

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**MISCELLANEOUS CIVIL APPLICATION NO. E085 OF 2025**

**MARY ODEMBO.....APPLICANT**  
**-VERSUS-**  
**PROTO ENERGIES LIMITED.....RESPONDENT**

**RULING**

1. Before court is an application by way of a chamber summons dated 4 April 2025 in which the applicant seeks orders:

*“a) That the Determination delivered in Nairobi on June,3,2024 by Daniel Kiptoo Bargoria MBS, OGW Director General of the Energy and Petroleum Regulatory Authority between the Parties herein be recognised and adopted as a judgement of this Honorable Court.*

*b) That leave be granted to the Applicant to enforce the said determination as a decree of this Honorable court.*

*c) That the costs of this application be borne by the Respondent.*

*d) That this honourable court be pleased to issue such further or other orders it deems just and expedient in the circumstances.”*

2. The application is expressed to be brought under section IA, 1B of Civil Procedure Act, cap. 21; order 21 rules 7 and 8; order 22 rule 6 and order 51 of the Civil Procedure Rules.

3. According to the affidavit sworn by the applicant in support of the application, on 25 March 2023, she lodged a dispute with the Energy & Petroleum Regulatory Authority (EPRA) concerning the purchase of a defective gas cylinder, which caused an accident at her residence.
4. The Petroleum and Gas Department investigated the matter on 27 July 2023 and produced an accident report which was subsequently submitted to the mediation team. The applicant submitted the dispute to EPRA for mediation and determination. EPRA made its determination on 3 June 2024. It is this determination that the applicant wants this Honourable Court to adopt as the judgment of the court.
5. The respondent filed grounds of objection opposing the application. In particular, the applicant has contended that this Honourable Court's jurisdiction is appellate in nature and, therefore, lacks the requisite jurisdiction to hear and determine the application. It is also pleaded that the applicant has not demonstrated any jurisdictional power that clothes this court with the power to adopt a decision of the Director General under the Energy Act. The Applicant is alleged to be inviting the court to usurp the power of the Tribunal that is established under Section 25 and 36 (3) of the Energy Act.
6. In any case, the determination dated 3 June 2024 and which is sought to be enforced, is invalid, null and void given the provisions of Section 23 (1) and (5) of the Energy Act. It is also pleaded that the determination

exceeds the jurisdiction of the Director General and is incapable of adoption by a court of law in light of the powers granted to the Director General under the Energy Act and The Energy (Complaints and Dispute Resolution) Regulations, 2012.

7. The determination has also not been gazetted in line with Rule 16 (7) of The Energy (Complaints and Dispute Resolution) Regulations, 2012 as read together with Section 23 (2) of the Energy Act. Thus, the respondent contends that the application is without any merit and liable for striking out with costs.
8. I have had opportunity to read the determination in issue; a copy has been exhibited to the applicant's affidavit. In its introductory paragraph, the determination states that the applicant lodged a dispute before the Energy and Petroleum Authority by way of an email dated 25 March 2023. After it received the complaint, EPRA referred the dispute to mediation pursuant to regulation 7 of the Energy (Complaints and Disputes Resolution) Regulations 2012. Apparently, the mediation efforts fell through and, therefore, EPRA eventually made its decision on the dispute on 3 June 2024.
9. The dispute arose when a Liquefied Petroleum Gas (LPG) cylinder exploded at the applicant's house at Miritini in Mombasa on 25 March 2023. As a result, the applicant and one other person were injured. EPRA established that the cylinder was faulty in the sense there was a "missing

"O" ring at the cylinder valve (manufacture defect) which led to uncontrolled release of LPG vapour while connecting the regulator on to the cylinder". In other words, the gas was leaking because of the missing "o" ring on the cylinder. The missing "o"ring was described as a "manufacture defect" and was attributed to the respondent which was established to be the brand owner of the defective cylinder. Under the Petroleum (Liquefied Petroleum Regulations, 2019, a "brand owner" is defined as a person who is the registered owner of a cylinder.

10. The cylinder exploded when the applicant attempted to light the cooking appliance after connecting the regulator. The primary source of fuel responsible for the fire was the LPG vapour which had been released in the process of connecting the regulator. In its determination EPRA held as follows:

***"The Authority has considered the Plaintiff's and Respondent's case and based on the facts and evidence presented and investigations made, therefore makes the following determination;***

***"a) A Declaration be and is hereby issued declaring that the Respondent breached its duty of care under the provisions of the Petroleum (liquefied petroleum Regulations 2019 which breach***

*has caused injury and damage to the Plaintiff and the Respondent is therefore under a duty to compensate the Plaintiff.*

*b)The Plaintiff is hereby awarded Kshs. 600,000/= as General damages for negligence and breach of duty of care by the Respondent.*

*c) This determination is final and binding upon both parties.*

*d) The parties are at liberty to exercise their right of appeal to this decision at the Energy and Petroleum Tribunal pursuant to the provisions of the Energy Act, 2019.”*

11. EPRA invoked several provisions of the Energy Act which, in its view, vests it with the requisite mandate to resolve the sort of dispute that was before it. In particular, it referred to Section 10 (a) (ii) of the Act, which provides that one of the functions of EPRA is to regulate the importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products; section 10(aa), which mandates EPRA to take such actions as is necessary to enforce the requirements or any regulations and to protect the environment, the health and safety of workers and the public; and, section 214(2) which empowers EPRA to direct an investigation to be carried out into any accident or incident arising from any undertaking or activity pursuant to a licence issued by EPRA and take such action, as it deems necessary.

12. Based on these provisions, EPRA concluded that it had the statutory mandate to investigate and determine complaints or disputes between parties, including the dispute between the applicant and the respondent, over any matter relating to licences and licence conditions under the Energy Act, 2019 and the Energy (Complaints and Dispute Resolution) Regulations, 2012.

13. Indeed, there isn't much of a dispute whether EPRA has the mandate to entertain disputes arising under the Energy Act. It has a statutory mandate to entertain disputes between complainants or plaintiffs and respondent. The terms "complainant", "plaintiff" and "respondent" have been employed in the Act as terms of art and are defined in regulations 3(1) of the Energy (Complaints and Disputes Resolution) Regulations, 2012. A complainant is defined as any person affected by a respondent's undertaking, activity or practice regulated under the Act. A plaintiff is defined to mean any person referring a dispute to the Authority for determination while a respondent means a person against whom another person has a complaint or a dispute relating to a matter regulated under the Act.

14. That aside, the material question upon which the applicant's application turns is whether this application is properly before this Honourable Court or whether it should be before the court in the first place. Counsel for the

respective parties have, in their submissions, adopted divergent opinion on this question.

15. According to the applicant's learned counsel, the applicant has properly invoked the jurisdiction of this Honourable Court. It is contended neither EPRA nor the Tribunal established under section 25 of the Energy Act can execute EPRA's determination against the respondent because none of these bodies have the requisite enforcement mechanisms. Relying on this Honourable Court's decision in enforceable has been affirmed in **Republic v Director, Kenya School of Law & 2 Others; Kitsao (EOO1 of 2024) [2024/ KEHC 2975 (KLR)**, the applicant's learned counsel has urged that orders issued by a tribunal, like those of any court of competent jurisdiction, are not made in vain and must be obeyed by the parties to whom they are directed.

16. More so, where a statutory body lacks its own enforcement machinery, this Court has jurisdiction to adopt and enforce such determinations to uphold the rule of law. It is for this reason that the applicant seeks this Honourable Court, in exercise of its unlimited original jurisdiction in civil matters under article 165(3)(a) of the Constitution and its inherent powers to make such orders as are necessary for the ends of justice under sections 1A, 1B and 3A of the Civil Procedure Act, to adopt the respondent's determination as the decree of this Honourable Court and enforce it accordingly.

17. The respondent's counsel are of a contrary opinion. Their position is that there is no decision or any valid decision before this Honourable Court for its consideration. What has been presented before this Honourable Court as EPRA's decision is a nullity because the purported decision was made outside the limitation period set by the Energy Act. In any event, it is the tribunal that ought to enforce the decisions of the Authority and, for this reason, this court would be usurping the tribunal's jurisdiction if it granted the orders sought by the applicant. The respondent has relied on **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. (1989) and Cyrus Komo Njoroge v. Kiringa Njoroge Gachoka & 2 Others [2015] eKLR** in support of its submissions.

18. Section 23 of the Energy Act provides, *inter alia*, when EPRA ought to make a decision and the course an applicant ought to take if the decision is not made within the stipulated timeline. It reads as follows:

***23. Decisions of the Authority***

***(1) The Authority shall within sixty days from the date of receipt of a request by an applicant, make its decision on any matter before it.***

***(2) A decision of the Authority shall be in writing and any order given and reasons thereof shall be served upon all parties to the***

*proceedings, and may be published in the Gazette as prescribed by regulations.*

*(3) The Authority shall, within seven days of making a decision, communicate such decision to the parties involved.*

*(4) All orders of the Authority shall become effective on the date of entry thereof, and shall be complied with within the time prescribed therein.*

*(5) Where the Authority does not make a decision as provided in subsection (1) the appellant may appeal to the Tribunal within seven days of the expiry of the prescribed period.*

19. It is not in dispute that the determination in issue was made well beyond the six-month limitation period but while the applicant does not contest this fact, it is submitted on its behalf that “sections 23(1) & (5) relate to licensing and procedural matters, not to the nullity of decisions made after a fully-heard complaint”.

20. I am unable to agree with the applicant because section 23(1) states in specific and unambiguous terms the decision to be made is on “any matter” with which EPRA is seized and this would include such disputes as the one lodged by the applicant against the respondent. Contrary to the respondent’s applicant’s submissions, section 23 is not a rule of

procedure but a statutory requirement by which EPRA is enjoined to comply.

21. Subsection (5) is clear that where the Authority does not make a decision within the sixty-day period, as it turned out in the applicant's case, the party aggrieved by EPRA's inaction may appeal to the Tribunal within seven days of the expiry of the prescribed period. In the absence of any contrary evidence that the determination sought to be impeached was made out of time, the applicant was enjoined to take this route. As to what the Tribunal would do once an appeal is filed before it in these circumstances is not a question before this court; I have no reason to speculate what the Tribunal would make of an indecision decision. What I can confidently say is that the Tribunal has such wide powers including "*power to grant equitable reliefs including...damages...*". (see section 36(5) of the Act). What is more, the Tribunal's "*judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law*". (see section 37(2)).

22. If I have to delve further into this discourse, I can only echo the words of this court in **Kenya Human Rights Commission (KHRC) & another v Kenya Airports Authority & 4 others; Kenya Aviation Workers Union (KAWU) & another (Interested Parties) [2026] KEHC 3386 (KLR)** that courts presume that a legislature says in a statute what it means and means in a statute what it says there. If the language of the

statute is clear, there is no need to look outside the statute or imply words into it in order to ascertain the statute's meaning. Differently put, when the words of a statute are plain and unambiguous, there is no need for a further judicial inquiry.

23. It has been held by the United Kingdom Supreme Court that the general approach of focussing on the words which Parliament has used in a provision is justified by the principle that those are the words which Parliament has chosen to express the purpose of the legislation. (**see For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent) [2025] UKSC 16**).

24. The rationale behind the establishment of such quasi-judicial bodies, as the Tribunal to which the applicant ought to have submitted is, in part, to benefit from of the wide spectrum of expertise offered by members who ordinarily constitute such bodies. More often than not, the decision-making process or the ultimate decision to be made by the decision-making bodies require some expert knowledge on the issues that arise out of the dispute with which these bodies are confronted. It is partly for this reason that a statute would enjoin the court to defer its jurisdiction and allow these bodies the first opportunity to resolve the dispute.

25. Reiterating the need to allow sufficient latitude to statutory organs to exercise their mandate and acknowledge their expertise, the Court of Appeal in **Pevans East Africa Limited & another v. Chairman,**

**Betting Control and Licensing Board and 7 Others (2013) eKLR;**  
**Civil Appeal No. 11 of 2018** held as follows:

*“Where the Constitution has reposed specific functions in an institution or organs of state, the court must give those organs sufficient leeway to discharge their mandate and only accept an invitation to intervene when those bodies are demonstrably shown to have acted in contravention of the Constitution, the law or that their decisions are so perverse, so manifestly irrational that they cannot be allowed to stand under the principles and values of our Constitution. Courts must decline to intervene at will in the Constitutionals spheres of other organs, particularly when they are invited to substitute their judgment over that of other of the organs in which constitutional power reposes, because those organs have expertise in their area of mandate, which the court do not normally have.”*

26.If EPRA’s determination had been made within time, I would have been prepared to discuss the question whether that decision ought to be enforced in this court or whether, by necessary implication, it would, like a decision by the Tribunal, be enforced as if it is an order or judgment of this Honourable Court(see section 37(2) of the Act). Having come to the

conclusion that EPRA's determination was made outside the prescribed timeline, this question is as good as moot.

27. For the reasons I have given, I have to reach the inevitable conclusion that the applicant's application is misconceived and an abuse of the process of this Honourable Court. It is struck out with costs. It is so ordered.

**Signed, dated and delivered on 24 April 2026**

Ngaah Jairus  
**JUDGE**