitive exemplary and aggravated damages, mesne profits, adoption of his valuations (Tysons: LR 14969 39 at Kshs. 180,000,000; LR 14969 38 at Kshs. 22,000,000; severed portion Kshs. 7,000,000), Kshs. 10,000,000 as constitutional damages by parity with *Githii v KAA* [2022], Kshs. 3,000,000 for trespass (considering duration and inflation), together with costs and interest.



Respondent's Submissions

24. In its submissions dated 5th July 2025 The Respondent isolates the issues as: (a) whether the Petition offends the doctrine of constitutional avoidance in light of the *akn ke act 2019 1 Energy Act* dispute-resolution framework (EPRA EPT); (b) whether lines were erected without consent; (c) whether upgrading from single-phase to three-phase violated any wayleave; (d) whether disconnection and non-relocation were unlawful; (e) whether any constitutional rights were breached; (f) entitlement to reliefs; and (g) costs. It is submitted that the dispute is a wayleave disconnection complaint to be commenced before EPRA or the Energy and Petroleum Tribunal, relying on *Communications Commission of Kenya -Vs- Royal Media [2014]* on constitutional avoidance.
25. On consent, the Respondent submits that a wayleave consent was granted in 1984 when the Petitioner was first connected (Account No. 1098817). It is contended that the existence of that consent is admitted in the Petitioner's pleadings (grant of a single-phase line to his house), and that parties are bound by their pleadings. While a written copy could not be retrieved, the Respondent asserts that both sides pleaded the existence of the consent, and that Section 176 permits entry for operation, inspection, repair or removal where infrastructure has been laid in accordance with the Act.
26. On upgrade, the Respondent relies on its Distribution Standards & Guidelines Manual to submit that clearance trace is determined by voltage class, not by the number of phases. It is contended the line remained low-voltage, and therefore no fresh consent was required; a fresh consent would be necessary only if upgrading to medium or high voltage or constructing a new line. On relocation and disconnection, the Respondent narrates that in February 2019 a site problem was complicated by a neighbour dispute, both parties refusing access across each other's land; relocation quotations were issued, the neighbour paid and was reconnected, but the Petitioner declined to pay Kshs. 161,449, and was later found with an illegal connection which was disconnected for safety and compliance.
27. On remedies, the Respondent cites Section 107 of the *akn ke act 1963 46 Evidence Act*, Anarita Karimi, Mumo Matemu, and Japheth Ododa Origa -Vs- Vice Chancellor University of Nairobi & 2 Others [2018] eKLR, submitting that the Petitioner did not prove constitutional violations with precision, and that mesne profits—being special damages—were neither strictly pleaded nor proved (relying on *Karanja Mbugua -Vs- Marybin [2014]* and *Peter Mwangi Mbuthia -Vs- Osman [2014]*). It is submitted that aggravated exemplary damages are unavailable absent the *Rookes -Vs- Barnard* thresholds (as adopted in *Obonyo, Bank of Baroda -Vs- Timwood*, and *Godfrey Mbogori v Nairobi City County*). The Respondent prays that the Petition be dismissed with costs.

Issues for Determination

28. I have carefully considered the Petition dated 5th July 2021, the Supporting and Replying Affidavits, the oral testimony of witnesses, the documentary exhibits produced by both parties, and the rival written submissions. I have equally considered the relevant provisions of *akn ke act 2010 constitution the Constitution of Kenya, 2010*, the *akn ke act 2019 1 Energy Act, 2019*, the *akn ke act 2012 6 Land Act, 2012*, and the authorities cited by both counsels.
29. From the pleadings, evidence and submissions, the following issues arise for determination:
 - a. Whether this Court has jurisdiction to entertain the Petition.
 - b. Whether the Respondent lawfully entered upon and erected electricity infrastructure on the Petitioner's land, and whether the subsequent upgrade of the line and continued occupation of the Petitioner's property without fresh consent or compensation amounts to unlawful



occupation, continuing trespass, or violation of the Petitioner’s proprietary rights under Article 40 of *akn ke act 2010 constitution the Constitution* and Sections 170, 171 and 173 of the *akn ke act 2019 1 Energy Act, 2019*.

- c. Whether the Respondent’s disconnection of electricity supply and its overall conduct violated the Petitioner’s constitutional rights under Articles 27, 28, 29(d), 40, 46 and 47 of *akn ke act 2010 constitution the Constitution* and the *akn ke act 2019 1 Energy Act, 2019*
- d. Whether the Petitioner is entitled to the reliefs sought in the Petition,

Analysis and Determination

Issue No. 1: Whether this Court has jurisdiction to entertain the Petition

30. The question of jurisdiction is the bedrock of any judicial process. The law is settled that a court without jurisdiction must down its tools the moment the question is raised. This principle was articulated in the landmark decision of Owners of the Motor Vessel “Lillian S” -Vs- Caltex Oil (Kenya) Ltd [1989] KLR 1, where Nyarangi J.A. stated that “jurisdiction is everything and without it, a court has no power to make one more step.”
31. The Respondent raised the issue of jurisdiction at the earliest opportunity by way of a Preliminary Objection dated 7th November 2021, contending that the dispute relates to wayleaves, disconnection, and electricity distribution matters allegedly falling within the exclusive mandate of the Energy and Petroleum Regulatory Authority (EPRA) and the Energy and Petroleum Tribunal (EPT) as established under the *akn ke act 2019 1 Energy Act, 2019*.
32. After considering the objection, this Court delivered a detailed Ruling on 28th February 2022, where it found that the Petitioner’s grievance is not a mere technical or regulatory complaint, but rather a claim anchored on constitutional violations, specifically the alleged infringement of property rights under Article 40 and the right to fair administrative action under Article 47 of *akn ke act 2010 constitution the Constitution*. The Court expressly held that the issues raised were within the constitutional and land jurisdiction of the Environment and Land Court under Article 162(2)(b) of *akn ke act 2010 constitution the Constitution* and Section 13 of the *akn ke act 2011 19 Environment and Land Court Act*. The Court therefore dismissed the Preliminary Objection with costs, confirming its jurisdiction to hear the Petition on the merits.
33. Dissatisfied with that ruling, the Respondent returned to Court through an application dated 18th July 2023 seeking a review of the decision of 28th February 2022. The application was predicated on the claim that the Court of Appeal in Nicholus -Vs- Attorney General & 14 Others; NECC & 5 Others (Interested Parties) [2023] eKLR (Kisumu) had clarified that disputes relating to wayleaves should first be heard by EPRA and EPT. The Respondent thus urged this Court to vary or set aside its earlier decision and uphold its objection to jurisdiction.
34. Upon hearing both parties, this Court (W. N. Githinji J.) delivered a further Ruling on 20th December 2023, dismissing the application for review with costs. In that decision, the Court held that the Respondent had not demonstrated any new and important matter or evidence to warrant review under Order 45 Rule 1 of the Civil Procedure Rules. The Court found that the alleged “discovery” of a Court of Appeal decision did not constitute new evidence within the meaning of the rule, since a change in the interpretation of the law or discovery of precedent is a ground for appeal, not review. The Court emphasized that its earlier finding of jurisdiction remained correct and binding, as the Petition raises constitutional and property-rights questions, not a mere administrative or regulatory claim under the *akn ke act 2019 1 Energy Act*.



35. It is therefore evident that the question of jurisdiction has been raised, heard, and conclusively determined by this Court on two distinct occasions first, in the Ruling of 28th February 2022, and again in the Ruling of 20th December 2023. In both instances, the Court upheld its jurisdiction to entertain the Petition, finding that the issues in dispute fall squarely within its constitutional and statutory mandate.
36. The Respondent, having elected not to appeal against either of those Rulings, is bound by the doctrine of finality and cannot reopen the same issue through the back door. As such, this Court's jurisdiction to hear and determine the Petition on its merits stands firmly settled.

Issue No. 2: Whether the Respondent lawfully entered upon and erected electricity infrastructure on the Petitioner's land, and whether the subsequent upgrade of the line and continued occupation of the Petitioner's property without fresh consent or compensation amounts to unlawful occupation, continuing trespass, or violation of the Petitioner's proprietary rights under Article 40 of *akn ke act 2010 constitution the Constitution* and Sections 170, 171 and 173 of the *akn ke act 2019 1 Energy Act, 2019*.

37. The Petitioner's case, as pleaded and supported by affidavit and oral evidence, is that he is the registered proprietor of L.R. Nos. 14969 38, 14969 39 and 14969 40, and that the Respondent, without his written consent or compensation, erected and later upgraded electricity distribution lines across his land, cutting through the parcels diagonally and rendering them unutilizable. He further contends that although he had initially permitted the Respondent in 1984 to draw a single-phase domestic line to his residence, the Respondent later converted and expanded the same to a three-phase line serving external consumers without notice, consent, or compensation, contrary to the *akn ke act 2019 1 Energy Act* and the Respondent's own technical manuals.
38. The Respondent, while acknowledging the presence of its infrastructure on the Petitioner's land, asserts that a wayleave consent existed from 1984, granted by the Petitioner himself at the time of his first power connection. Although no copy of the wayleave document was produced, the Respondent contends that both parties pleaded its existence, and that it thereby lawfully entered and installed the original line. It further argues that the later conversion from single-phase to three-phase did not change the voltage class, hence did not require a fresh consent under the *akn ke act 2019 1 Energy Act*.
39. The starting point is the *akn ke act 2019 1 Energy Act, 2019*. Section 170 allows a person to develop energy infrastructure on, through or under any land "subject to the provisions of this Act and relevant written law." Section 171(1) makes it mandatory that any person wishing to enter upon another's land for such development "shall seek the prior consent of the owner," while Section 173(1) provides that such consent shall be in writing and accompanied by an agreement on compensation, and that the consent shall be binding on all parties with an interest in the land. The certificate of consent contemplated under Section 173(2) must also be issued in the prescribed form.
40. The Respondent did not produce any written consent, wayleave agreement, or certificate issued under Section 173. Its position that the document could not be traced in its records, while asserting that both parties pleaded its existence, does not discharge the statutory burden. The Petitioner's acknowledgment that he once allowed a connection for his own supply does not translate into a perpetual easement or a general authority to upgrade or extend the servitude. As held in *Mwandogho -Vs- Kenya Electricity Transmission Co. Ltd [2022] KEELC 3923 (KLR)*; the burden of proving that a wayleave was lawfully and procedurally acquired lies with the licensee.
41. Moreover, Clause 5.1–5.5 of the Respondent's own Kenya Power Distribution Standards and Guidelines Manual, Issue No. 1 (June 2021) defines a wayleave as an easement that gives the right to



use or restrict land for the benefit of others, and requires that such wayleaves be lawfully documented, property damage assessed and compensated, and fresh consents obtained where a line is upgraded to a higher voltage. Notably, the NOTE at page 7 of the same manual provides that while a wayleave serves for a line being constructed and its maintenance, “should the line be upgraded to higher voltage, fresh wayleave consents must be obtained because of the extended width of the wayleave trace.”

42. The Respondent did not produce any technical or documentary evidence to demonstrate that the upgrade from single-phase to three-phase did not affect voltage or corridor width. Its own officer, RW-2, conceded during cross-examination that the new line supplies multiple consumers and that the power lines now hang lower than design specifications. In the absence of technical drawings or engineering specifications to the contrary, the Court is persuaded that the upgrade materially altered the line configuration and burden on the Petitioner’s land, thereby necessitating a fresh wayleave consent and compensation under Section 173 of the Act.
43. The continued occupation of the Petitioner’s land by the upgraded power line, without such consent or compensation, therefore constitutes an irregular occupation and continuing trespass. In *Nasela & Mukakaik Ltd -Vs- Kenya Urban Roads Authority & 2 others* [2023] KEELC 21544 (KLR), the Court held that entry onto private land without lawful consent, even for public infrastructure, amounts to trespass, notwithstanding the public interest served. The same principle applies here: statutory bodies are bound by the rule of law and must obtain lawful authority before burdening private land.
44. Under Article 40(3) of *akn ke act 2010 constitution the Constitution*, no person shall be deprived of property except in accordance with the law and upon prompt and just compensation. The Respondent’s conduct in maintaining its power infrastructure over the Petitioner’s land without following the prescribed process under the *akn ke act 2019 1 Energy Act* and without compensation infringes the Petitioner’s constitutional right to property.
45. The Court therefore finds that while there may have been an initial consent for a domestic supply line, the Respondent’s subsequent upgrade and continued use of the Petitioner’s land for broader distribution purposes, absent a fresh written consent and compensation, was unlawful, and amounts to continuing trespass and violation of Article 40 of *akn ke act 2010 constitution the Constitution*.

Issue No. 3: Whether the Respondent’s disconnection of electricity supply and its overall conduct violated the Petitioner’s constitutional rights under Articles 27, 28, 29(d), 40, 46 and 47 of *akn ke act 2010 constitution the Constitution* and the *akn ke act 2019 1 Energy Act*, 2019

46. The Petitioner contends that the Respondent’s act of disconnecting electricity supply to his premises on or about 12th May 2019 was arbitrary, discriminatory, and punitive, and that the disconnection occurred soon after he raised a complaint regarding the illegal passage of power lines across his land. He asserts that no notice, explanation, or outstanding bill was issued to him prior to the disconnection and that, despite the disconnection, the Respondent continued to bill him monthly, aggravating the violation of his rights.
47. The Respondent admits disconnecting the Petitioner’s electricity but maintains that the disconnection was lawful. It avers that after a dispute arose between the Petitioner and his neighbour over service lines passing across each other’s property, both were advised to apply for relocation of their lines at a quoted cost of Kshs. 161,449. The Respondent states that the neighbour complied and was reconnected, while the Petitioner declined to pay, resulting in continued disconnection. It further claims that the Petitioner later engaged in illegal reconnection, prompting enforcement and removal of the unauthorized supply.



48. The key question, therefore, is whether the disconnection was conducted in accordance with the law and with due regard to the Petitioner's constitutional and statutory rights.
49. Section 136(1)(c) of the *Kenya Electricity Act, 2019* imposes on an electricity transmitter the duty to "provide non-discriminatory open access to its transmission system for use by a licensee or an eligible consumer on payment of fair and reasonable charges." Similarly, Section 140(d) imposes on a distributor the obligation to "provide non-discriminatory open access to its distribution system for use by any licensee, retailer or eligible consumer upon payment of prescribed use charges." Further, Section 142(1) makes it mandatory for a distributor to "plan and construct the requisite electric supply lines to enable any person in the licensee's area of supply receive electrical energy."
50. These statutory provisions must be read together with Article 47(1) of *Kenya Constitution*, which guarantees every person the right to administrative action that is lawful, reasonable, and procedurally fair, and Article 46(1), which safeguards consumer rights, including the right to goods and services of reasonable quality and to information necessary for full enjoyment of such services.
51. The Respondent did not produce any notice of disconnection issued to the Petitioner, nor any evidence of outstanding bills or illegal connection reports prior to the 12th May 2019 disconnection. The purported quotation for relocation, standing alone, does not constitute a lawful basis to suspend an existing and paid-for supply connection. Indeed, disconnection is an adverse administrative action, and the law imposes a duty to give prior notice, afford the consumer an opportunity to be heard, and provide written reasons for such action.
52. In *Wilfred Juma Wasike & 11 Others -Vs- Ministry of Interior and Coordination & Another* [2022] eKLR, the Court held that where public authorities interfere with private property or services, due process requires prior notice, reasons, and opportunity to respond. The Court further emphasized that denial of such procedural safeguards violates Articles 40 and 47 of *Kenya Constitution*.
53. In the instant case, the Respondent's own witness, RW-2, admitted that the Petitioner's property has remained disconnected since May 2019, and that no written communication was issued explaining the decision. It was further admitted that no follow-up was made to reconnect the Petitioner despite his status as a longstanding consumer since 1984.
54. In the foregoing the Court finds that the disconnection was done without notice, without hearing, and without lawful justification, and therefore violated the Petitioner's rights to fair administrative action (Article 47), consumer protection (Article 46), and dignity (Article 28). Further, the selective disconnection while other consumers remained connected, and the demand for relocation fees as a precondition for service restoration, amount to discriminatory treatment contrary to Article 27 of *Kenya Constitution*.

Issue no 4: Whether the Petitioner is entitled to the Reliefs Sought

55. The Petitioner seeks several reliefs including declaratory orders, mandatory injunction, general and compensatory damages, and costs. The Petition having been found meritorious on the earlier issues, it follows that the question now before the Court is the nature and extent of reliefs that meet the ends of justice.
56. The uncontroverted evidence is that the Respondent erected and continues to maintain high-voltage electric power lines across the Petitioner's parcels of land without a valid, written wayleave consent and without compensating him. The Respondent's own witness (RW-2) conceded that the power lines



traverse the property, are low-lying, and pose danger, thus restricting the Petitioner's full use of the land. That occupation amounts to continuing trespass and deprivation of use.

57. The Petitioner further proved that on or about 12th May 2019, his electricity supply was disconnected following his protest over the unlawful line, an action the Court has already found to be unreasonable and contrary to Articles 27, 40, 46 and 47 of *akn ke act 2010 constitution the Constitution*.
58. Having proved violation of both statutory and constitutional rights, the Petitioner is entitled to declaratory and compensatory remedies. The Court is however guided by the settled principle that damages must be compensatory, not punitive, and should reflect the extent of infringement proven by evidence. (See *Fleetwood Enterprises Ltd -Vs- KPLC [2015] eKLR*)

Final Disposition

59. Having considered the pleadings, evidence and applicable law, judgment is entered in favour of the Petitioner against the Respondent as follows:
- a. A Declaration that the Respondent's erection and continued maintenance of electricity infrastructure over L.R. Nos. 14969 38, 14969 39 and 14969 40 (Kasarani) without the Petitioner's written consent or compensation is unlawful, unconstitutional and constitutes continuing trespass, contrary to Article 40 of *akn ke act 2010 constitution the Constitution* and Sections 170–173 of the *akn ke act 2019 1 Energy Act, 2019*.
 - b. A Declaration that the Respondent's disconnection of electricity supply to the Petitioner's residence on or about 12th May 2019 was unlawful, unreasonable and procedurally unfair, in violation of Articles 27, 46 and 47 of *akn ke act 2010 constitution the Constitution*.
 - c. A Mandatory Order directing the Respondent to, within six (6) months from the date hereof, remove, realign or reroute the impugned power lines and poles from the Petitioner's land, in consultation with the Petitioner and relevant authorities.
 - d. The Respondent shall pay the Petitioner:
 - i. Kshs.3,000,000 - for compensation for the affected portion of land and loss of use;
 - ii. Kshs.500,00 - for general damages for continuing trespass;
 - iii. General Damages for violation of constitutional rights has not been proved and are disallowed.
 - e. The Petitioner shall have the costs of the Petition.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF NOVEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Judgment delivered in the presence of: -

for the Applicant

for the 1st Respondent

for the 2nd Respondent



Philomena W. Court Assistant

