Energy & Petroleum Regulatory Authority

IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/ EPRA/CP/4/51650556/25

WATERFRONT GARDEN LIMITED .... PLAINTIFF

VERSUS

KENYA POWER PLC ....RESPONDENT

DETERMINATION

A. BACKGROUND

1. The dispute between the Plaintiff, Waterfront Garden Limited, and the Respondent, Kenya Power PLC, was first brought to the attention of the Energy and Petroleum Regulatory Authority ("the Authority") by a complaint letter dated 24th July 2024 and acknowledged on 14th August 2024. Upon initial review, the Authority referred the Complainant back to Kenya Power to exhaust the utility's internal complaint-handling procedures before returning to the Authority.
2. Following various meetings and engagements between the parties, no amicable resolution was reached. Consequently, the matter was re-escalated to the Authority through a letter received on 26th June 2025, concerning an allegedly inflated bill and disconnection of Account No. [redacted] in the name of HEWTON LTD, originally on Meter No.[redacted] and subsequently replaced by Smart Meter No. [redacted], with the disputed amount standing at Kshs. 7,359,061.35.

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B. PLAINTIFF'S CASE

3. The matter arises from a dispute submitted to the Authority vide the Plaintiff's letter dated 30th May 2025 and received on 26th June 2025. The Plaintiff states that the Respondent issued a billing statement dated 24th March 2024 demanding Kshs 7,359,061.35 for Account No.[redacted] without a justifiable basis, insisted on full payment, and unilaterally disconnected supply on 20th June 2025.
4. The meter in issue supplied the estate's water borehole. The Respondent routinely relied on readings sourced from the estate and, for extended periods, billed on estimates. The Plaintiff also furnished readings and promptly settled invoices rendered.
5. The Plaintiff avers that they first raised the matter with the Respondent by letter dated 15th April 2024, received on 26th April 2024, challenging the bill and noting that as at 22nd February 2023 the bill stood at Kshs 80,277 against a meter reading of 0347800.
6. The Respondent did not provide a timely explanation. The Plaintiff wrote again on 28th June 2024 (received on 1st July 2024) and subsequently escalated the matter to the Authority, which acknowledged the complaint on 14th August 2024. The Respondent only issued a substantive response on 10th March 2025, attributing the charges to a "system anomaly" said to have persisted for approximately ninety (90) months.
7. Arising from the complaint, the Respondent's reply, and the proceedings before the Authority, the Plaintiff re-affirms its earlier submissions and advances additional grounds challenging the justification, reconstruction methodology, and back-billing horizon of the billing statement dated 24th March 2024 in the sum of KShs 7,359,061.35 for Account No[redacted]
8. The Plaintiff contends that the impugned bill is unjustified: the Respondent has not demonstrated a transparent, lawful methodology for reconstructing charges of this magnitude after years of accepting readings and payments without reservation.

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9. Further, the Plaintiff submits that the matter falls within the ambit of section 159(1) of the Energy Act, which permits a licensee—where a meter is found defective through no fault of either party to determine a reasonable quantity and recalculate charges for up to a maximum of six months from the date the defect is established.

10. The Respondent admits the meter was changed and that the replacement smart meter does not exhibit the anomaly. The Plaintiff therefore contends the defect lies in the metering arrangement and should be treated as a "defective meter" scenario within section 159(1). A consumer ought not be saddled with an abrupt multi-year debit nor subjected to disconnection threats in such circumstances.

11. On that footing, the Plaintiff maintains the Respondent's demand of Kshs 7,359,061.35 is neither justified nor properly assessed; moreover, the Plaintiff has been denied the benefit of contemporaneous billing and historically lower tariffs that would have applied had accurate bills been rendered timeously.

12. The Plaintiff therefore seeks—
    a. A declaration that the electricity bill of Kshs 7,359,061.35 (March 2024) for Account No [redacted] is invalid and the demand unlawful;
    b. A declaration that the said bill violates the Plaintiff's consumer rights and is invalid; and
    c. An order restraining the Respondent from disconnecting power to the Plaintiff on account of the impugned bill.

C. RESPONDENT'S CASE

13. It is the Respondent case that by a letter dated 10th March 2025, the Respondent's County Business Manager – Nairobi North, Mr. Barnabas Muli, wrote to the Complainant's property managers, Kiragu & Mwangi Limited, setting out the basis upon which the disputed bill arose and providing the account chronology and consumption figures.

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14. The letter specifically addressed the concerns raised regarding the billing for Account No. [redacted] in the name of HEWTON LTD and explained the steps taken by the Respondent to review and regularize the account.

15. The Respondent states that the supply was initially metered through Ordinary Meter No. [redacted], commissioned at a zero-start read on 9th March 2017, and in service until 2nd October 2024, when it was replaced by Smart Meter No. [redacted].

16. The meter replacement on 2nd October 2024 is described as an upgrade and part of corrective measures to ensure accurate and auditable billing going forward.

17. According to the Respondent, while Meter No. [redacted] was read regularly, the billing system was affected by a digits-related anomaly which prevented the account from being billed correctly notwithstanding the field readings and the register advances.

18. The Respondent avers that the anomaly remained undetected for several years and was identified and resolved in March 2024 following internal review; thereafter, a reconstruction of the account was undertaken.

19. The Respondent records that the ordinary meter, commissioned at zero in March 2017, registered 381,297 units by the time of its removal covering approximately ninety (90) months of service.

20. The replacement smart meter was also commissioned at a zero-start read and, within the first four (4) months of operation, recorded 18,224 units an average of 4,556 units per month.

21. The Respondent's technical team concluded that the consumption pattern recorded on the smart meter aligns with the historical usage indicated by the removed meter's cumulative register and is therefore a reasonable benchmark for the account.

22. On this footing, the Respondent avers that 352,835 units were attributable to the period affected by the undetected system anomaly and were not correctly billed when incurred. Applying the applicable tariffs, levies, and statutory charges across

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the relevant billing periods, the same yielded a reconstructed amount of Kshs 7,359,061.35.

23. The Respondent further maintains that the root cause is a billing system digits anomaly—not a physically defective meter—and therefore the six-month recalculation cap tied to defective meters does not apply. Instead, the Respondent asserts a right under the prevailing conditions of supply to recover charges for electrical energy actually consumed but previously under-billed.
24. The Respondent contends that throughout the material period meter readings were captured, the customer enjoyed the benefit of energy supplied, and the subsequent reconciliation merely regularizes amounts properly due to that consumption.
25. The Respondent states that the Complainant was notified of the reconstruction, furnished with the figures underpinning the adjustment (including the meter chronology and consumption summaries), and invited to engage on settlement.
26. Regarding supply status, the Respondent records that any interruption was undertaken in accordance with credit-control procedures applicable to arrears accounts. The Respondent avers that upon receipt of the Authority's directions of 26th June 2025, the Respondent undertook to comply with the Authority's directives pending determination.
27. In the premises, the Respondent prays that the Authority find the reconstruction lawful and reasonable and uphold the sum of Kshs.7,359,061.35 as due and payable.

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

28. By letter dated 26th June 2025, the Authority invited written submissions from both parties and directed the Respondent to reconnect electricity supply to the Plaintiff; the communication issued to the Plaintiff through its advocates, Kiragu & Mwangi Limited, and to the Respondent, Kenya Power. The Respondent's subsequent filing also expressly references the Authority's letter of 26th June 2025.

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29. Upon receipt of the parties' submissions, the Authority via a hearing notice dated 22nd July invited the parties for a hearing on 31st July 2025. It is on the basis of the hearing conducted that the Authority renders its determination on the matter.

E. ISSUES FOR DETERMINATION

30. Based on the facts, evidence and investigations, the following are the issues for determination:
    a. Whether the under-billing arose from a meter defect or from a billing system digits anomaly.
    b. Whether the Plaintiff is liable to settle the outstanding bill on a/c no. meter no.[redacted] later replaced by Smart Meter No.[redacted] amounting to Kshs.7,359,061.35.

F. ANALYSIS OF THE DISPUTE

a. Whether the under-billing arose from a meter defect or from a billing system digits anomaly.

31. The Authority notes that the Respondent attributes the short-billing to a digits-related anomaly in its billing system, not to a failure of the metering instrument itself. In its response of 30th July 2025, the Respondent states that Ordinary Meter No[redacted] was read regularly, yet "the system was unable to bill the said account correctly due to a system anomaly associated with the digits," an error said to have gone undetected for years until March 2024.

32. On the available record, no metrological evidence has been produced to establish that the withdrawn meter was defective: there is no bench-test certificate, no removal/installation job card, and no terminal inspection record in the file. What is exhibited instead is that the meter was replaced as an upgrade on 2nd October 2024 with Smart Meter No. [redacted], which does not assert a physical fault in the old meter.

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33. The Authority further notes the consumption chronology relied upon by the Respondent: the ordinary meter allegedly advanced from a zero start in March 2017 to 381,297 kWh at removal (≈90 months), while the smart meter registered 18,224 kWh in its first four months, figures which the Respondent says compare well. These data points are tendered to corroborate that energy was indeed consumed during the period when the billing system failed to post proper charges.

34. From the Plaintiff's side, it is admitted that supply was ongoing and that, whenever the Respondent did not attend to read, the estate provided self-readings which the Respondent used for billing. This supports the conclusion that the metering installation was functional enough to be read and to produce register advances, and that the parties' interaction revolved around capture and posting of reads, not a meter incapable of measurement.

35. On cause classification, therefore, the Authority finds that the present evidentiary record does not substantiate a metering defect. The absence of any meter test report or other metrological proof, the stated purpose of the meter replacement as an upgrade, and the Plaintiff's own provision of self-readings together point away from an instrument failure and toward a downstream CIS/billing anomaly as the proximate cause of under-billing. On that footing, the defective-meter recalculation provision in section 159(1) of the Energy Act which caps recalculation to six months where a meter is found defective is not engaged on the present evidence.

36. That said, the Authority also records that the Respondent visited site and captured reads over more than seven years at all times (save for a few occasions) without detecting or correcting its internal digits anomaly. The long-running failure to surface and rectify a posting error despite routine reading activity constitutes negligence in system oversight and exception handling. This bears not on cause classification (which, on the evidence, is CIS-related rather than metrological) but does bear on remedies and modalities of recovery, given the Respondent's extended delay in rendering accurate bills.

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37. In conclusion, the Authority determines that under-billing arose from a billing-system digits anomaly, not from a defective meter. Accordingly, section 159(1) (defective-meter six-month cap) does not apply on the present record. However, the Respondent's prolonged failure to detect and correct the anomaly, despite regular reads and the Plaintiff's assistance with self-readings, mitigates the manner and timing of any recovery and will be taken into account in the Authority's orders on quantification and payment terms.

b. Whether the Plaintiff is liable to settle the outstanding bill on a/c no. meter no. 062222661 later replaced by Smart Meter No. number [redacted] amounting to Kshs. Kshs 7,359,061.35.

38. The Authority observes that the matter before it concerns a retrospective billing adjustment and a related disconnection affecting Account No. [redacted] in the name of HEWTON LTD. The account was originally metered on Ordinary Meter No. [redacted] (commissioned on 9th March 2017) and, on 2nd October 2024, replaced with Smart Meter No. [redacted] The amount demanded under the impugned bill is Kshs 7,359,061.35 pursuant to a billing statement dated 24th March 2024. The dispute was escalated to the Authority following exchanges between the parties and the Authority's directions of 26th June 2025 inviting submissions and directing reconnection pending determination.

39. On the Plaintiff's showing, the supply serves a common facility—specifically, the estate's water borehole. The Plaintiff states that readings were routinely furnished (including by the estate when the Respondent did not attend), bills were paid as rendered, and extended periods of estimation occurred without contemporaneous objection by the Respondent. The Plaintiff first challenged the escalation by a letter dated 15th April 2024 (received 26th April 2024), noting that as of 22nd February 2023, the bill stood at Kshs.80,277 at meter reading 0347800. The Plaintiff further states that the multi-year uplift lacked a transparent reconstruction basis and that

disconnection occurred on 20th June 2025. Importantly, the Plaintiff does not dispute that it remained on supply throughout the period now in issue.

40. The Respondent avers that, although field readings were taken over the years, a digits-related billing-system anomaly prevented correct posting of charges for an extended period. The anomaly was identified and resolved in March 2024, following which the account was reconstructed. On removal, the ordinary meter displayed a cumulative register of 381,297 kWh across approximately ninety (90) months of service. Within its first four months, the smart meter recorded 18,224 kWh, yielding an average of approximately 4,556 kWh per month. The Respondent contends that the smart-meter profile compares well with the historic usage and that 352,835 kWh corresponds to consumption incurred during the anomaly window; applying tariffs, levies, and statutory charges across the affected months resulted in the demand of KShs 7,359,061.35.

41. The Authority notes that the Respondent relies on (a) the ordinary meter's cumulative 381,297 kWh at removal (≈4,236 kWh/month over 90 months) and (b) the smart-meter's 18,224 kWh over four months (≈4,556 kWh/month) to corroborate the historical usage. While these monthly averages are broadly aligned, the Respondent simultaneously advances 352,835 kWh as the quantum associated with the anomaly window. The documents submitted does not include a granular month-by-month reconstruction ledger showing the derivation of 352,835 kWh, the month and tariff mapping, levies/VAT application, reversals, or treatment of estimated vs actual reads. Four months of smart-meter data are also a limited statistical basis for extrapolating across ninety months, particularly for a common-area load subject to duty-cycle variation. On the evidence provided, some level of under-billing is plausible, but the precise quantum claimed remains insufficiently demonstrated in methodological detail.

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42. In assessing liability, the Authority weighs the following:

(i) The Plaintiff's undisputed receipt of supply and non-denial that energy was consumed over the entire period;

(ii) The Respondent's prolonged failure to detect and correct its system anomaly despite routine site meter readings; and

(iii) The absence of a transparent, time-stamped reconstruction workbook to verify the exact monthly build-up to KShs 7,359,061.35 based on the actual cumulative meter reading.

43. On balance, the Authority finds that the Plaintiff is liable in principle to settle charges for energy consumed, but that the Respondent's negligence in system oversight and its delay in rendering accurate bills materially affect the terms and modalities of recovery.

44. Having regard to consumer-protection considerations, fairness, and the parties' conduct, while it would be inequitable to absolve payment for energy admittedly consumed, the Authority holds that it is also inequitable to perpetuate the Respondent's negligence in system oversight and its delay in rendering accurate bills by allowing a seven-year lapse to be blamed upon the Plaintiff. Had the Respondent corrected the said system anomaly earlier or even had the same not been existent, the Respondent would not be in the position it is trying to recover such lumpsum amount as is the case in this dispute.

45. The Authority refers to **Alan E. Donovan v Kenya Power & Lighting Company [2021] KEHC 13070 (KLR)** as cited by the Plaintiff where the High Court stated as follows:

I find from the evidence on record that the cumulative conduct of the 1st Respondent towards the Petitioner as evidenced in the supportive affidavit and annextures thereto, contravened provision of Article 46 of the Constitution by Respondent's failure to provide a breakdown and justification of the demanded payment for purported supplied electricity power to the Petitioner. I further hold even where the 1st Respondent would have with evidence, justified such big billed payment, many years back, the good

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governance infrastructure in Article 10 of the Constitution would, in my view, prohibit one from back billing for a period of 12 calendar months proceeding, as this would be contrary to the National Values, Principles of Good Governance, Integrity, Transparency and Accountability and sustainable Development.

46. The Authority therefore refers to the above principle in prohibiting back billing for prolonged periods. The Authority particularly takes issue with this back billing that is perpetuated solely by the Respondent. However, noting that the consumption in question is not disputed and the Respondent's failure to timely detect the said anomaly and corrects its system, pursuant of the powers granted under section 11 of the Energy Act, Cap 314, the Authority, shall allow a maximum recovery period of six (6) months from the date the Respondent discovered the said anomaly.

G. DETERMINATION

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

  a) The Respondent shall be permitted to recover a maximum of six (6) months' consumption arising from the reconstruction. For quantification, the disputed sum of KShs 7,359,061.35 accrued over ninety (90) months; pro-rating this across the accrual horizon yields a monthly average of KShs 81,767.35 (7,359,061.35 ÷ 90 = 81,767.35). The Plaintiff shall therefore pay six (6) equal monthly instalments of KShs 81,767.35, commencing 5th September 2025
  b) That this Determination is final and binding upon both parties.
  c) That each party to bear their own costs.
  d) 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.

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DATED AT NAIROBI THIS ...22ND... DAY OF ...August...2025.

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DANIEL KIPTOO BARGORIA, MBS, OGW

<u>DIRECTOR GENERAL</u>