Energy & Petroleum Regulatory Authority

IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/63630735/25

MARTHA ANNAH ONSOMU……………………………………………… PLAINTIFF

VERSUS

KENYA POWER PLC ………………………………………………………RESPONDENT

DETERMINATION

A. BACKGROUND

1. The dispute between Martha Annah Onsomu (Plaintiff) and Kenya Power PLC (Respondent) was first reported to the Authority on 13th August 2025 through a letter dated 7th August 2025.
2. The dispute relates to alleged vandalism, harassment, malicious damage to property and illegal and unlawful disconnection of electricity at Martha Annah Onsomu's premises in Machakos County.

B. PLAINTIFF'S CASE

3. The Plaintiff, in her submissions stated that on 24th October 2024 around 1.00 pm, persons presenting themselves without any identification as the Respondent's employees, climbed the perimeter wall at her premises, maliciously demolished the wall, removed bricks, broke in, vandalized and disconnected power supply.

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4. The Plaintiff averred that she had made an application for electricity installation at KPLC Tala office in 2015 and was issued with meter number [redacted] in 2016.
5. She stated that since then, she has had uninterrupted power until October 2024 when the Respondent's employees maliciously disconnected power form her house.
6. The Plaintiff stated that on 24th October 2024, the Respondent's employees visited her home using motorcycle registration number [redacted] and motor vehicle registration number [redacted] and [redacted], gained illegal entry into her home stole valuables, disconnected electricity and harassed minors.
7. The Plaintiff further averred they reported the incident to KBC Malaa Police Station on 24th October 2025 vide OB No. 39 at 19.36 hours.
8. The Plaintiff averred that she lodged a complaint with the Respondent on the incident, after which the Respondent sent a security team from Machakos Office to carry out investigations on the incident.
9. The Plaintiff averred that on 28th October 2024, the Respondent further sent a security team, among them one employee who was present during the 24th of October 2024 incident, who stated that their action was because of a punctured cable found on the Plaintiff's power connection.
10. The Plaintiff added that the Respondent sent another team on 7th December 2024 who alleged that the unwarranted vandalism was due to "meter migration", which the Plaintiff found to be grossly an afterthought.
11. The Plaintiff confirmed that she wrote a letter to the Respondent dated 23rd December 2024, which was responded to on 2nd January2025 on a non-prejudice basis advising the Plaintiff to reapply for power reconnection and laying the blame on the Plaintiff.
12. The Plaintiff further stated that her letters to the Respondent dated 16th January 2025 and 11th July 2025 were not responded to and thus she filed the dispute with the Authority.

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13. The Plaintiff therefore prays for:

i.	Payment and installation of 5kW solar system (installed to mitigate the damage caused by the Respondent	**Ksh.**	**391,350.00**
ii.	Repair works-	**Ksh.**	**310,354.60**
iii.	General damages for pain, loss and suffering	**Ksh.**	**1,000,000.00**
iv.	Legal fees (party and party costs)	**Ksh.**	**175,000.00**
	Total	**Ksh.**	**1,876,704.60**

C. RESPONDENT'S CASE

14. The Respondent reconnected power to the Plaintiff as directed via a letter dated 2nd September 2025, however they failed to file their submissions nor request for more time to do so.
15. The Authority further notes that the Respondent did not file any form of correspondence indicating their position in the matter.

D. DISPUTE RESOLUTION PROCESS

16. The dispute between Martha Annah Onsomu (Plaintiff) and Kenya Power PLC (Respondent) was first reported to the Authority on 13th August 2025 through a letter dated 7th August 2025.
17. The Authority directed the parties to file their submissions regarding the matter via a letter dated 2nd September 2025.
18. In the said letter, the Respondent was directed to reconnect power supply to the Plaintiff's premises pending hearing and determination of the dispute.
19. The Plaintiff filed her written submissions dated 5th September 2025.
20. The Authority further forwarded the submissions to the Respondent via email on 10th September 2025.
21. The Respondent reconnected power to the Plaintiff's premises as directed but failed to file their submissions within the stipulated timelines nor request for more time to do so.

22. In view of the above, the Authority hereby renders its determination on the matter as follows:

E. ISSUES FOR DETERMINATION

i. Whether the Plaintiff is entitled to the reliefs sought.

F. ANALYSIS OF THE DISPUTE

i. Whether the Plaintiff is entitled to the reliefs sought.

23. The Authority notes that despite being duly served with the Plaintiff's submissions on 10th September 2025 and afforded adequate opportunity to respond, the Respondent failed to file any submissions or correspondence indicating its position. The matter is therefore undefended.
24. It is trite law, as codified under sections 107–109 of the Evidence Act (Cap. 80), that he who alleges must prove. Accordingly, the Plaintiff, notwithstanding the absence of a response from the Respondent, bears the burden of proving her case on a balance of probabilities. This was the Court's position in ***Gichinga Kibutha vs. Caroline Nduku [2018] eKLR***, a matter that was similarly undefended.
25. Where the Plaintiff has discharged this burden, the Respondent's failure to file a response leaves the Plaintiff's evidence unrebutted. Courts have consistently held that uncontroverted evidence which is credible is deemed admitted. In ***Trust Bank Limited v Paramount Universal Bank Limited & 2 Others [2009] eKLR***, the Court, while admitting the evidence adduced against the 2nd and 3rd Defendants, held that:

"……In the same vein failure to adduce any evidence meant that the evidence adduced by the Plaintiff against the 2nd and 3rd Defendants was uncontroverted and therefore unchallenged…"

26. The Plaintiff averred that the Respondent's actions caused her harm and damage. She has therefore summed her prayers as follows:

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i. Payment and installation of 5kW solar system (installed to mitigate the damage caused by the Respondent- **Ksh. 391,350.00**

ii. Repair works- **Ksh. 310,354.60**

iii. General damages for pain, loss and suffering- **Ksh. 1,000,000.00**

iv. Legal fees (party and party costs)- **Ksh. 175,000.00**

Total- Ksh. 1,876,704.60

27. The Plaintiff produced token and transaction records demonstrating consistent purchases on the same meter number over a period of approximately nine years, thereby confirming a continuing supply relationship. No evidence was tendered by the Respondent to dispute this position.

28. Under the Energy Act, Cap 314, any disconnection on grounds of meter tampering or safety must be preceded by a lawful inspection, written notice, and proportional enforcement measures. The record before the Authority contains no inspection authorization, safety notice, or meter test results linking the disconnection to any proven irregularity.

29. The Authority had also issued an earlier directive for reconnection pending determination. Accordingly, the Authority finds that the Respondent failed to establish lawful justification for the disconnection.

30. On the manner of entry and physical impact, the Plaintiff adduced photographic evidence showing peeled or lifted roof sheets allegedly to access an electrical conductor. Such an approach is inherently intrusive and destructive unless justified by an immediate and documented safety exigency, which was not demonstrated.

31. The Plaintiff's account of broken perimeter and structural fixtures is consistent with the photographic record. In the absence of any counterevidence, the Authority finds on a balance of probabilities that the Respondent's field operations caused the damage complained of.

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32. The Authority further notes the absence in the record of fundamental operational documents expected under the Respondent's service charter and statutory obligations. Specifically, there is no disconnection order referencing the meter, no advance written notice to the consumer, no job card identifying the field crew or authority to enter, no meter removal or test report, and no photographic proof of bypass or unsafe wiring attributable to the consumer. This documentary gap demonstrates non-compliance with the procedural requirements under the Energy Act, Cap 314, and undermines any assertion of lawful conduct by the Respondent.

33. On loss and quantum, the Authority identified three types of claim:

i. Direct property damage- relating to the roof and fixtures. This claim was supported by photographic evidence and an invoice for repair works from Mukase Contractors dated 26th March 2025, of Ksh.310,354.60 and receipts of repair materials from Nyamosh Hardware, Electrical and Wholesalers totalling to **Ksh. 267,547,** however, these receipts are not dated. Additionally, no photographic proof of repair works was provided. The Authority therefore finds that this claim is not sufficiently proven to warrant compensation.

ii. Mitigation through installation of a solar system- the Plaintiff submitted a bank receipt and an invoice for a Ksh. 391,350 solar system. However, no completion certificate or photographic proof of installation was provided.

This notwithstanding, the Plaintiff's action to install a solar PV system is recognized as a reasonable mitigation measure to restore power supply, however the associated costs represent a capital investment conferring long-term, continuing benefit. Such expenditure, though prudent from a consumer perspective, does not constitute a compensable loss under the principles governing damages. Accordingly, the prayer for reimbursement of the solar system cost is declined. This position is further supported by the decision of the Court in ***Hahn vs. Singh [1985] KLR 716***, where the Court held that a claimant is

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under a duty to mitigate, and cannot recover expenses that are excessive, unnecessary, or confer an enduring benefit unrelated to the breach.

iii. Non-pecuniary loss- arising from prolonged outage, inconvenience, and distress occasioned by the unlawful disconnection and intrusive entry. The Authority finds that this loss is supported in as it is uncontroverted by the Respondent and further on grounds enunciated above, regarding the Respondent's unauthorised/unlawful actions.

34. Regarding the prayer of general damages, the Courts, have recognized that an action that causes pain, agony and/ or affects the comfort and peace of mind of an individual, warrants an award for General Damages.

35. 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.

36. Considering the inconvenience, pain, loss and damage to the Plaintiff's premises caused by the Respondent's arbitrary actions, and the resulting dispute before this Authority, we find that an award of general damages is warranted.

37. Therefore, the Authority deems it fair and just to award the Plaintiff a sum of **Ksh. 200,000** as general damages for pain, loss and suffering.

G. FINAL DETERMINATION

38. The Authority has considered the Plaintiff's case and based on the facts and evidence presented and investigations made, therefore makes the following determination:

   a) The Plaintiff is awarded Ksh. 200,000 as general damages for pain, loss and suffering caused by the Respondent's arbitrary actions.

   b) Each party shall bear their own costs of the suit.

   c) This Determination is final and binding upon both parties.

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d) 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 16^TH **DAY OF** OCTOBER **2025.**

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DANIEL KIPTOO BARGORIA, MBS, OGW

DIRECTOR GENERAL