



Kariuki & another v Kenya Power & Lighting Co. Ltd (Environment and Land Case E034 of 2024) [2025] KEELC 7868 (KLR) (12 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7868 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E034 OF 2024**

**JM MUTUNGI, J
NOVEMBER 12, 2025**

BETWEEN

JOSEPH MUTEMA KARIUKI 1ST PLAINTIFF

PETER WAMBUGU KARIUKI 2ND PLAINTIFF

AND

KENYA POWER & LIGHTING CO. LTD DEFENDANT

RULING

1. The Defendant, Kenya Power & Lighting Company Limited, filed a Notice of Preliminary Objection dated 23rd October 2024. The objection was taken on the ground that this Court lacks jurisdiction to hear and determine the dispute as framed in the Plaint and that the suit, together with all consequential orders, should be struck out with costs. The objection was premised on the provisions of Sections 3(1), 10, 11(e)(f)(i)(k) and (l), 23, 24, 25, 36, 40, 42, 159(3), 160(3), and 224(2)(e) of the *akn ke act 2019 1 Energy Act*, 2019; Regulations 2, 4, 7, and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012; Articles 159(2)(c) and 169(1)(d) and (2) of *akn ke act 2010 constitution the Constitution of Kenya*, 2010; and Sections 9(2) and (3) of the *akn ke act 2015 4 Fair Administrative Action Act*, 2015.
2. The Preliminary Objection was lodged after the Plaintiffs filed a Plaint dated 2nd October 2024. In the suit, the Plaintiffs sought, among other orders, a declaration that on 30th July 2024 the Defendant unlawfully trespassed upon land parcel L.R. Baragwe Thumaita 3408, causing permanent and irreparable damage; an order of permanent injunction compelling the Defendant to cease trespass and remove all poles, power lines, and a transformer situated on the land; an order of restoration of the land upon removal of the installations; compensatory damages as valued in a report dated 8th August 2024; general damages for continuous trespass that allegedly had persisting since 2015; interests; and costs of the suit.



3. The Plaintiffs pleaded that the 1st Plaintiff is the registered owner of the suit land, while the second Plaintiff has been in actual possession and utilising it commercially since 2018. They averred that the land is a subdivision of land parcel Baragwe Thumaita 636, which belonged to their late father. According to them, on 30th July 2024, the Defendant's agents entered the land without notice, cut down trees, fruit trees, and maize crops, and claimed that the vegetation interfered with existing high voltage power lines and poles standing on the land.
4. The Plaintiffs contended that the destruction was illegal, unjustified, and undertaken without prior notice, consent, or compensation as required by law. They further asserted that the continued presence of the high voltage lines made the land unsafe and unusable for development, and that deprived them of their right to enjoy their property fully.
5. The Court directed that the Preliminary Objection be canvassed by way of written submissions, and the parties filed their respective submissions.
6. The Plaintiffs filed their written submissions dated 15th May 2025. They framed one issue for consideration, namely, whether this Court had jurisdiction to hear and determine the matter. Counsel submitted in the affirmative.
7. It was their case that the dispute was not strictly about wayleaves as alleged by the Defendant but rather, that the Defendant had, without any lawful authority, illegally installed power poles and transmission lines on their private land and further entered the land, destroying developments thereon. Counsel argued that property rights are constitutionally protected under Article 40 of *akn ke act 2010 constitution the Constitution*, and that the Defendant's actions amounted to a violation of the Plaintiffs' property rights.
8. In support of their submission, the Plaintiffs relied on the case of Kenya Power & Lighting Company Ltd v Eunice Ringera & George Joseph Kang'ethe & Another (Consolidated CA Nos. E247 and E248 of 2020) and the case of Abida Nicholus v Attorney General & Others (Supreme Court Petition No. E007 of 2023)(2023)KESC 113 (KLR).
9. They therefore urged the Court to dismiss the Preliminary Objection with costs.
10. The Defendant filed its written submissions dated 6th May 2025. Counsel also identified one issue for consideration: whether this Court had jurisdiction to hear and determine the Plaintiff and the application as against the Defendant.
11. It was submitted on behalf of the Defendant that under the *akn ke act 2019 1 Energy Act, 2019* and the Energy (Complaints and Disputes Resolution) Regulations, 2012, the Energy and Petroleum Regulatory Authority (EPRA) has power to investigate and determine complaints between parties and to grant equitable relief. Pursuant to those provisions, it was argued, this Court lacked jurisdiction to hear and determine the claim or grant the reliefs sought by the Plaintiffs.
12. The Defendant's Counsel further submitted that Section 25 of the *akn ke act 2019 1 Energy Act, 2019* establishes the Energy and Petroleum Tribunal for the purpose of hearing and determining disputes and Appeals that arise under the Act. According to the Defendant, the Plaintiffs' complaint concerns alleged trespass and the unlawful placement of live electricity wires and installations on their land, which is a matter governed by the *akn ke act 2019 1 Energy Act*. The Defendant argued the Act provides a clear procedure for redress of grievances arising from acts done under it, and there was no indication that the Plaintiffs had pursued the statutory process provided under the Act.



13. The Defendant therefore submitted that the present suit was prematurely before this Court. In conclusion, Counsel urged the Court to uphold the Preliminary Objection, dismiss the Plaintiffs' suit, and award costs to the Defendant.
14. Having considered the Notice of Preliminary Objection, the pleadings, and the parties' submissions, the issue that arises for determination is whether this Court has jurisdiction to hear and determine the Plaintiffs' claim as framed in the plaint dated 2nd October 2024.
15. A preliminary objection was defined in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696* as consisting of a pure point of law which, if argued successfully, may dispose of the suit. Whether or not a Court has Jurisdiction is a pure point of law and, once raised, must be addressed in limine. In the case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1*, the Court held that jurisdiction was everything, and without it a court must down its tools as it would be engaging in a futile exercise if it proceeded to hear the suit if it lacked jurisdiction.
16. The Defendant's case is that the Plaintiffs' claim, though framed as trespass, arises from the existence of high voltage electricity poles, lines, and related installations, matters which are regulated by the *akn ke act 2019 1 Energy Act, 2019*. The *akn ke act 2019 1 Energy Act* establishes a dispute resolution framework under Sections 11, 24, 25, and 36, which vests original jurisdiction in the Energy and Petroleum Regulatory Authority (EPRA) and the Energy and Petroleum Tribunal (EPT). Regulation 4 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 expressly provides that disputes relating to wayleaves, easements, and rights-of-way in connection with the transmission and supply of electricity fall within that framework.
17. The Court of Appeal in the case of *Kibos Distillers Ltd & 4 Others v Benson Ambuti & 3 Others (2020) eKLR* emphasised that where Parliament had provided a statutory procedure for resolution of disputes, such procedure must be exhausted before resort to the courts. The same principle was restated in the case of *United Millers Ltd v Kenya Bureau of Standards & 5 Others [2021] eKLR*, where the Court of Appeal held that disputes cannot be disguised as constitutional or trespass claims to circumvent statutory mechanisms.
18. The Supreme Court in the case of *Abidha Nicholus –vs- The AG & 7 others & 6 Interested Parties (2023) KESC 113 (KLR)* the relied on by Plaintiffs took the position that where issues were Multifaceted and intertwined and involved allegations of Constitutional Violations, even where an alternative avenue for redress existed, it would be more efficacious to invoke the jurisdiction of the appropriate superior Court. The Supreme Court in the case inter alia held:-

“Section 106 of the *akn ke act 2019 1 Energy Act* provided that Appeals to the EPT from decisions of EPRA shall be in relation to issues relating to licensing while Section 25 of the Act generally granted jurisdiction to the EPT to hear and determine disputes and appeals in accordance with the Act or any other written law. Determination of allegations of constitutional violations could not be such issues as to attract the tribunal's attention.

Since the Appellant's claim was multifaceted by his own choice, the most appropriate forum for the determination of his Petition was the ELC which would then interrogate and determine them based on such facts and law as shall be placed before it. The Superior Courts therefore fell into error by finding the Appellant had not demonstrated that he would not have received efficacious relief if he had followed the Dispute Resolution process outlined in the *akn ke act 2019 1 Energy Act*. That was because though the claims against the 2nd and 3rd Respondents were intertwined and arose from the same series of events, it would have



been impractical to expect the Appellant to Appeal the decisions of both NEMA and KPLC before two different tribunals.”

19. In the present matter, the Plaintiffs allege that the Defendant entered their land, destroyed trees and crops, and interfered with their use and occupation of the land. While they have pleaded trespass, the underlying complaint is that the Defendant, a licensed electricity distributor, interfered with their land in the course of maintaining and operating electricity infrastructure. Such disputes in my view are such as are contemplated by the *akn ke act 2019 1 Energy Act, 2019* and the Regulations made thereunder. The Plaintiffs had an alternative statutory dispute resolution forum where they ought to have sought redress before invoking the jurisdiction of this Court. The Plaintiffs did not exhaust the alternative Dispute Resolution Mechanism provided under the Law and for that reason the invocation of this Court’s jurisdiction was premature.
20. The Court of Appeal in providing the Constitutional rationale and basis for the exhaustion doctrine in the case of *Geoffrey Muthinja Kabiru & 2 Others –vs- Samuel Munga Henry & 1756 Others (2015) KECA 304 (KLR)* stated thus:-

“It is imperative that where a Dispute Resolution Mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Court is invoked. Courts ought to be fora of last resort and not the first Court of call the moment a storm brews. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of Judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place in resolution outside the Courts. These accord with Article 159 of *akn ke act 2010 constitution the Constitution* which commands Courts to encourage alternative means of Dispute Resolution.”
21. I dare observe that some of these organs who have been vested with adjudicative functions e.g EPRA, EPT, NEMA, NET, WARMA etc have specialization in their respective areas and in their determinations offer insights that could even prove useful to the Courts when Appeals are preferred from their decisions. It is therefore essential to tap into their unique specialties in the initial adjudication process.
22. The upshot is that I find the Preliminary Objection by the Defendant has merit and uphold the same. The Plaintiffs suit is struck out with costs to the Defendant.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

