Energy & Petroleum Regulatory Authority

**IN THE REPUBLIC OF KENYA**

**ENERGY AND PETROLEUM REGULATORY AUTHORITY**

**DISPUTE NO: EPRA/PEACP/CP/4/63120016/2025**

**DAVID MUIGAI IRUNGU........................................................................ PLAINTIFF**

**VERSUS**

**KENYA POWER PLC ..........................................................................RESPONDENT**

**DETERMINATION**

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## A. BACKGROUND

1. The dispute between David Muigai (Plaintiff) and Kenya Power PLC (Respondent) was first reported to the Authority on 7th August 2025 through a letter dated 1st August 2025.
2. The dispute is on alleged unlawful disconnection of power for account number 159411735 located at Chiereini Area along Eastern by-pass Ruai.

## B. PLAINTIFF'S CASE

3. The Plaintiff in his documents stated that he runs a business of recycling plastics under the company by the name of May concepts Limited situated at Chiereini Area along Eastern by-pass Ruai.
4. The Plaintiff stated that he lodged a complaint with the Authority on 7th August 2025, against the Respondent due to unlawful disconnection of power at his premises for account number [redacted].

5. The Plaintiff stated that on 29th July 2025 around 2 pm, the Respondent's County Business Manager, Nairobi South in the company of his fellow staff members went to his premises and disconnected power without any reason, notice or justification.
6. The Plaintiff further averred that the said County Business Manager and his team inspected his premises and found no illegal power connection but disconnected his electric power, nonetheless.
7. The Plaintiff averred that he had paid all his electricity bills for the said account number and therefore the disconnection was unwarranted and without any basis.
8. The Plaintiff stated that he had made numerous follow ups with the Respondent at its County Offices and Headquarters in a bid to have his power reconnected but to date, the issue has never been addressed.
9. The Plaintiff further stated that he wrote to the Respondent vide an email dated 31st July 2025 regarding power reconnection, which elicited a response where the Respondent promised to restore his power. The Plaintiff stated that his power was never reconnected, which action necessitated the present complaint.
10. The Plaintiff thus prays for the following:
    i. That the Respondent immediately reconnect power to the Plaintiff's premises.
    ii. That Respondent do compensate the Plaintiff for loss of business and other damages occasioned by the unlawful disconnection of power in the sum of Kenya Shillings Sixty Thousand (60,000) per day from the date the power was unlawfully disconnected until it is restored.
    iii. That the Respondent do pay fine in accordance with section 11 of the Energy Act, Cap 314, Laws of Kenya.

## C. RESPONDENT'S CASE

11. The Respondent failed to file their submissions nor request for more time to do so despite the directive issued via letter dated 12th August 2025.



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12. Additionally, the Respondent failed to implement the directive of restoring power to the Plaintiff's premises as directed in the letter dated 12th August 2025.

## D. DISPUTE RESOLUTION PROCESS

13. Upon receiving the Plaintiff's complaint, the Authority, pursuant to Regulation 7 of the Energy (Complaints and Disputes Resolution) Regulations 2012, directed the parties to file their submissions regarding the matter vide a letter dated 12th August 2025.
14. The Plaintiff filed his submissions dated 15th August 2025 and forwarded the same to the Respondent via email on the same date.
15. The Respondent failed to file submissions nor reconnect power to the Plaintiff's premises as directed via the letter dated 12th August 2025.
16. The Plaintiff sent an email on 2nd August 2025, notifying the Authority that his power had not been restored.
17. In view of the above, the Authority vide a letter dated 4th September 2025 wrote to the Respondent notifying them that it would proceed to render its determination on the matter.
18. In response to the above-mentioned letter, the Respondent wrote a letter to the Authority dated 12th September 2025 explaining the position of the matter and further requested for a tripartite energy audit at the Plaintiff's premises for clarity.
19. Accordingly, a site visit was scheduled on 22nd September 2025 to shed more light on the dispute.
20. Following the site visit, parties agreed to resolve the dispute by way of Consent.
21. Email correspondences dated 22nd September 2025, 26th September 2025 and 30th September 2025 were exchanged between the parties, however, negotiations fell through prompting the Authority to make its Determination on the matter.

## E. ISSUES FOR DETERMINATION



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i. Whether the Respondent disconnected the Plaintiff's power supply unlawfully.

ii. Whether the Plaintiff is entitled to an award of compensation and general damages for unlawful power disconnection.

## F. ANALYSIS OF THE DISPUTE

### i. Whether the Respondent disconnected the Plaintiff's power supply unlawfully.

22. During the site visit conducted on 22nd September 2025 at the Plaintiff's premises, the Authority's officers confirmed that new production equipment had recently been installed by the Plaintiff.
23. They also found that the sub-mains and meter tails showed signs of thermal damage caused by electricity use far above the contracted capacity (about 50 kVA over).
24. The visible burning and damage to the conductors were caused by under-sized wiring and/or loose connections under excessive demand.
25. This posed a real safety risk that required immediate disconnection. However, the Respondent did not provide any notice, inspection report, or documented plan for upgrading the connection.
26. Since the Respondent failed to file any response, the Plaintiff's claims about the Respondent's poor handling of the matter remain unchallenged.
27. Therefore, while there was a genuine safety risk, we find that the Respondent did not follow due process, as envisaged in Section 158 of the Energy Act, Cap 314. Consequently, we find that the disconnection was unlawful.

### ii. Whether the Plaintiff is entitled to an award of compensation and general damages for unlawful disconnection.

28. The Plaintiff avers that as a consequence of the unlawful power disconnection by the Respondent, he is incurring a loss and damage in the sum of Ksh. 60,000 per day. In



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support of their claim, the Plaintiff has produced the Audited report for the period ended 30th June 2025.

29. The law is clear on the issue for special damages. That is, special damages being quantifiable losses, must be specifically pleaded and strictly proved.
30. The principle has time and time again be enunciated by the Courts. In ***Hahn v Singh [1985] KLR 716***, the Court of Appeal emphasized that special damages must be proved *"with a degree of certainty and particularity."* This requirement is not merely a formality but a fundamental safeguard against speculative awards.
31. The Plaintiff submitted the Management Report and Financial Statements for the period ended June 30th, 2025. Upon scrutiny, the Authority finds that it does not provide the strict proof necessary to link the precise loss of Ksh. 60,000 per day attributable to the unlawful disconnection that occurred on 29th July 2025.
32. The report, being a statement of the company's historical financial position, only offers a general context of profitability. We find that the figure of Ksh. 60,000, is an estimation of turnover rather than a strictly verified loss of profit.
33. The need for absolute clarity in proof of special damages was further reiterated by the Court of Appeal in ***Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 Others Civil Appeal No. 192 of 1992*** (cited by the Plaintiff), where it was held that where a claim is capable of precise proof, only such precise proof will suffice.
34. In this matter, the Plaintiff's business is an established entity, capable of maintaining detailed daily records of production, costs, and sales. The mere presentation of an audited annual report is not sufficient to replace the need for specific evidence such as daily sales ledgers, production logs, or audited accounts covering the immediate period of the loss itself.
35. Consequently, the claim for special damages in the sum of Ksh. 60,000 per day fails due to lack of strict proof.
36. With regard to the prayer of general damages, the Courts, in numerous decisions, have recognized that an action that causes pain, agony and/ or affects the comfort



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and peace of mind of an individual, even in a commercial context, warrants an award for General Damages.

37. In ***Joseph Abraham Kafwa vs. Kenya Power & Lighting Co. Ltd [2014] eKLR,*** the Court while acknowledging that an award of general damages is in a Court's discretion, awarded general damages to the Plaintiff for pain and agony caused by the Defendant's actions.
38. Considering the inconvenience and disruption to the Plaintiff's business operations caused by the Respondent's arbitrary actions in cutting off power supply, and the resulting dispute before this Authority, we find that an award of general damages is warranted.
39. Therefore, the Authority deems it fair and just to award the Plaintiff the sum of **Ksh. 200,000** as General Damages for the inconvenience and disruption suffered during the period of the unlawful disconnection.
40. The prayer for payment of a fine by the Respondent is untenable as the present dispute is a consumer dispute as opposed to an administrative enforcement matter. As such, the Authority cannot to impose the regulatory fines contemplated under the Energy Act, Cap 314 in this context.

## G. DETERMINATION

41. The Authority has considered the Plaintiff's and Respondent's case and based on the facts and evidence presented, therefore makes the following determination:
    a) The Plaintiff is awarded **Ksh. 200,000** as general damages for the inconvenience and disruption suffered during the period of unlawful disconnection.
    b) The Plaintiff must immediately disconnect the newly installed production equipment that pushes demand beyond the contracted capacity.



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c) The damaged sub-mains, meter tails, and any affected protective devices must be replaced and properly fixed to ensure safety.
d) The Plaintiff is hereby directed to apply for an uprating of their service (including transformer, service cable, or metering class as required).
e) The Respondent shall then conduct a load survey and issue a formal upgrade quotation and connection offer within the required timelines.
f) The Respondent shall restore supply once the Plaintiff has disconnected the additional equipment, repaired and certified the damaged installation as safe.
g) Each party shall bear their own costs of the suit.
h) This Determination is final and binding upon both parties.
i) 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.

**DATED AT NAIROBI THIS ...3rd... DAY OF ...OCTOBER...2025.**

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**DANIEL KIPTOO BARGORIA, MBS, OGW**

**DIRECTOR GENERAL**