



**Gathumbi v Kenya Power & Lighting Co Ltd (Land Case E175 of 2024)
[2024] KEELC 13603 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E175 OF 2024
LN MBUGUA, J
DECEMBER 5, 2024**

BETWEEN

JOSEPH GACHUHI GATHUMBI PLAINTIFF

AND

KENYA POWER & LIGHTING CO LTD DEFENDANT

RULING

1. This ruling relates to the defendants Notice of Preliminary Objection dated 18.6.2024 raising grounds that the court lacks jurisdiction to hear the matter on account of the provisions set out under the Energy Act. In their submissions dated 27.9.2024, the defendants argue that the legal framework giving rise to the Preliminary Objection is the Energy Act particularly Sections 3, 9, 10, 11(e), (f), (i), (k), (l), 23, 24, 36, 40, 42, 153 (3), 160 (3) and 224 (e) as read with regulations 2, 4, 7, and 9 of the Energy (Complaints and Disputes Resolution) Regulations of 2012. To this end, it is argued that the appropriate forum for determination of the dispute is the Energy Petroleum Regulatory Authority. To buttress their arguments, the defendants have proffered a host of authorities including Kenya Power & Lighting Company v Kamau [2024] KEELC5332 (KLR).
2. The plaintiff has opposed the Preliminary Objection vide his submissions dated 28.10.2024. He contends the court, just like the High Court has unlimited, original and unfettered discretion to deal with the dispute in terms of the provisions of Article 165 of the Constitution. It is argued that pursuant to the provisions of Section 36 of the Energy Act, the tribunals jurisdiction relates disputes between a licensee and a third party. In support of his arguments, the plaintiff has relied on the case of Environment and Land Court Petition 13 of 2022 and ELC Land Case No. E007 OF 2023.
3. I have considered all the arguments raised herein. The issue falling for determination is whether, this court has jurisdiction to hear the matter. The crux of the dispute as set out in the plaint is that the plaintiff blames the respondent for allowing transmission power lines to pass through his farm in 1981.



4. The legal framework governing issues of energy and petroleum are anchored under the [Energy Act](#) and the [Energy \(Complaints and Disputes Resolution\) Regulations, 2012](#) which provides for elaborate dispute resolution mechanisms. To this end, the provisions of Section 9 of the [Energy Act](#) establish the Energy & Petroleum Regulatory Authority which under section 11 has the mandate to “investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act”.
5. From the Authority, the disputes cascade to the Energy Tribunal, whose jurisdiction is established under Section 36 as follows;
 1. The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.
 2. The jurisdiction of the Tribunal shall not include the trial of any criminal offence.
 3. The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.
 4. The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.
 5. The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.
 6. The Tribunal shall hear and determine matters referred to it expeditiously.”
6. From the tribunal, the disputes then go to the High Court as provided under Section 37 of the [Act](#).
7. The provisions of Regulation 2 of the [energy \(Complaints and Disputes Resolution\) regulations, 2012](#) provides that;

“These Regulations shall apply, to any person who has a complaint or a dispute regarding any license, permit, contract, code, conduct. Practice or operation of any party or any matter regulated under the Act”.
8. While Regulation 4 thereof stipulate that the regulations shall apply to complaints and disputes in the following areas;

“.....Way leaves, Casements or rights-of-way in relation to the generation, transmission, distribution, supply and use of electrical energy”.
9. The case of [Alice Mweru Ngai v Kenya Power & Lighting Co. Ltd](#) (2015) eKLR, which has been cited by the defendant has similarities with the current matter, and the court in striking out that suit held that the plaintiff had chosen the wrong forum to agitate her claim.
10. This far, I am in agreement with the submissions of the defendant that the dispute herein ought to be subjected to the dispute resolution mechanisms available under the [Energy Act](#) and the Regulations set out thereof. The point of divergence being the allegation that the court has no jurisdiction to hear the matter. As rightly argued by the plaintiff the court does have original jurisdiction to hear matters relating to title, use and occupation of land. However, in exercising that jurisdiction, the court is required invoke the doctrine of Abstention and restraint in instances where other bodies have been given statutory mandate to deal with certain disputes to the courts.



11. In the case of *Benson Ambuti Adegga & 2 Others v Kibos Distillers Limited & 5 Others* [2020] eKLR, the Supreme Court of Kenya stated that;

“Judicial abstention, as with judicial restraint, is a doctrine not founded in constitutional or statutory provisions, but one that has been established through common law practice. It provides that a court, though it may be vested with the requisite and sweeping jurisdiction to hear and determine certain issues as may be presented before it for adjudication, should nonetheless exercise restraint or refrain itself from making such determination, if there would be other appropriate legislatively mandated institutions and mechanism. Emphasize added”.

12. I stand guided by the aforementioned statutes and case law and conclude that this is a matter where the court, though having jurisdiction in matters land is called upon to exercise restraint. In the circumstances, I find that the preliminary Objection is merited. This suit is hereby struck out as the same ought to be subjected to the available dispute resolution mechanisms set out under the relevant law under the *Energy Act* and regulations. Each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5th DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Irungu Mwangi for Plaintiff

Court Assistant: Vena

