Energy & Petroleum Regulatory Authority

IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/63014643/25

MICHAEL MWANIKI MACHARIA……………………………………………PLAINTIFF

VERSUS

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED….RESPONDENT

DETERMINATION

A. BACKGROUND

1. The dispute between Michael Mwaniki Macharia (Plaintiff) and Kenya Electricity Transmission Company (Respondent) was first reported to the Authority through a letter from his advocate dated 14th July 2025.
2. The dispute is on alleged trespass of land known as L.R No. [redacted] registered under the Plaintiff, Mr. Michael Mwaniki Macharia.

B. PLAINTIFF'S CASE

3. The Plaintiff stated that he is the registered proprietor of L.R No. [redacted].
4. The Plaintiff averred that the Respondent was required to implement infrastructural developments involving erection of power lines between Kenya and Ethiopia, which required them to secure wayleave rights from the affected landowners.
5. The Plaintiff stated that the said project traversed his land and the total land earmarked for the exercise was 1.7 acres.

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6. The Plaintiff added that the said piece of land was under tree coverage at varying degrees of maturity.

7. The Plaintiff further stated that the Respondent invited him for a valuation exercise for purposes of compensation. Following which a site visit was conducted by the Respondent's assessors and a contract of compensation was arrived at after based on the number of trees on the land, number of trees earmarked as mature, number of trees earmarked as of medium maturity and number of trees identified as young trees.

8. The Plaintiff asserted that based on the data, a final composite figure was determined to be Ksh. 5,042,150.00 and he was required to countersign for the same, which he did.

9. The Plaintiff later established that his neighbours involved in the same exercise had received or were in the process of receiving payment and yet he had not been contacted on the same.

10. He indicated that he later learnt that the Respondent's representative had arrived at a decision that his affected land was to be re-valued.

11. The Plaintiff further averred that permission for removal of trees had been granted after the initial valuation and thus there was not a realistic way that re-evaluation would take place.

12. The Plaintiff stated that, nonetheless, he agreed to meet the Respondent's representatives during which they insisted that they would base re- evaluation on measuring the available stumps, ignoring the missing stumps and thus the Plaintiff withdrew from the exercise.

13. The Plaintiff further stated that the Respondent purported to carry out a quick repeat exercise, devoid of any scientific logic on how they could be accurate under such circumstances.

14. The Plaintiff stated that he later received communication that his bank account had been credited with Ksh. 2,642,100.00 from the Respondent as wayleave compensation.

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15. The Plaintiff stated that in view of the above, he proceeded to Environmental and Land Court in Engineer (***E.L.C. case no. 14 of 2021 Michael Mwaniki Macharia vs. Ketraco Co. Ltd)*** where lawyers raised an objection that the court had no jurisdiction to determine the matter on account of provisions in the Energy Act, Cap 314 and was thus dismissed.
16. The Plaintiff further stated that he escalated the matter to the ***ELC Court in Olkalau vide Nyandarua- ELCLA E006 of 2024: Michael Mwaniki Macharia vs. Ketraco Co. Ltd.*** which court also directed that the matter should be referred to the Authority.

C. RESPONDENT'S CASE

17. The Respondent stated that it was required to implement infrastructural developments involving erection of high voltage power lines between Kenya and Ethiopia.
18. The Respondent further expressed that it was required to secure wayleave from landowners along the affected areas.
19. The Respondent asserted that the said project begun with sensitization of landowners that would be affected by the project, undertaking of transmission line mapping and survey.
20. It is the Respondents case that they carried out a verification process for all parties involved and treated all of them equally and fairly.
21. The Respondent averred that the Plaintiff had been duly briefed about the compensation process from enumeration to verification, where enumeration was to be undertaken by the wayleave assistant while verification and disclosure would be undertaken by a valuer.
22. The Respondent further stated that upon undertaking verification and disclosure processes, it proceeded to transfer the compensation amount of Ksh. 2,642,100.00 to the Plaintiff's bank account.
23. The Respondent indicated that the Plaintiff returned the said amount in protest that it was not the amount agreed on.

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24. The Respondent stated that following the Plaintiff's complaints and requests, it agreed to undertake a joint re-verification process that was carried out on the subject parcel on 25th February 2021 with the purpose of resolving any errors and reaching an amicable solution.

25. The Respondent noted that the Plaintiff refused to undertake the joint re-verification process.

26. The Respondent further noted that the Plaintiff subsequently filed the matter in court at Engineer*- E.L.C. case no. 14 of 2021 Michael Mwaniki Macharia vs Ketraco Co. Ltd.* seeking payment in the sum of Ksh. 5,452,150,00 being the alleged compensation sum allegedly promised by the Respondent.

27. The Respondent added that during the pendency of ***ELC 14 of 2021***, the parties entered a consent to pay the undisputed sum of Ksh. 2,642,100,00 being the assessed compensation payable by the Respondent which was disbursed to the Plaintiff's bank account on or about 30th November 2022 and the same was acknowledged by the parties in court.

D. DISPUTE RESOLUTION PROCESS

28. Upon receipt of the complaint, the Authority pursuant to Regulations 7(2) as read with the Second Schedule of the Energy (Complaints and Disputes Resolution) Regulations, 2012, directed the Parties to file their submissions via a letter dated 4th August 2025.

29. The Plaintiff responded to the said letter via email on the same date, requesting the Authority to register a dispute based on the documents initially submitted, and further stated that that they were referred to the Authority by court.

30. The Respondent acknowledged receipt of the Authority's letter dated 4th August 2025 via an email dated 1st September 2025, in which it informed the Authority that they had had a discussion with the Plaintiff's advocate and had agreed to allow the Respondent more time to file their submission.

31. The Respondent later filed its submissions via email on 22nd September 2025.

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32. The Authority invited parties for a hearing on 29th September 2025, via a letter dated 23rd September 2025 which was postponed to 1st October 2025 upon Plaintiff's request.

33. During the hearing the Plaintiff and the Respondent's valuer were called upon to give their testimony.

34. The Plaintiff's and the Respondent's Counsel cross-examined the Respondent's Valuer and the Plaintiff respectively during which the following additional facts were established:

i. The period between the damage of trees and re-verification activity was around 5 months.

ii. The people who gave the alleged figure were officers of the Respondent but not valuers.

iii. Trees were fell down by the contractors and authorisation to do so was given by the landowners during a stakeholders meeting.

iv. Rates used for compensation of Plaintiff's property were derived from Kenya Forest Service gazetted in 2016.

v. Further explanation on the rates was done to landowners on request, but in this case it was not done to the Plaintiff since no request was made.

vi. During the re-verification exercise, the Plaintiff had a representative on site.

vii. The verification was done between 28th October 2019 and 2nd November 2019.

viii. The people who gave the Plaintiff the alleged sum of Ksh. 5,452,150,00 were not valuers but employees of the Respondent.

ix. That the final figure for damages and properties is given by valuers.

x. Request for re-verification was made by the Plaintiff via a letter.

xi. The trees had been in the Plaintiff's farm since 1999.

xii. A few of the tree stumps are still on the farm, however the Plaintiff has not done any valuation of the same.

xiii. The officers who gave the Property Damage Report were employees of the Respondent and not valuers.

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xiv. The Ksh 5,452,150,00 was indicated at the back of the Plaintiff's Property Damage Report thus it was not the final value.

35. Through this hearing meeting, Parties were accorded an opportunity to resolve the dispute amicably, however, the issues remained unresolved prompting the Authority to issue a determination on the matter.

36. In view of the above, the Authority directed the Parties to submit relevant documents to facilitate determination of the matter.

E. ISSUES FOR DETERMINATIO

37. Based on the facts, evidence and investigations, the following are the issues for determination:

   i. Whether the compensation offered by the Respondent was lawful, fair and adequate.

F. ANALYSIS OF THE DISPUTE

Whether the compensation offered by the Respondent was lawful, fair and adequate.

38. The foundational evidence agreed upon by both parties is the joint site inspection conducted on 11th April 2019 on LR [redacted]. The inspection confirmed a total of 566 mature Blue Gum, 925 medium Blue Gum, 223 young Blue Gum, 10 young Cypress, and 13 young Wattle. These figures are undisputed and represent the factual baseline for determining compensation.

39. The Property Damage Report (PDR No. 00673), signed by the Plaintiff during the inspection, was incomplete. The key computation fields, namely "Level of management," "Quantity," "Rate," and "Ksh."were left blank. While this limits its value as proof of an agreed price, it nonetheless confirms the species and tree counts observed on site.

40. The inspection was carried out by wayleave assistants whose official role was enumeration, not valuation. Despite this, the PDR they issued to the Complainant

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contained maturity classifications and a handwritten total of Ksh. 5,452,150. Such entries exceeded their authority as only qualified valuers, applying an approved schedule, can determine maturity classes and assign unit rates. Accordingly, the handwritten figure and assistant-level valuation lack evidentiary weight and cannot be relied upon as the final valuation.

41. The Property Damage Report (PDR No. 00673), relied on by the Respondent *(page marked "92" of the Respondent's bundle)* reveals that the description of the trees as recorded by the Respondent's agents on 11th April 2019 was changed to 566 medium Blue Gum, 925 young Blue Gum, 223 young Blue Gum, 10 young Cypress, and 13 young Wattle trees.

42. We note that the description of trees in the PDR relied on by the Respondent contained visible crossings, the effect being that the earlier description of 566 **mature** Blue Gum and 925 **medium** Blue Gum **had been changed** to 566 **medium** Blue Gum and 925 **young** Blue Gum.

43. The PDR relied on by the Respondent appears to have been executed by the Respondent's agents on 15th November 2019 with a total of Ksh. 2,641,100 tabulated as the total amount of compensation payable to the Plaintiff. Additionally, the remarks by the Respondent's agents in this PDR stated that *".... the subject parcel constitutes a tree plantation of mainly eucalyptus trees. Due to the large numbers, the growth rate was suppressed, and the girth was relatively small. The trees were reclassified based on girth sizes".*

44. In their submissions, the Respondent argue that the maturity of trees had been erroneously recorded in April 2019 hence the corrections of November 2019.

45. The Respondent asserts that the valuation of was based on the Kenya Forest Service (KFS) gazetted schedule of 2016.

46. While using a statutory schedule is appropriate in principle, the Respondent did not provide a complete verification worksheet showing how each tree count was matched to its corresponding KFS rate. Without this disclosure /justification, neither the

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amount credited of Ksh. 2,642,100, nor the alleged figure of Ksh. 5,452,150 can be independently verified or audited.

47. The "re-verification" exercise conducted on 25th February 2021 occurred after felling and relied on stump and photographic evidence. Post-harvest verification provides lower accuracy than pre-harvest measurement and cannot justify reclassifying maturity without supporting measurement data. Therefore, the April 2019 joint traverse remains the more reliable record for species and maturity classification.

48. The compensation process lacked a key procedural safeguard: a pre-felling verification and disclosure stage. Proper practice requires that (i) valuation be undertaken by qualified valuers, (ii) rates and totals be disclosed in writing to the landowner, and (iii) acceptance or objection be recorded before felling. The absence of this step, combined with communication of an unofficial figure by assistants, contributed to the misunderstanding and the subsequent dispute.

49. On the totality of the evidence, the only reliable data are the jointly witnessed pre-harvest counts. The subsequent handwritten total, incomplete PDR, and post-harvest re-verification lack the documentation necessary to support a valid valuation.

50. Accordingly, the Authority directs that a fresh valuation be undertaken by a qualified, independent valuer from the Kenya Forest Service (KFS) or Kenya Forestry Research Institute (KEFRI). The exercise shall use the agreed 2019 tree counts and maturity classification and shall apply the KFS gazetted schedule in force at the time of felling. A full item worksheet (species × maturity × rate) shall be disclosed to both parties, and the verified balance paid or recovered as appropriate.

G. <u>FINAL DETERMINATION</u>

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

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a) That a fresh valuation be undertaken by a qualified, independent valuer from the Kenya Forest Service (KFS) or Kenya Forestry Research Institute (KEFRI). The exercise shall use the agreed 2019 tree counts and apply the KFS gazetted schedule in force at the time of felling.

b) A full item worksheet containing- species × maturity × rate, shall be disclosed to both parties, and the verified balance shall be paid to the Plaintiff by the Respondent within fourteen (14) days of confirmation.

c) Each party shall bear its own costs.

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

e) 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.

DATED AT NAIROBI THIS 9TH **DAY OF** OCTOBER **2025.**

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DANIEL KIPTOO BARGORIA, MBS, OGW

DIRECTOR GENERAL