



IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/63324838/25

MUEMA KITULUPLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY PLC 1ST RESPONDENT

**RURAL ELECTRIFICATION & RENEWABLE
ENERGY CORPORATION.....2ND RESPONDENT**

DETERMINATION

A. BACKGROUND

1. The dispute between Muema Kitulu (Plaintiff), Kenya Power & Lighting Company PLC (1st Respondent) and Rural Electrification & Renewable Energy Corporation (2nd Respondent) was first reported to the Authority through a letter from his advocate dated 14th August 2025.
2. The dispute is on alleged trespass and damage of trees on land parcel number [REDACTED] (original Number [REDACTED]) situated in Kilambini Village, Mukaa Sub-County, Makueni County.

B. PLAINTIFF'S CASE

3. The Plaintiff stated that he is the beneficial owner of a parcel of land located along the Nairobi- Mombasa Highway measuring approximately 40 acres, forming part of land parcel number [REDACTED] registered in the name of Elizabeth Kamene Ndolo.

4. The Plaintiff stated that he is a successful decree holder of a judgement issued on 19th March 2018 in his favour in High Court ELC no. 233 of 2017 (O/S) Makueni, Muema Kitulu vs Elizabeth Kamene Ndolo.
5. The Plaintiff stated that since March 1993, he has planted numerous trees within his land and along his boundary with Nairobi-Mombasa Highway to mark the boundary.
6. The Plaintiff stated that he has also erected, around his aforesaid land, a chain link and barbed wire supported with treated wooden cedar posts to secure his farm from trespassers.
7. The Plaintiff further stated that in or about the year 2000, the Respondent laid power lines along the Nairobi-Mombasa Road at Kalimbini area to supply electricity to residents of Kalimbini village including himself.
8. The Plaintiff stated that during the said exercise, the 2nd Respondent ran two power lines through the subject piece of land without consent or notice.
9. The Plaintiff further stated that on or about January 2009, the two Respondents jointly and severally translocated a transformer serving several customers from its location elsewhere along the lines and erected it within the Plaintiffs residential home where they have continued to connect their customers in the area.
10. The Plaintiff stated that the said power lines were laid in his farm after the said fence was erected and trees grown.
11. The Plaintiff averred that he has pleaded with the Respondents to relocate the power lines without success.
12. The Plaintiff further stated that the Respondents have continued to maintain the said power lines and transformer without consent from him and has thus been constrained from developing his land.
13. The Plaintiff further stated that on or about 22nd September 2023, the 1st Respondent's agents invaded the subject land and proceeded to cut down mature trees and damaged the fence and removed the trunks of the cut down trees in the subject parcel.

14. The Plaintiff stated that the above matter was reported to Sultan Hamud Police Station vide O.B No. 13/22/9/2023 and the matter is still under investigation.
15. The Plaintiff further stated that between September 2023 and November 2023, the Plaintiff caused the Makueni County Forest Conservation Department to visit the site of destruction and prepared a report dated 27th September 2023 and a bill of quantity dated 30th November 2023.
16. The Plaintiff thus prays for the following:
- i. Special damages of Ksh.1,435,075.00.
 - ii. General damages for trespass, loss of use and deprivation of enjoyment.
 - iii. Costs of this claim.
 - iv. Interest on (i) from the date of filing, and on (ii) and (iii) from the date of judgement.
 - v. An order compelling the Respondents, jointly and severally to remove the transformer erected on the Plaintiffs land forthwith.

C. 1ST RESPONDENT'S CASE

17. The 1st Respondent responded to and controverted the Plaintiff's claims, evidence, and prayers on both factual and legal grounds, asserting that the Plaintiff's claim for compensation were unfounded.
18. The 1st Respondent argued that the Plaintiff's prescriptive rights over LR No. [REDACTED] were acquired via a judgment delivered on 19th March, 2018, *in Makueni ELC Case No. 233 to 241 of 2017*. This right was finally confirmed by the Court of Appeal on 18th November 2022, in *Nairobi Civil Appeal No. 394 of 2018*.
19. The 1st Respondent asserted that the Plaintiff did not have any legitimate right capable of sustaining an action for compensation over acts of trespass or damage until 18th November 2022. Consequently, all claims for compensation relating to acts that occurred before this date, including the alleged erection of powerlines and installation of a transformer, were unfounded.

20. They added that if the powerline was, as alleged, erected in the year 2000, the Plaintiff acquired interest in the property after the powerline was already *in situ*. Therefore, the Plaintiff took the property "as is," with the powerline and transformer constituting an overriding interest.
21. The 1st Respondent maintained that the powerline erected along Nairobi-Mombasa Road did not encroach onto LR No. [REDACTED], as a survey report allegedly confirmed it was erected on the road reserve.
22. That the Plaintiff's allegation that powerlines were erected while he had planted trees on the land was deemed "inconceivable and incredible," as standard practice requires all vegetation to be cleared to provide adequate safety clearance before a powerline is erected.
23. The 1st Respondent denied that the transformer was installed without the Plaintiff's consent or approval, arguing that the Plaintiff's action, inaction, and conduct indicated he acquiesced with the installation.
24. The 1st Respondent also cited the Plaintiff's application for an electricity connection in 2008 as evidence of his knowledge and acceptance.
25. The 1st Respondent also stated that it was not liable for erecting the powerline, as the work was allegedly done by the 2nd Respondent (REREC).
26. The 1st Respondent asserted its own prescriptive rights and noted the Plaintiff's failure to notify them of the court case:
27. The 1st Respondent maintained that the continuous use of the land for the powerline since 2000 constituted an easement, right of way, access, and/or use enjoyed beyond twenty years. This claim was argued to be absolute and indefeasible under the provisions of Sections 32 and 38 of the Limitation of Actions Act Cap 22.
28. The 1st Respondent argued that the Plaintiff was guilty of laches for delaying his complaint against the powerline, which was erected in 2000, despite claiming beneficial possession since 1993.

29. That the Plaintiff, although aware of the powerline and transformer, did not involve KPLC (the Respondents) in his suit for adverse possession or notify them of the judgment.
30. The 1st Respondent maintained that judicial precedent dictates priority should be given to an existing encumbrance in an adverse possession suit unless satisfactory evidence is provided to rebut it. KPLC argued the Plaintiff circumvented this by failing to disclose the encumbrance and the court case¹⁴.
31. The 1st Respondent prayed that the Authority dismissed the Plaintiff's case, arguing that the Plaintiff was not entitled to special and general damages, and sought the following specific orders:
- a) A declaration that the continuous and un-intercepted use of the land for an electric right of way since the year 2000 granted the Respondents a prescriptive right over the property.
 - b) A declaration that the land corridor where the powerline and transformer lie be declared an overriding interest under Section 28(i) of the Land Act.
 - c) An order directing the Registrar of Land, Makueni County, to register a right of way in favor of the Respondents on the Plaintiff's suit property.
 - d) An order for the Plaintiff to pay costs to the Respondents.

D. 2ND RESPONDENT'S CASE

32. The 2nd Respondent stated that the subject parcel of land is a portion of land previously owned by Esther Ndolo as per the judgement in Makueni environmental land court – Muema Kitulu vs Elizabeth Kamene Ndolo.
33. The 2nd Respondent stated that the Plaintiff was legally recognized as the legal owner of the suit property in 2018 pursuant to adverse possession decree issued by court.

34. The 2nd Respondent noted that the Plaintiff alleged that the Respondents trespassed the suit property around the year 2000, a year which precedes the existence of the 2nd Respondent.
35. The 2nd Respondent was established under section 66 of the Energy Act of 2006 and became operational in 2007 and the alleged trespass is said to have occurred in the year 2000, before the 2nd Respondent was established and became operational.
36. The 2nd Respondent averred that it did not implement the energy infrastructure that is the subject of this dispute and further averred that there was no nexus between the 2nd Respondent and the acts complained of.
37. The 2nd Respondent further averred that the transformer installed in the Plaintiff's land is branded with the initials of the 1st Respondent and further pleaded that it was the 1st Respondent who lopped the trees along the power line.
38. The 2nd Respondent additionally stated that the transformer in the suit property only serves the Plaintiff.
39. The 2nd Respondent averred that a person who acquires land after a trespass or laying of an energy infrastructure acquires the land subject to existing encumbrances and does not have the locus standi to sue for damages that occurred before they acquired legal title.
40. The 2nd Respondent stated that the Plaintiff did not have any legal capacity to sue for trespass which occurred before he obtained title to the property.
41. The 2nd Respondent further stated that the Plaintiff has benefited from the energy infrastructure for over 25 years and thus cannot claim that the line which he has been deriving benefit from is trespassing.
42. The 2nd Respondent stated that the Plaintiff had not led any evidence to demonstrate or establish that the 2nd Respondent was liable to pay damages and or compensation.

E. DISPUTE RESOLUTION PROCESS

43. The dispute between Muema Kitulu (Plaintiff), Kenya Power & Lighting Company PLC (1st Respondent) and Rural Electrification & Renewable Energy Corporation (2nd Respondent) was first reported to the Authority through a letter from his advocate dated 14th August 2025.
44. Pursuant to Regulations 7(2) as read with the Second Schedule of the Energy (Complaints and Disputes Resolution) Regulations, 2012, the Authority directed parties to file their submissions via a letter dated 19th August 2025.
45. The Plaintiff complied with the directive and filed submissions on 5th September 2025.
46. The 1st Respondent, through a letter dated 3rd September 2025, responded to the Plaintiff's dispute, contesting the evidence presented and the reliefs sought.
47. Subsequently, the 1st Respondent filed its formal response on 6th September 2025 and later issued a further letter dated 26th September 2025 outlining reasons for seeking dismissal of the Plaintiff's case.
48. The 2nd Respondent filed its submissions on 26th September 2025, thereby complying with the Authority's directions.
49. The Authority invited parties for a virtual hearing on 30th September 2025, vide a letter dated 23rd September 2025.
50. Through this virtual hearing, each party was given an opportunity to present their case and resolve the dispute amicably. However, the issues remained unresolved prompting the Authority to issue a determination on the matter.
51. In view of the above, Parties agreed to file further submissions by 7th October 2025, after which the Authority would render a determination on the dispute.

F. ISSUES FOR DETERMINATION

52. Based on the facts, evidence and investigations, the following are the issues for determination:
 - i. Whether the Respondents trespassed onto the Plaintiff's property.

- ii. Whether the Respondents are liable to pay the Plaintiff the special and general damages sought.

ANALYSIS OF THE DISPUTE

i. Whether the Respondents trespassed onto the Plaintiff's Property

53. The dispute involved two separate electrical installations: a low-voltage (LV) line supplying the Plaintiff's homestead and nearby consumers, and a 33 kV power line running along the Nairobi–Mombasa Road.
54. The Plaintiff claimed that the Respondents entered his property without permission, destroyed vegetation and fences in September 2023, and continued to trespass thereafter.
55. The Respondents explained that the LV works were done under a customer connection scheme in which the Plaintiff had signed the supply documents, showing consent.
56. They further stated that the 33 kV line lay within the public road reserve and had been built around the year 2000, long before the Plaintiff's land title was confirmed through court proceedings.
57. Although court judgments confirmed the Plaintiff's ownership of the land, they did not clearly define where the boundary lay in relation to the road reserve or the electrical lines.
58. Since no survey map or geo-referenced plan was produced, the Authority could only rely on the evidence provided by each party.
59. For the LV spur, the records showed that the Plaintiff had benefited from the power connection and had signed the relevant supply contracts. There was no evidence that he later withdrew consent or that the line deviated from the agreed route. Therefore, the LV spur appeared to have been installed lawfully and did not amount to trespass.
60. For the 33 kV line, the available survey information supported the Respondents' position that the structures were within the public road reserve. The Plaintiff did not submit a counter-survey or official documentation to show otherwise.

61. In *M'Tuamwari v Kenya Power and Lighting Company (ELC Case E023 of 2021) [2023] KEELC 21498 (KLR)* the Plaintiff alleged that electricity poles and lines had been erected without authority and that trees were felled on his land, causing loss and damage. The Respondent (KPLC) contended that the works were carried out under wayleave / right-of-way or public routes and not on private land; that there was no valid evidence showing the location of the poles were inside the Plaintiff's title or that the Plaintiff had withdrawn consent (if any). The Court emphasized that when alleging trespass or damages, the Plaintiff must produce specific mapping, survey, or other geographic evidence to show that the damage is inside his private parcel; mere statements or assumptions are insufficient.

62. Accordingly, in the absence of such evidence, we conclude that the 33 kV line was legally located. Any removal of vegetation or fencing within the road reserve for safety clearance was therefore a legitimate operation, not trespass.

ii. Whether the Respondents are liable to pay damages

63. The Energy Act, Cap 314, requires that vegetation works be carried out with proper notice and restoration where trees stand on private land. However, these obligations apply only when the works occur within private property, not in a public road reserve.

64. Since the affected area was not proven to be part of the Plaintiff's parcel, the Authority finds no basis for compensation under Section 180 of the Act.

G. FINAL DETERMINATION

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

- a) The Low Voltage (LV) line was installed with the Plaintiff's consent under a customer connection arrangement.
- b) The 33 kV distribution line was established within the public road reserve and is lawfully positioned.

- c) The Plaintiff did not prove that the destroyed vegetation or fence lay within his parcel of land.
- d) The Respondents are therefore not liable for trespass or payment of damages.
- e) The Authority, therefore, dismisses the Plaintiff's claim.
- f) The Authority advises the Respondents to ensure that future vegetation management near property boundaries should be undertaken with prior notice in accordance with Section 180 of the Energy Act, Cap 314, to avoid recurrence of disputes.
- g) Each party shall bear its own costs.
- h) This Determination is final and binding upon both parties.
- i) 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^{27th} DAY OF OCTOBER.....2025.

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CPA CYPRIAN M. NYAKUNDI
FOR: DIRECTOR GENERAL