



Mbobu v Kenya Power and Lighting Co Limited (Environment and Land Miscellaneous Application E024 of 2023) [2024] KEELC 3732 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3732 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E024 OF 2023
CA OCHIENG, J
APRIL 24, 2024

BETWEEN

MATHEW KYALO MBOBU APPLICANT

AND

KENYA POWER AND LIGHTING CO LIMITED RESPONDENT

RULING

1. The Applicant had instituted this Originating Motion dated the 28th September, 2023 seeking various orders which included transfer of Complaint EPA No. E009 of 2023 between the Applicant and Respondent to the Environment and Land Court. The Applicant further sought for orders of injunction, to restrain the Respondent from disconnecting A/C No. xxxx for the supply of electricity at title number Mavoko Town Block 3/ 29357 Mua Hills, Machakos County.
2. To oppose the instant Application, the Respondent filed a Replying Affidavit sworn by Joseph Muchai and a Notice of Preliminary Objection dated the 25th October, 2023 where it contended that the Court lacked jurisdiction to handle this matter by dint of certain provisions in the Energy Act, 2019 read together with some Regulations from the Energy (Complaints and Disputes Resolution) Regulations, 2012.
3. The Applicant thereafter withdrew this suit on 26th October, 2023 but the Respondent sought for costs. The Court marked the suit as withdrawn but directed parties to file submissions on costs.
4. The parties filed their respective submissions to canvass the issue of costs, which I have considered.
5. On awarding of costs, Section 27 of the Civil Procedure Act provides that:-

“ 27



- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers.”

6. Further, the *Halsbury's Laws of England*, 4th Edition (Re-issue), [2010], Vol.10. para 16, provides that:-

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice.”

7. In the case of *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR the court observed that:-

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

8. See also the decision of *Cecilia Karuru Nyayu Vs Barclays Bank of Kenya & Another* (2016) eKLR.

9. In this instance, the Applicant had lodged a complaint against the Respondent in respect to their billing on the aforementioned account, which he felt was excessive. He initially filed a suit at the Energy and Petroleum Tribunal which was referred to mediation but the said mediation was not successful. Further, the Tribunal vide its Ruling dated the 16th November, 2022 referred the dispute to the Energy and Petroleum Regulatory Authority (EPRA). The Applicant proceeded to EPRA and from the minutes annexed to the Supporting Affidavit, I note EPRA failed to resolve the dispute, that had been pending from January, 2023. The Respondent in its Replying Affidavit insisted that the matter had been fixed for mention at EPRA and hence the instant Miscellaneous Cause should not be entertained by court. I note from the documents filed in court, the dispute between the Applicant and Respondent had been pending for more than one (1) year, while the Respondent still demanded from the Applicant, the full settlement of the Bill, which had formed the fulcrum of the said dispute. Further, the Respondent insisted that the Court lacked jurisdiction to handle the dispute herein and sought to strike out this suit, but failed to offer a solution. Insofar as the Respondent’s Counsel filed the Notice of Preliminary Objection and attended Court once, on which date, the suit was marked as withdrawn, however from the background I have provided, I am of the view that the delay in resolving this dispute, is what precipitated the filing of the instant suit.



10. Based on the facts before me while associating myself with the decisions I have cited including the legal provisions quoted, in the interest of justice, I find that the Respondent is not entitled to costs as the dispute herein emanated from its delay in resolving it.

11. In the circumstances, I direct that each party does bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 24TH DAY OF APRIL, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of;

Ododa for Respondent

Mrs. Bhoke for Kyalo for Applicant

Court Assistant – Simon/Ashley

