



IN THE REPUBLIC OF KENYA
ENERGY AND PETROLEUM REGULATORY AUTHORITY
DISPUTE NO: EPRA/PEACP/CP/4/65825620/25

BONIFACE KIARIE GITAGIA PLAINTIFF
VERSUS

RURAL ELECTRIFICATION & RENEWABLE
ENERGY CORPORATION1ST RESPONDENT
KENYA POWER & LIGHTING COMPANY PLC 2ND RESPONDENT

DETERMINATION

A. BACKGROUND

1. The matter between Boniface Kiarie Gitagia (Plaintiff), Rural Electrification & Renewable Energy Corporation (1st Respondent) and Kenya Power & Lighting Company, PLC (2nd Respondent) was first reported to the Authority as a Complaint via the online portal on 8th December 2025.
2. The Complaint was not resolved to the Plaintiff's satisfaction, prompting the Plaintiff to request the Authority to handle the matter as a dispute via a letter dated 15th December 2025.
3. The Authority consequently advised the Plaintiff to properly file dispute documents and or submissions and serve the same to the Respondents via a letter dated 13th January 2025.
4. The dispute relates to alleged trespass on parcel known as [REDACTED]
[REDACTED] within Tranzoia County.

B. PLAINTIFF'S CASE

5. The Plaintiff Mr. Boniface Kiarie Gitagia stated that in 2013, individuals identifying themselves as employees of the Respondents unlawfully entered their land, cut down trees, and erected a power line without consent.
6. The Plaintiff asserted that the Respondents' actions resulted in the destruction of numerous tree species, including 178 eucalyptus and approximately 50 croton trees, causing substantial environmental and economic loss.
7. The Plaintiff stated that although the Respondents allegedly acknowledged part of the destruction and promised compensation, no payment has been made to date.
8. The Plaintiff further stated that the Respondents' employees continued to cut and uproot sprouting tree stumps under the power line, claiming fire risk, despite the Plaintiff's insistence that compensation be settled first.
9. The Plaintiff averred that the Respondents' trespass and interference have continued from 2013 to the present, including additional destruction in January 2024 when part of their fence was removed and replaced.
10. The Plaintiff alleges persistent frustration and non-responsiveness from both Respondents despite numerous visits to their local and headquarters offices.
11. The Plaintiff stated that he engaged a legal firm who issued a demand letter to the 2nd Respondent in August 2023 to which it replied in September 2023, stating that compensation was the responsibility of the 1st Respondent.
12. The Plaintiff averred that subsequent communication from 2nd Respondent was intimidating and discouraging of legal action. When the advocates sent a demand letter to 1st Respondent it responded in October 2023 requesting more time to verify the claim.
13. The Plaintiff stated that an officer of the 1st Respondent later visited the site in December 2023, confirmed the destruction, and requested additional documents, promising resolution within three months. However, the plaintiff's further attempts to follow up allegedly went unanswered.

14. The Plaintiff stated that due to continued delays, the Plaintiff filed suit at the Kitale Magistrate's Court under MCCC/E049/2025 seeking compensation and wayleave.
15. The Plaintiff further stated that the matter was later referred to the Energy and Petroleum Regulatory Authority (EPRA), where the Plaintiff alleges that the 2nd Respondent failed to file submissions.
16. The Plaintiff stated that pursuing the matter has been financially and emotionally burdensome, involving significant travel and expenses.
17. The Plaintiff contends that the Respondents are deliberately employing delay tactics, and that the presence of the power line has reduced the usability and value of their land without providing any benefit.
18. The Plaintiff reported suffering substantial losses and risks as a result.

C. 1ST RESPONDENT'S CASE

19. The 1st Respondent stated that except for what it expressly admitted, it denied every allegation made by the Plaintiff in the complaint filed on 22nd January 2026 before the Authority.
20. The 1st Respondent indicated that the Plaintiff's allegations were treated as if set out verbatim and responded to seriatim.
21. The 1st Respondent stated that it denied the Plaintiff's first paragraph, explaining that the description was merely about the Complainant.
22. The 1st Respondent asserted that it did not cut any trees nor erect a power line through the Plaintiff's land and therefore placed the Plaintiff to strict proof.
23. The 1st Respondent further stated that it denied paragraph 2, adding that it did not destroy any of the tree species claimed, nor did it promise any compensation for alleged damage to trees.
24. It also argued, without prejudice, that any claim for trees allegedly cut in 2013 was statute barred because more than three years had passed since the alleged cutting.

25. The 1st Respondent said that it denied paragraph 3 and insisted that it did not enter the Plaintiff's land or cause any of the alleged damage. Paragraph 4 was also denied, with the Plaintiff again put to strict proof.
26. It added that it was a stranger to the allegations made in paragraphs 5, 6, 7 and 8 of the complaint.
27. The 1st Respondent stated that it denied paragraph 9, insisting that no power line had been constructed on the Plaintiff's land.
28. The 1st Respondent asserted that the power line complained of was actually erected on a road reserve leading to Nyakinyua Primary School, as permitted by law, and that the Plaintiff had no proprietary rights over road reserves. It explained that cutting and looping of trees was necessary for maintenance and safety of the line.
29. The 1st Respondent said that it denied paragraph 10 because it implied trespass. It maintained that the power line stood on a road reserve. It also denied paragraphs 11 and 12, putting the Plaintiff to strict proof.
30. The 1st Respondent claimed to be a stranger to the averments in paragraphs 13, 14, 15 and 16, again requiring the Plaintiff to strictly prove them. It admitted paragraph 17 only to the extent that it had received a demand letter from the Plaintiff.
31. The 1st Respondent also admitted paragraph 18 only on the point that it wrote to the Plaintiff as part of investigating the complaint.
32. The 1st Respondent explained that writing that letter did not amount to an admission of liability but was only aimed at establishing facts, confirming the power line's location and determining whether trespass had occurred.
33. The 1st Respondent added that it admitted paragraph 19 only to the extent that its officer had visited the site and confirmed that the power line was on a road reserve, not on the Plaintiff's land.
34. The 1st Respondent also stated that investigations found no evidence of trees having been cut along the alleged path.
35. The 1st Respondent admitted paragraph 20 but denied paragraph 21, arguing that the Magistrates' Court had made a factual error in its trespass finding and that the

suit itself had been dismissed at the preliminary stage after a jurisdictional objection.

36. The 1st Respondent denied paragraphs 22, 23, 24 and 25 and reiterated that no power line had been erected on the Plaintiff's land.
37. In its reply, the 1st Respondent asserted that the Plaintiff's claim relating to trees allegedly cut in 2013 was statute barred under section 4(2) of the Limitation of Actions Act.
38. The 1st Respondent restated that the power line stood on a road reserve to Nyakinyua Primary School, where the Plaintiff had no proprietary rights.
39. It maintained that Respondents were empowered by law to erect power lines on road reserves without compensating adjacent landowners.
40. The 1st Respondent added that the Plaintiff had provided no evidence showing that any tree had been cut on his property or that a power line encroached onto his land.
41. The 1st Respondent concluded that the Plaintiff's claim lacked evidential support and should be dismissed with costs.

D. 2ND RESPONDENTS CASE

42. The 2nd Respondent stated that it responded to and controverted the Plaintiff's complaint and prayers on several grounds.
43. The 2nd Respondent indicated that the Plaintiff was seeking compensation for trees allegedly destroyed at his home in Nyakinywa Village, Trans Nzoia District, in 2013 when KPLC was said to have been putting up a main power line through his land.
44. The 2nd Respondent asserted that the Plaintiff had not provided the land registration number or title documents to prove ownership of the property and therefore lacked locus standi.
45. The 2nd Respondent stated that it did not construct the power lines in question.
46. The 2nd Respondent submitted that the 1st Respondent constructed the subject lines, and it relied on a photo of a transformer on-site showing "REA" inscribed on the danger/hotline plate as evidence.

47. The 2nd Respondent argued that the 1st Respondent's predecessor, REA, and the 2nd Respondent had entered into a Service Level Agreement (SLA) dated 30th April 2010.
48. The 2nd Respondent stated that under Article 4, Section 4.6 of the SLA, the 1st Defendant was responsible for seeking wayleaves and paying compensation.
49. The 2nd Respondent referred to Section 4.4 of the SLA, which it said required the Authority to submit signed wayleave documents, cadastral drawings, and letters confirming that all wayleaves for an extended network had been obtained and compensation paid. It added that Section 4.7 required the Authority to take custody of all executed wayleave documents, while KPLC would refer any subsequent requests regarding wayleaves to the Authority.
50. The 2nd Respondent denied that it had ever promised to compensate the Plaintiff for trees allegedly destroyed—being 178 blue gum trees and 50 croton trees.
51. The 2nd Respondent further disputed that the Plaintiff's parcel of land could accommodate the number of trees he claimed.

E. DISPUTE RESOLUTION PROCESS

52. The matter between Boniface Kiarie Gitagia (Plaintiff), Rural Electrification & Renewable Energy Corporation (1st Respondent) and Kenya Power & Lighting Company, PLC (2nd Respondent) was first reported to the Authority as a Complaint via the online portal on 8th December 2025.
53. The Complainant was not resolved to the Plaintiff's satisfaction, prompting the Plaintiff to request the Authority to handle the matter as a dispute via a letter dated 15th December 2025.
54. The Authority consequently advised the Plaintiff to properly file dispute documents and or submissions and serve the same to the Respondents via a letter dated 13th January 2025.
55. The Authority conducted a joint site visit to the subject parcel, together with the Respondents on 3rd February 2026.

56. The Authority then invited parties for a virtual hearing on 10th February 2026, vide a letter dated 3rd February 2026.

57. 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.

F. ISSUES FOR DETERMINATION

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

- i. Whether the Plaintiff has the requisite *locus standi* to bring this claim.
- ii. Whether the Respondents trespassed onto the Plaintiff's land by constructing and maintaining a 33 kV power line, and if so, which Respondent bears liability?
- iii. Whether the Plaintiff's claim for compensation for the felled trees in 2013 is statute-barred.
- iv. Whether the Plaintiff is entitled to the remedies sought, namely compensation for the felled trees, general damages for the continued trespass, and an order for the removal of the infrastructure.

i. Whether the Plaintiff has the requisite *Locus standi* to bring this claim.

59. The 2nd Respondent challenged the Plaintiff's standing to sue, arguing that he failed to provide a title document to prove ownership of the land in question. *Locus standi* is the right of a party to appear and be heard in a proceeding. In land disputes, a claimant must demonstrate a sufficient legal interest in the subject property.

60. The Authority notes that the Plaintiff, in his submissions and during the proceedings, explained that he is acting in a representative capacity for his late mother's estate. He produced letters of administration granting him authority over the deceased's estate. Furthermore, the site visit of 3rd February 2026 confirmed that the Plaintiff was in physical possession of the subject property.

61. The Authority is satisfied that for the purposes of this dispute, which seeks redress for damage to the estate's property, the Plaintiff has demonstrated sufficient legal capacity to pursue the matter.

ii. Whether the Respondents trespassed onto the Plaintiff's land by constructing and maintaining a 33 kV power line.

62. The tort of trespass to land is defined as any unjustifiable intrusion by one person upon land in the possession of another. For a plaintiff to succeed, they must prove, on a balance of probabilities, that the defendant's actions constituted a physical and unlawful interference with their possessory rights.

63. The Plaintiff's case is that in 2013, agents of the Respondents entered his land, cut down trees (approximately 178 eucalyptus and 50 croton trees), and erected a power line without consent. He further avers that this trespass has continued, with additional destruction of a fence in January 2024.

64. The Respondents' primary defence, as articulated by the 1st Respondent, is that the power line is actually erected on a road reserve leading to Nyakinyua Primary School, where the Plaintiff has no proprietary rights. The 1st Respondent maintained that the cutting and looping of trees was necessary for the maintenance and safety of the line, a lawful operation within a public corridor.

65. This conflicting assertion of facts placed a premium on the evidence gathered by the Authority.

66. A joint site visit was conducted on 3rd February 2026. The findings of that visit are instructive. The Authority confirmed the existence of a 33 kV line, constructed in 2013. Critically, the site visit report notes that while the line runs close to a road, the road boundary was not demarcated on the ground. Consequently, visual inspection alone could not conclusively establish whether the line lies wholly within the road reserve or extends into the Plaintiff's property.

68. The Court emphasized in M'Tuamwari v Kenya Power and Lighting Company (ELC Case E023 of 2021) [2023] KEELC 21498 (KLR), when alleging trespass or damage by utility infrastructure, a Plaintiff must produce specific mapping,

survey, or other geographic evidence to demonstrate that the intrusion occurs within their private parcel. Mere statements or assumptions are insufficient.

69. In the present case, while the site visit confirmed the line's existence, it did not provide the conclusive proof of encroachment required. The Plaintiff did not produce a certified cadastral map, a survey report from a licensed surveyor, or a Registry Index Map (RIM) to definitively place the line's poles within his registered boundary. Therefore, the claim was unproven.

iii. Whether the Plaintiff's claim for compensation for the felled trees in 2013 is statute-barred.

70. The 1st Respondent raised a preliminary objection based on limitation, arguing that the claim for trees allegedly cut in 2013 is statute-barred, as more than three years had elapsed since the cause of action arose.

71. The applicable law is the Limitation of Actions Act (Cap 22). Section 4(2) of the Act provides that an action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued. An action for trespass, being a tort, falls squarely within this provision.

72. However, this issue is now academic and need not be definitively resolved. The question of limitation only arises if a cause of action is first established. As the Authority has already found in issue (ii) that the Plaintiff has failed to prove that the trees were located on his land, therefore there is no underlying wrong to which the limitation defence could attach. A claim cannot be statute-barred if the foundational act giving rise to the claim has not been proven to have occurred on the Plaintiff's property.

iv. Whether the Plaintiff is entitled to the remedies sought, namely compensation for the felled trees, general damages for the continued trespass, and an order for the removal of the infrastructure.

73. Having found that the Plaintiffs have failed to establish the foundational fact of trespass, the remedies they seek, being consequential to that finding, also fail.

G. FINAL DETERMINATION

74. 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 Plaintiff has failed to discharge their burden of proof to demonstrate, on a balance of probabilities, that the Respondents' electricity infrastructure is located within the boundaries of their land parcel known as [REDACTED] Settlement, [REDACTED] within Transoia County. Therefore, the allegation of trespass against the Respondents is not proven.
 - b) Consequently, the ancillary prayers for the removal of the electricity infrastructure, an award of damages for continued trespass and compensation for cut trees are hereby disallowed.
 - c) The Authority therefore dismisses the Plaintiff's claim.
 - d) Each party shall bear its own costs.
 - e) This Determination is final and binding upon both parties.
 - f) 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 12TH DAY OF MARCH 2026.



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DANIEL KIPTOO BARGORIA, MBS, OGW
DIRECTOR GENERAL