Energy & Petroleum Regulatory Authority

IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/64831741/25

MONICA KERUBO OCHOKI …………………………………………… PLAINTIFF

VERSUS

KENYA POWER & LIGHTING PLC ……………………………………… RESPONDENT

DETERMINATION

A. BACKGROUND

1. The dispute between Monica Kerubo Ochoki (Plaintiff) and Kenya Power & Lighting PLC (Respondent) was first reported to the Authority via a statement of claim dated 8th October 2025 from Ochoki & Ochoki Associates.
2. The dispute relates to alleged trespass of land parcel known as Kisii Central [redacted]

B. PLAINTIFF'S CASE

3. The Plaintiff, Monica Kerubo Ochoki stated to be the legal representative of the estate of the deceased Paul Ochoki Mogeni.
4. The Plaintiff averred that Land Parcel Kisii Central [redacted] measuring approximately 1.7 hectares and situated in Kisii Central, was purchased in 1974 by the late Ochoki Mogeni and was registered in his name on 2 December 1974.

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5. The plaintiff averred that, after purchase, the late Ochoki Mogeni put the entire parcel under large scale farming, initially growing pyrethrum, maize and assorted vegetables and later tea bushes, which stabilized the family's food needs and financed school fees for his eight children. It was emphasized that this property formed the family's principal source of livelihood.
6. The plaintiff further asserted that the late Ochoki Mogeni had ancestral land at Bokondo near Bigogo Primary School, from which the family also derived subsistence, but that the suit property ([redacted]) was put into commercial farming, especially tea.
7. It was the plaintiff's case that, to ensure uninterrupted management of the tea farming when the widow Ruth Moraa Ochoki needed support, the family agreed that James Obiri (a first cousin who had studied at Nyakuro Secondary School) would assist with management from the late Ochoki's homestead on the land. The plaintiff contended that James Obiri successfully managed the tea for about eight years until he died in a road accident, after which his wife and children continued. Subsequently, the widow Ruth Moraa Ochoki relocated to the United States of America and, after about twenty-five years, returned to Kenya to find electric poles, heavy high voltage cables, and a transformer traversing the land and cutting across tea bushes, with a transformer allegedly sited in the middle of the land where workers used to pluck tea.
8. The Plaintiff averred that upon discovering the electricity works, the widow visited Kenya Power & Lighting Company (KPLC) offices and was referred to a person in charge named Daniel Ariri, who allegedly promised a site visit and a solution but did not act. The plaintiff stated that several demand letters were subsequently issued to KPLC by different law firms—among them Amolo & Gacoka Advocates (e.g., 12 August 2009), E.M. Obonyo & Co. Advocates (e.g., 9 February 2011), and Ochoki & Ochoki Associates Advocates (letters cited include 14 March 2013, 19 July 2014, and 17 January 2022)—but that no substantive response was received.

9. The plaintiff explained that, because of the alleged inaction, ELC Case No. 20 of 2022 was filed at the Kisii High Court, but it was dismissed by Justice Silas Munyao on grounds of non-exhaustion of available mechanisms, with no orders as to costs. Thereafter, the family obtained Letters of Administration for the estate of the late Ochoki Mogeni, namely a Limited Grant issued to Monica Kerubo Ochoki on 31 July 2025 by the Kisii High Court (Family Division).

10. Turning to the present claim, the Plaintiff alleged that the 1st Respondent (KPLC), without authority or consent of the registered owner, erected electric poles on Kisii [redacted] placed a transformer on the land, dug trenches, and strung high voltage lines that diagonally traverse the parcel from east to west. The plaintiff contended that the works cut through tea bushes, ignored statutory provisions including Sections 44, 146 and 3(1) of the Land Act, provisions of the Energy Act (including Section 46 and Cap 314), and Articles 40, 62 and 64 of the Constitution protecting property rights. It was asserted that wayleave procedures and compensation requirements were not observed, and that no request was made by the family or the administrator for power on the suit property.

11. The Plaintiff also alleged that, despite being aware of ELC No. 20 of 2022 and the existence of a dispute, the 1st Respondent recently supplied power to the 2nd Respondent from lines standing on the suit land, thereby treating the land as if it were public and demonstrating impunity. It was further alleged that the 2nd Respondent colluded with the 1st Respondent so that a live wire now traverses from the middle of the suit land to the 2nd Respondent's house, aggravating the encroachment.

12. Finally, the plaintiff stated that, before his demise, the late Ochoki Mogeni (also known as Paul Ochoki Mogeni) had informed the family that Jimmy Sausi Ochoki, Elijah Mokua Ochoki and Job Maosa Ochoki would settle on Kisii Central [redacted] while the last born Bundi Ochoki would settle at Bokondo. The plaintiff contended that, because of the negligence and conduct of the 1st

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Respondent and the alleged collusion with the 2nd Respondent, live power lines now prevent the three sons from settling on the suit land, rendering them destitute.

13. The Plaintiff sought the following reliefs:

    i. Removal of all huge cables and electric poles from Kisii Central [redacted] and their erection along the adjacent road, which is only thirty-nine meters away.

    ii. The Plaintiff indicated that due to heavy and high-voltage live wires overhead, they feared attending to the tea bushes and eventually abandoned the exercise of plucking tea. Consequently, the tea bushes were damaged, and the estate suffered losses estimated at Kenya Shillings Seventy Million (Kshs. 70,000,000/=) for the continued illegal occupation of private land by the Respondent.

    iii. Compensation of Kenya Shillings Forty Million (Kshs. 40,000,000/=) for the period during which the 1st Respondent occupied 0.08 hectares of Kisii Central [redacted]

    iv. They claimed Kenya Shillings One Hundred and Twenty Million (Kshs. 120,000,000/=) for trespassing on Kisii Central Kitutu/ [redacted]

    v. Kenya Shillings Two Hundred and Ten Million (Kshs. 210,000,000/=) for lost income during the period the 1st Respondent remained in occupation, as no major activities were carried out on the property due to fear of electrocution by the live neck-high cable wires.

    vi. Kenya Shillings Ninety-nine Million (Kshs. 99,000,000/=) as disturbance allowance.

    vii. They further claimed Kenya Shillings Fifteen Million (Kshs. 15,000,000/=) for aggravated damages.

    viii. Lastly, the Plaintiff prayed for award of costs of the claim.

C. RESPONDENT'S CASE

14. Via a letter dated 1st December 2025, the forwarded a survey report dated 28th November 2025, summarizing the findings as follows:

    i. An 11kV line and a low-voltage power line traverse the suit property.

    ii. The wayleave trace measuring 10 metres for the 11kV power line covers an area of 864.77 square metres, equivalent to 0.087 hectares or 0.214 acres.

15. Further, the Respondent via a letter dated 8th December 2025 further summarized the valuation report of the suit property as follows:

    i. The affected portion of land by wayleave trace measures 0.214 acres. This is consistent with the area cited by the complainant.

    ii. Comparable sales of similar parcels within the locality, together with consultations with the Government Valuer at the Nyamira Lands Office, confirm that the valuation index ranges from KES 1.2 million to KES 2.5 million per acre.

    iii. The respondent's valuation adopted the rate of KES 2.5 million per acre, translating to KES 535,000.00 for the affected portion.

    iv. In line with the applicable law and internal compensation policies/procedures, the respondent applied a 30% compensation rate, resulting in a payable amount of KES 160,000.00. Notably, in respect of wayleaves, land ownership remains with the registered proprietor and only the specific portion occupied by the electricity infrastructure is subject to restricted use.

    v. Considering the duration that the electricity infrastructure has been situated on the affected portion of land, the respondent settled on KES 2,889,000 as full and final compensation due and payable to the complainant.

16. In the above-mentioned letter, the Respondent averred that it was further noted that the Plaintiff own valuation shows ongoing agricultural activity occurring even on the affected portion of land. The Plaintiff added that this observation undermines and renders unsubstantiated the claims of loss of use, loss of income, disturbance

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allowance and aggravated damages, none of which have been supported by evidence meeting the required standard of proof.

17. The Respondent further averred that the electricity infrastructure was rerouted on 5th December 2025, and as such the land has been restored to its original status.

D. DISPUTE RESOLUTION PROCESS

18. The dispute between Monica Kerubo Ochoki (Plaintiff) and Kenya Power & Lighting PLC (Respondent) was first reported to the Authority via a statement of claim dated 8th October 2025 from Ochoki & Ochoki Associates.
19. The Authority directed the parties to file their submissions regarding the matter via a letter dated 4th November 2025.
20. Pursuant to the above directive, the Plaintiff filed it's written submissions dated 20th November 2025.
21. The Authority invited parties for a virtual hearing on 1st December 2025, via a letter dated 24th November 2025.
22. During the above-mentioned hearing, the Respondent requested to be allowed time to engage the Plaintiff in a bid to resolve the matter, after which they would inform the Authority on the outcome.
23. Via a letter dated 8th December 2025, the Respondent informed the Authority that the parties attempted to engage in negotiations on 4th and 5th December 2025 but were unable to reach a consensus and thus requested the Authority to issue a determination on the matter.

E. ISSUES FOR DETERMINATION

24. Based on the facts, evidence and investigations, the following is the issue for determination:
    i. Whether the Plaintiff is entitled to the reliefs sought.

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F. ANALYSIS OF THE DISPUTE

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

25. The existence of the Respondent's electric line and structures on L.R. Kisii Central [redacted] is undisputed. Both parties' survey reports confirm an 11kV overhead line and low-voltage line traverse the land. A strip of approximately 0.214 acres is encumbered.
26. The Respondent commissioned its own survey and valuation. It quantified the affected area and proposed compensation for the installation period. It has rerouted the line. These actions imply acceptance that the occupation was unauthorized. The Plaintiff is entitled to compensation for the encumbrance.
27. The key issues are the extent of impact and appropriate compensation.
28. The Plaintiff seeks substantial awards for loss of tea income, occupation, trespass, lost income, disturbance, and aggravated damages. However, no breakdown supports these figures.
29. However, no production records, audited accounts, yield analyses, or economic models link the line to the claimed amounts. The claims remain bare assertions.
30. We note that the Respondent uses a corridor-based approach. It compensates at 30% of market value for the affected strip.
31. The valuer set the encumbered area at 0.214 acres, unit value at Ksh. 2.5 million per acre, and applied this over 18 years to reach Ksh. 2,889,000. This methodology is transparent and repeatable, and it is at least grounded in specific assumptions that the Authority can interrogate and adjust if necessary.
32. The Plaintiff's position, by contrast, does not provide the Authority with a calculable model that can be stress-tested or corrected; it simply presents global amounts without linking them to area, time, yield, or unit values.
33. The Plaintiff alleges that the power line disrupted tea cultivation and frightened workers. From an agronomic and technical perspective, this claim is unsubstantiated. Tea bushes are typically plucked at a height of approximately one

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metre, while 11 kV distribution lines are installed with statutory clearances of several metres. These clearances permit safe agricultural activities to be carried out beneath the lines, subject to basic safety awareness. No expert evidence, technical reports, or incident records were presented to demonstrate that the line posed any actual danger or impeded cultivation.

34. The Authority is satisfied that the Plaintiff has suffered inconvenience as a result of the presence of poles and conductors within their land. The corridor constrained land use and reduced value for development. However, the evidence does not show the entire 1.7-hectare parcel became unusable or tea production ceased. Additional losses beyond the strip require proof, such as yield trends or valuation. None is provided.

35. In the absence of such proof, the Authority finds no basis to sustain the very large, unparticularised sums claimed in the prayers, and limits monetary relief to compensation for the encumbrance of the wayleave corridor together with an award for general damages.

36. Accordingly, the Authority upholds the uncontroverted offer by the Respondent of Ksh. 2,889,000 as compensation and awards Ksh. 200,000 as general damages for the inconvenience caused by the Respondent.

37. We note that, from the Respondent's correspondence dated 8th December 2025, the subject electricity infrastructure was re-routed on 5th December, 2025 and the land has been restored to its original state. The prayer for re-routing is therefore spent.

F FINAL DETERMINATION

38. 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:

    a) The Respondent's offer of Ksh. 2,889,000 as full and final compensation is upheld and should be settled within 30 days of this Determination.

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b) The Plaintiff is awarded Ksh. 200,000 as general damages for the inconvenience caused by the Respondent, payable within 30 days of this Determination.

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

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

e) 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 19TH **DAY OF** DECEMBER **2025.**

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DANIEL KIPTOO BARGORIA, MBS, OGW

DIRECTOR GENERAL