Energy & Petroleum Regulatory Authority

IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/51904849/2025/LM/pm

THOMAS MWAU MUTUA……………………………………………………PLAINTIFF

VERSUS

KENYA POWER AND LIGHTING PLC…………………………………………RESPONDENT

DETERMINATION

A. BACKGROUND

1. The dispute between Thomas Mutua Mwau (Plaintiff) and Kenya Power and Lighting PLC(Respondent) was first reported to the Energy and Petroleum Regulatory Authority, hereinafter referred to as "the Authority", on 13th June 2025.
2. The dispute is on wrongful allegation of meter tampering of Meter Number [redacted], in Thika, Kikuyu County.

B. PLAINTIFF'S CASE

3. It is the Plaintiff's case that he has been a Client with KPLC, the Respondent, through meter number [redacted]
4. The Plaintiff states that the Respondent's employees disconnected his meter on 20th May 2025, on the allegation that there was meter tampering after which the said employees sealed the meter box.
5. The Plaintiff avers that on the 21st May 2025, he presented himself at the offices of the Respondent in Thika Town and was informed that only a staff member would be able to disable the red and blue current transformers.

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6. The Plaintiff further avers that the meter still has its original seal and has never been tampered with since it was installed.
7. The Plaintiff states that after the meter was sealed on the 20th May 2025, employees of the Respondent were on the Plaintiff's premises on 8th July and unsealed the meter box.
8. The Plaintiff further states that the Respondent's agents/employees were on the premises under the guise of installing a new meter on the next property which had been applied for by Mrs. Margaret Mutua, spouse to the Complainant.
9. The Plaintiff further states that the Respondent's agents/employees failed to install any meter and left the Plaintiff's meter box unsealed.
10. The Plaintiff claims that he has installed 18 solar panels which produce energy of between 7 to 9 Kilowatts. He states that depending on the weather power ·from the national grid only comes in when the energy from the panels is below 4 Kilowatts.
11. The Plaintiff further claims that the solar panels can produce a load greater than the assertion of an 8A load made by the Respondents.
12. The Plaintiff avers that the Respondent despite accusing him of committing a felony contrary to section 168(1) of the Energy Act 2019, have failed/neglected to institute criminal proceedings against him and has not presented an occurrence book number before this honorable Authority.
13. The Plaintiff states that the Respondent despite admitting that they have disconnected his account since 20th May 2025 has continued to arbitrarily charge a bill to his account.
14. The Plaintiff further states that on the month of July 2025, he was issued with a bill of KES. 22,811.00 despite being disconnected during that month.
15. The Plaintiff avers that he is informed by his advocates that the Respondent's actions are against the National Values of transparency, integrity and accountability as provided under Article 10 of the Constitution of Kenya 2010.
16. The Plaintiff further avers that despite the Authority's order for the Respondent to reconnect the electrical supply to the Plaintiff pending the hearing and determination of the dispute via letter dated 19th June 2025 the Respondent has refused/neglected to reconnect power to the Plaintiff's premises.

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17. The Plaintiff states that he is informed by his advocates that the orders from the Authority are sacrosanct and must be obeyed by the party to whom such orders are directed.
18. The Plaintiff avers that the Respondent, being in active disobedience of the Authority's orders, cannot be expected to be granted audience until the apparent contempt is purged.

C. RESPONDENT'S CASE

19. The Respondent confirms that the Plaintiff is the registered owner of account number [redacted] which is domiciled in Kiambu County.
20. The Respondent states that the County Rapid Response Initiative (R.R.I) team, which had been appointed in April 2025, was mandated to carry out targeted inspections across the county in a bid to establish various avenues which the Respondent was losing revenue and come up with solutions to mitigate the same.
21. The Respondent further states that on 20th May 2025, during the County R.R.I team checks, the Respondent noted that the Plaintiff had intentionally tampered with the Respondent's meters through disabling the Red and Blue Current Transformer (CT).
22. The Respondent avers that this appeared to have been done so as to record a lower consumption of electricity which would equate to a lower electricity bill.
23. The Respondent further avers that whereas the Plaintiff assumed that the installation of solar panels would have greatly reduced the electricity costs, the same is untrue as the Respondent's measured load of 8A installed on the Plaintiff's premises was greater than the load provided by the solar panel.
24. The Respondent states that Section 168 (1) (lb) of the Energy Act, Cap 314, Laws of Kenya states that a person who without lawful right abstracts, branches off or diverts or causes to be abstracted, branched off or diverted any electrical energy commits an offence and shall on conviction, be liable to a fine of not less than one million shillings, or to a term of imprisonment of not less than one year, or to both.
25. The Respondent further states that Section 168 (2) of the Energy Act provides that where a person has been found to have committed an offence under Section 168(1) of

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the Energy Act, the licensee (the Respondent herein) may also discontinue the supply of electrical energy to the premises of such consumer or abstain from resuming such supply.

26. The Respondent states that in light of the provisions stated above, they acted within the purvey of the law by immediately disconnecting the illegal connection on the Plaintiff's premises.

27. The Respondent avers that upon further investigations, the Respondent noted that there was a drop in consumption of units from 28th June 2022 and established that the units which had been lost as a result of the tampering of the meter was 53,175.80 which amounted to KES. 1, 649,817/-.

D. <u>DISPUTE RESOLUTION PROCESS</u>

18. The Plaintiff, through his Advocate, M/s Watiri Ng'ang'a and Company Advocates filed a dispute with the Authority alleging wrongful allegation of Meter Tampering in relation to Meter number [redacted] Thika, Kikuyu County vide a letter dated 10th June,2025 and received by the Authority on the 13th June 2025.

19. Pursuant to the same, the Authority requested both the Plaintiff and the Respondent to present their submissions within three days and fourteen days respectively.

20. On 30th June 2025 and 16th July 2025, the Authority received an Affidavit of Complaint along with written Submissions and a Replying Affidavit respectively from the Plaintiff. Submissions from the Respondent were received by the Authority on 15th July 2025.

21. The Authority vide a letter dated 9th July 2025, invited the parties for a virtual hearing on 17th July, 2025 at 9:00 am.

E. ISSUES FOR DETERMINATION

22. Based on the fact and evidence shared by the Parties, the Authority finds that the following issues arise for determination;

    a) **Whether the Respondent disconnected the Plaintiff's meter number [redacted] illegally.**

b) **Whether the Plaintiff tampered with meter number [redacted]**

c) **Whether the Plaintiff ought to pay the dispute bill of Kshs. 1,649,817.**

F. ANALYSIS OF THE DISPUTE

a) **Whether the Respondent disconnected the Plaintiff's meter number [redacted] illegally.**

23. The Plaintiff in his Affidavit of Complaint dated 30th June, 2025 claims that the Respondent arbitrarily and illegally disconnected electricity supply to his meter number [redacted] on the 20th May, 2025.

24. He further claims that he spoke to a representative of the Respondent on phone who insinuated that his meter was rewired internally and consequently the electricity billing was faulty.

25. It is the Plaintiff's position that the Respondent ought to have issued him with forty-eight (48) hour notice in writing before disconnecting electricity supply at his premises.

26. The Plaintiff in his submissions dated 30th June, 2025 submits that the Respondent disregarded the provisions of Section 158 (2) of the Energy Act, Cap 314 and proceeded to rely on the case of ***Tom Mokua Otuto -vs- Kenya Power & Lighting Company (Tribunal Case E030 of 2022)*** where the tribunal found that the Respondent did not act within the provisions of the Law by disconnecting the Applicant's power supply owing to accumulated electricity bills.

27. On the other hand, the Respondent in their Response dated 15th July, 2025 relies on the provisions of Section 168 (2) of the Energy Act, Cap 314, Laws of Kenya in disconnecting power from the Plaintiff's premises.

28. Section 158 (2) of the Energy Act, Cap 314 states as follows;

*"The licensee shall not make any **alteration**, **adjustment** or **readjustment** in any **meter** being used for ascertaining the quantity of electrical energy supplied, as to **affect the functioning of such meter** unless the licensee has given to the consumer not less than **forty-eight hours' written notice** of the intention to do so or unless otherwise mutually arranged.*

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29. The above-mentioned section has used the words "**alteration**", "**adjustment**" and "**readjustment**" and prohibits licensees from altering meters so as to affect their function unless they issue a 48 hours' notice to the consumer.

30. The **Cambridge Dictionary** defines the aforementioned words as follows;

"Alteration"- A change, usually a slight change in the appearance, character or structure of something.

"Adjustment"- A small change.

"Re-adjustment:- The process of changing in order to fit a different situation, or the act of changing something slightly in order to improve it.

31. The Respondent states in its response, that during the County R.R.I team check, its representatives visited the Plaintiff's premises and established that the Plaintiff had tampered with meter number [redacted] through disabling the Red and Blue Current Transformer (CT) in order to record a lower consumption of electricity. The Plaintiff's does not dispute that the Respondent inspected his meter on the 20th May, 2025.

32. It is worth noting that there is no evidence tendered by the Plaintiff to confirm that the Respondent's representatives intended to **alter, adjust and/or readjust** his meter to warrant a forty-eight hour notice to be issued by the Respondent.

33. Section 168 (1) (b) of the Energy Act under the head "Unauthorized, fraudulent or improper supply or use of electrical energy" states as follows;

A person who-

*"Without lawful right (the proof of which shall be upon him) **abstracts**, branches off or diverts or causes to be abstracted, **branched off** or diverted any electrical energy, or consumes or **uses any such electrical energy which has been wrongfully or unlawfully abstracted**, branched off or diverted, knowing it to have been wrongfully or unlawfully abstracted, branched off or diverted" Commits an offence.*

34. Section 168 (2) of the Energy Act, Cap 314 provides as follows;

*"In any case where the person who commits an offence under subsection (1) is the **consumer**, the **licensee may also discontinue the supply of electrical energy to the premises** of such consumer or **abstain from resuming such supply**, if already*

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discontinued, for such period as the Authority may direct, notwithstanding any contract which may have been previously entered into".

35. In light of the above provision of the Law, the Authority finds that the Respondent legally disconnected electricity supply from the Plaintiff's premises pursuant to the provisions of Section 168 (2) of the Energy Act, Cap 314.

b) Whether the Plaintiff tampered with meter number [redacted]

36. The Authority notes that this matter, presents as a **<u>metering-accuracy dispute</u>** arising from an inspection by the Respondent's County R.R.I. team on 20th May 2025 and the subsequent laboratory testing of Meter S/No. [redacted] (model HOLLEY DTSY541) removed from the Plaintiff's premises.
37. The Authority considers the competing narratives and has perused the primary technical records namely; the on-site *Installation/Interference Notice*, the *Respondent's Central Laboratory meter test report*, the *bench sheet*, the *Plaintiff's affidavits, photographs of the meter cabinet*, the *SMS and billing records for account* [redacted] and the *documents tendered on the existence of a hybrid solar borehole-pump system* and states as follows;
38. On the metrology, the Respondent's Central Laboratory test establishes that the meter is **<u>slow by approximately sixty-six (66) percent</u>** under standard three-phase test conditions. The bench-sheet records that the red and blue current channels do not indicate applied current on the bench, with the meter therefore integrating essentially one phase out of three.
39. A constant error of about –66.7% is the characteristic signature of such a condition in a direct-connected 3-phase, 4-wire meter. The physical inspection notes improvised or non-standard seals on the left terminal cover together with communications module and visible cover interference at the terminal block region. The said features are consistent with internal access to the meter casing.
40. Because the same two channels remain inoperative when the unit is rewired in the laboratory test jig, the abnormality cannot be attributed to any external bypass that might have existed at site; it originates within the meter enclosure, whether by **<u>deliberate alteration</u>** or **<u>internal failure</u>**.

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41. The consumption history submitted by the Plaintiff corroborates the laboratory finding on timing and magnitude. The Authority observes that the billed energy prior to June 2022 averages approximately 2,500–2,600 kWh per month with months exceeding 3,000 kWh, whereas from June 2022 onwards the billed energy stabilizes around 600–1,000 kWh per month.

42. That step change—on the order of 60–65%—tracks the meter's measured under-registration and supports the Respondent's assertion that the loss of two current channels commenced around late June 2022. Zero-billing months in late 2022 do not negate the pattern; they would, if anything, depress any reconstructed shortfall. On this record, the Authority finds that the laboratory error and the billing trend reinforce one another.

43. On the other hand, the Plaintiff attributes lower bills to a solar installation. The documents produced by the Plaintiff describe a hybrid PV solution centred on Davis and Shirtliff's, *Dayliff SV3 5.5 kW* three-phase Sunverter, driving a borehole pump and prioritizing solar energy, with grid as backup.

44. The Authority accepts that such a system can offset daytime pumping loads; however, two engineering observations follow. First, the solar system is documented as existing well before 2022; it therefore **cannot explain a discrete consumption step beginning in mid-2022.** Second, even if the 5.5 kW pump operates several hours daily on solar, the expected displacement is in the hundreds of kilowatt-hours per month, not the sustained reduction of roughly 1,600 kWh per month evidenced after June 2022.

45. Most importantly, the laboratory finding that **two-meter current channels fail to register even under standardized bench wiring** is unrelated to the presence of PV on the installation and is not explained by ordinary solar-pump operation.

46. Turning to causation, the Authority notes that simultaneous failure of exactly two current phases to produce a neat one-third registration is statistically unlikely as a spontaneous defect, and the presence of improvised or untraceable seals and terminal-cover interference is inconsistent with a meter that has never been opened.

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47. The on-site interference notice, bearing the Plaintiff's particulars and the Respondent's witnessing officer, substantiates the inspection pathway that led to the meter's removal and testing.

48. While the laboratory result alone proves under-registration, the seal condition and casing marks materially increase the probability that the **cause is internal interference rather than random failure.**

49. The Authority's technical view is that the subject meter was under-registering by approximately two-thirds owing to the following;

    i) Loss of two current phases.

    ii) The physical condition of the meter casing and seals being consistent with internal access.

    iii) The Plaintiff's solar arrangement does not account for the timing or magnitude of the drop, in units consumed.

    iv) The Respondent's reconstruction of unrecorded units and the resulting assessment are within the range expected from the laboratory and billing evidence.

50. Consequently, the Authority finds that the Plaintiff interfered and tampered with meter number [redacted]

c) Whether the Plaintiff ought to pay the dispute bill of Kshs. 1,649,817.

51. On quantum, the Respondent in their response dated 15th July, 2025 computes unrecorded units of **53,175.8 kWh** from 28th June 2022 to May 2025 amounting to **Kshs. 1,649,817.**

52. On the other hand, the Plaintiff claims that the bill of Kshs. 1,649,817 is overly inflated and ought to be reviewed downwards. It is the Plaintiff's position that his electricity bill over the years has been in the range of **Kshs. 15,000- 18,000** per month.

53. Independently, applying the laboratory error to the Plaintiff's measured consumption for the same window, yields a comparable order of magnitude for missing energy.

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54. The Authority therefore finds that the claimed quantum by the Respondent is technically plausible and directs that Plaintiff to pay the Respondent, the electricity bill of **Kshs. 1, 649, 817.**

DETERMINATION

55. The Authority has considered the Plaintiff's and the Respondent's case and hereby makes the following determination;

a) That the Respondent **legally** disconnected electricity supply from the Plaintiff's premises pursuant to the provisions of Section 168 (2) of the Energy Act, Cap 314.

b) That the Plaintiff interfered and tampered with meter number [redacted]

c) That the Plaintiff is hereby directed to pay the Respondent, the electricity bill of **Kshs. 1, 649, 817.**

d) That this Determination is final and binding upon both parties.

e) That each party to bear their own costs.

f) That 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, Cap 314, Laws of Kenya.

DATED AT NAIROBI THIS ..12th....... DAY OF ..AUGUST........2025

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CPA CYPRIAN M. NYAKUNDI

FOR: DIRECTOR GENERAL