



**Otuto v Kenya Power and Lighting Company (Tribunal Case
E030 of 2022) [2023] KEET 87 (KLR) (Civ) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEET 87 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
CIVIL**

TRIBUNAL CASE E030 OF 2022

**KIOKO KILUKUMI, CHAIR, D.K MWIRIGI, VICE CHAIR, B.H
WASIOYA, F. M KAVITA, D JEMATOR & F.S IBRAHIM, MEMBERS**

MARCH 24, 2023

BETWEEN

TOM MOKUA OTUTO APPLICANT

AND

KENYA POWER AND LIGHTING COMPANY RESPONDENT

JUDGMENT

A. Background

1. Mr. Tom Mokua Otuto (“the Applicant”), who is a customer of the Kenya Power and Lighting Company Limited (“the Respondent” or “KPLC”) filed two claims, regarding disputed bills from the Respondent for two properties in Kitengela Town.
2. The first claim dated 9th December 2022 was for a disputed bill of KShs. 259,898 in respect of a hotel, butchery and gym supplied with electricity through account number 138233374, culminating in disconnection of power supply by the Respondent to the subject account and three other account numbers 41031998, 41032210 and 41034166 around the months of August or September 2021.
3. The matter was referred to the Energy and Petroleum Regulatory Authority (“the Authority” or “EPRA”) on 26th October 2021, who on 4th November 2021 directed the Respondent to re-connect power supply pending determination of the dispute. The Respondent did not fully comply with the Authority’s directive.
4. The Applicant filed a second claim dated 23rd January 2023 following disconnection of power supply, by the Respondent, to his rental property comprising about 100 units on plot number 7130, referred to as Santiago Flats, supplied with electricity through many account numbers including 41031998, 41032210 and 41034166 due to disputed bills amounting to KShs. 437,706/=.



5. In its directions delivered on 1st February 2023, the Tribunal advised that it would only address disputed bills on electricity account numbers 41031998, 41032210 and 41034166, which had been referred to EPRA on 26th October 2021. For all disputed bills on all other accounts in Santiago Flats, the Applicant was advised to first refer them to the Authority.
6. Upon careful consideration of the pleadings, witness statements and written submissions of both the Applicant and Respondent, the Tribunal has consolidated the two claims into one and issues this judgement accordingly.

B. The Applicant's case

7. The Applicant states that he used to pay a bill of between KShs. 30,000/= and 40,000/= every month on account number 138233374, until he received an unexplained and exorbitant bill of KShs. 259,898/= leading to disconnection of power supply to the Applicant's business premises by the Respondent around the month of August/September 2021.
8. Following the disconnection, the Applicant visited the Respondent's Kitengela office and was informed that the outstanding bill then stood at KShs. 281,000/=-, which he disputed. Despite the disconnection, the bill was KShs. 339,955/= as at 19th October 2021. On the same date, the Respondent asked the Applicant to pay KShs. 2,500/= to activate the new smart meter which was paid but power was not restored.
9. The Applicant paid KShs. 74,000/= on 21st October 2021 and KShs. 100,000/= on 26th October 2021, reducing the outstanding bill to KShs. 165,955/= but the power was not reconnected, instead the Respondent disconnected power supply to the premises from the pole and removed the electricity meter. Electricity supply to account numbers 41031998, 41032210 and 41034166 was also disconnected.
10. On 26th October 2021, the Applicant referred the matter to EPRA, who wrote to the Respondent on 4th November 2021, ordering reconnection of power supply to electricity account numbers 138233374, 41031998, 41032210 and 41034166, pending determination of the dispute.
11. The dispute was not resolved, nor was the power reconnected as ordered by EPRA, but the Respondent continued to bill the Applicant. Amounts billed include KShs. 40,036/= on 19/12/2021, KShs. 30,131/= for January 2022, KShs. 28,819/= for February 2022, KShs. 32,623/= for March 2022, KShs. 32,908/= for April 2022 and KShs. 8,331/= for May 2022.
12. On 8th March 2022, the Applicant paid KShs. 100,000/= on request by the Respondent as a condition for the power supply to be reconnected, which reconnection was never done.
13. The bills for the months of November 2021 to August 2022 came at a time when electricity had been disconnected by the Respondent from the pole and the power cut out taken by the Respondent.
14. The Applicant's request for the Respondent to provide a statement of power consumption for the period beginning January to December 2021 to justify the alleged bill of KShs. 259,898/= was ignored.
15. The Applicant has had to close his business for over a year as the Respondent carried away the electricity meter from the premises. The Applicant has incurred losses due to inability to operate the business that serves as his sole source of income.
16. The Applicant further states that on 13th January 2023, the Respondent, without notice, disconnected power supply to Santiago Flats comprising 100 units for an alleged outstanding bill of



- KShs. 437,706/=. The bill arrears have been exaggerated with one tenant who is single and without any children and staying in a bedsitter with only a lighting point being billed KShs. 35,358.45.
17. Electricity to the whole block of flats was disconnected from the pole instead of disconnecting only accounts in arrears, thereby disconnecting even those tenants whose bills have been paid, never mind that:
 - (a) Some of those bills are disputed.
 - (b) Some of the exaggerated bills were referred to EPRA, who ordered reconnection pending determination of the dispute, which order was not complied with.
 18. The Applicant also states that in 2021, through his agent one Mr. Geteri, he paid over KShs. 300,000/= to regularize his tenants' accounts, which payment has not been factored in the alleged arrears of KShs. 437,706/=: rendering the same inaccurate and unverifiable.
 19. In addition, the Applicant alleges that some meters which were procured for houses to be built in future have huge bills for standing charges, such as those with account numbers 41034133, 41029200, 41035486, 142443126, 41029549, 142448059 and 142442326. In particular, one meter has arrears of KShs. 18,243.44, yet it is not serving any house. In effect, the Respondent has billed the Applicant for power not consumed.
 20. It is the Applicant's contention that the draconian and illegal disconnection of electricity supply from the pole has occasioned more than twenty tenants vacating the subject premises and consequent loss of rental income to the Applicant.
 21. The Applicant states that he has lost trust in the Respondent and prays the Tribunal to issue orders:
 - (a) Compelling the Respondent to reconnect power to the Applicant's premises served by account number 138233374 as well as Santiago Flats, both in Kitengela Town.
 - (b) For stay of any disconnection without notice for the Applicant's properties being the premises served by account number 138233374 as well as Santiago Flats, both in Kitengela Town.
 - (c) For aggravated damages.
 - (d) For costs.

C. The Respondent's Case

22. In rebuttal, the Respondent filed two affidavits dated 21st December 2022 and 28th February 2023 both of which were sworn by Mr. Duncan Saku Musyoki, the Respondent's Kajiado County Commercial Services Engineer.
23. The Respondent stated that the Applicant's application and prayers sought lack merit and are grounded on falsehoods, misconceived and distorted facts, meant to dent the Respondent's reputation.
24. Following EPRA's letter dated 4th November 2021 ordering reconnection of power supply to the Applicant's electricity account numbers 41031998, 41032210, 41034166 and 138233374 pending determination of the disputed bill of KShs. 230,000/=: the Respondent proceeded to restore power supply to the Applicant's premises, which, as at 26.10.2021, had an outstanding bill of KShs. 165,955/=:
25. According to the Respondent, the Applicant's claim which is pending determination at EPRA relates to a disputed electricity bill of KShs. 230,000/= on account number 138233374 and not the current



outstanding bill of KShs. 259,898/= as alleged by the Applicant in his Notice of Motion dated 09.12.2022.

26. In addition, the Respondent stated that in the Notice of Motion dated 09.12.2022 filed at the Tribunal, the Applicant indicated that he used to pay a monthly power bill ranging from KShs. 30,000/= to 40,000/= while in the application dated 26.10.2021 to EPRA, which is pending determination thereat, the Applicant indicated that he used to pay a monthly bill ranging from KShs. 25,000/= to 70,000/=, making the consistency of the Applicant's applications questionable.
27. Electricity supply to the Applicant's premises remains disconnected for an outstanding bill of KShs. 29,898/= over and above the disputed bill of KShs. 230,000/=.
28. Perusal of the supplementary affidavit sworn by the Applicant on 01.02.2023, together with annexures thereto, reveals that the alleged payments relate to electricity accounts that are not part of the Applicant's complaint pending at EPRA. The only electricity account number 41034166 which forms part of the complaint lodged at EPRA is rightly before the Tribunal for determination.
29. The Respondent further states that they acted in accordance with Section 160 of the [Energy Act](#), 2019, which provides that if a dispute arises as to any charges, the application of any deposit, any illegal or improper use of electrical energy, any alleged defects in any apparatus or protective devices, . . . it shall be referred to the Authority.
30. The Respondent goes on to state that the current application and claim before the Tribunal is a fresh claim and ought to be referred to the Authority as the court of first call.
31. The Respondent identified issues for determination as being:
 - (a) Whether the Applicant's Notice of Motion dated 09.12.2023 raises new issues.
 - (b) Whether this Tribunal has jurisdiction to hear this dispute.
 - (c) Whether the electricity bill in dispute is justified.
 - (d) Whether the Applicant is entitled to the relief sought.
32. The Respondent prays for:
 - a. A declaration that the Respondent acted within the provisions of the law by disconnecting the Applicant's power supply owing to an accumulated bill of KShs. 259,898/=.
 - b. A declaration that the claim herein is a fresh one that exclusively falls under the jurisdiction of the Energy and Petroleum Regulatory Authority and as such the Applicant must pursue his claim there.
 - c. A finding that the Respondent has expended considerable resources in this matter and thus ought to be awarded costs reprieve.

D. Analysis, Directions and Determination

33. Upon consideration of the pleadings and evidence on record as well as the submissions made by both parties, the Tribunal has identified the following issues for determination:
 - (a) How much does the Applicant owe the Respondent in respect of each of the four electricity accounts in dispute?



- (b) Did the Respondent act within the law by disconnecting the Applicant's power supply owing to accumulated bills?
- (c) Whether the Applicant is entitled to compensation for illegal power disconnection, loss of business earnings and aggravated damages?
- (d) Whether the Respondent should be compelled to install pre-paid (token) meters for the Applicant's electricity accounts at Santiago Flats?

(a) How much does the Applicant owe the Respondent in respect of each of the four electricity accounts?

- 34. It is to be noted that the monthly billing process for electrical energy consumed starts from reading the meter, which reading, less the reading in the preceding month will give the number of units or kilowatt-hours ("kWHrs") consumed in the current month.
- 35. The bill amount in KShs. is then computed based on the approved tariff which includes energy and fuel cost charges as well as applicable taxes and levies. The amount due from the consumer for the current month will be the amount billed plus any arrears or less any credit from the previous month.
- 36. In order to establish the veracity of the disputed bills, the Tribunal directed the Respondent to file, and serve upon the Applicant, on or before 6th March 2023, a full record of meter readings, kWhrs consumed, amounts billed and payments received, every month, from January 2021 to December 2022, for each of the four accounts.
- 37. In the documents filed, the Respondent did not fully comply with the directions of the Tribunal. The only information provided was meter readings, transaction amounts (with no explanation of what that means) and balances for the four accounts.
- 38. Notwithstanding the opportunity given to prove the veracity of the outstanding amounts on the various accounts in the Applicant's name, the Respondent failed to provide an understandable record of bills, payments and balances on any of the four accounts in dispute.
- 39. The fact that some of the outstanding bills are attributable to meters that are not connected to any house, as alleged by the Applicant and not rebutted by the Respondent, lends credence to the claim by the Applicant that he was billed for electrical energy not consumed.
- 40. The Respondent has failed to prove beyond reasonable doubt what amounts, if any, are due from the Applicant on any of the four accounts in dispute.

(b) Did the Respondent act within the law by disconnecting the Applicant's power supply owing to accumulated bills?

- 41. The origin of the dispute can be traced to the Applicant's letter dated 15th March 2021 wherein he lodged a complaint with the Respondent regarding exaggerated bills.
- 42. There is no evidence of any action by the Respondent until 21st October 2021 when they wrote to the Applicant demanding payments of KShs 32,703 on account number 41031998, KShs 16,529 on account number 41032210 and KShs 20,423 on account number 41034166 as a condition precedent for them to make a payment plan for settlement of the overdue debt on account number 138233374.
- 43. Following failure by the Respondent to address the complaint in accordance with the Energy (Complaints and Disputes Resolution) Regulations, 2012, and disconnection of electricity supply, in



contravention of, inter alia, section 4 of the [Fair Administrative Action Act](#), 2015, the Applicant sought redress from EPRA.

44. The Authority vide their letter dated 4th November 2021 instructed the Respondent to reconnect power supply to the Applicant's electricity account numbers 41031998, 41032210, 41034166 and 138233374 pending determination of the disputed bills.
45. The Respondent contemptuously defied the Authority's directive to re-connect power supply to the Applicant's premises pending determination of the dispute. There is no evidence of EPRA taking any steps to enforce its directives. To add insult to injury, the disputes are yet to be determined by the Authority more than 16 months after they were referred to it, contrary to the requirement of the maximum of sixty days allowed by section 23 of the [Energy Act](#).
46. It is abundantly clear that if the Respondent had a functioning internal complaints handling procedure as required by the Energy (Complaints and Disputes Resolution) Regulations, 2012, the Applicant's complaints would probably have been resolved much earlier.
47. The Tribunal does not therefore agree that the Respondent acted within the provisions of the law by disconnecting the Applicant's power supply owing to disputed accumulated electricity bills.

(c) Whether the Applicant is entitled to compensation for illegal power disconnection, loss of business earnings and aggravated damages?

48. As to whether the Applicant is entitled to compensation for illegal power disconnection, loss of business earnings and aggravated damages sought, it is to be noted that at the core of these disputes is the manner in which electrical energy consumed in the subject premises, particularly the block of residential flats, is measured or metered.
49. This originated from failure by both the Respondent and the Applicant to comply with the provisions of Section 151 of the [Energy Act](#), 2019, which reads:

151. Carrying out electrical installation work

- (1) It shall be the duty of any person planning, building, operating or maintaining a transmission or distribution system to ensure that such works are carried out only by electrical contractors and electrical workers duly authorized by the Authority.
- (2) It shall be the duty of the owner or occupier of any premises to ensure, in accordance with regulations issued under this Act, that the electrical installation in the subject premises is—
 - (a) carried out only by a duly authorized electrical contractor and appropriate certificates detailing particulars of the installation submitted to the licensee, before initial connection to a supply of electricity; and
 - (b) tested and inspected periodically, any defects being remedied, and appropriate certificates detailing particulars of the installation issued and displayed at the point of supply.



3. Where the electrical installation does not meet the conditions set out in sub-section (1), the licensee shall decline to connect supply, or if the supply is connected, the supply may be discontinued until such time as the defects are remedied.
50. Given the large number of rental units in the property known as Santiago Flats, it is unrealistic to have credit meters for all the units, and all in the name of the owner of the property. It was the Applicant's responsibility to seek and obtain professional advice on the most appropriate metering arrangements for the said block of flats. In the alternative, the Respondent should have, but failed, to advise the Applicant on the most appropriate metering arrangements.
51. Further, it was stated by the Applicant, and not disputed by the Respondent, that some of the outstanding bills arise from meters which he procured for houses to be built in future. This is not only irregular and contrary to Section 151 of the Energy Act, but renders electrical safety in the subject property questionable.
52. It is also noteworthy that the Applicant did not quantify the loss of business earnings and aggravated damages sought.
53. From the foregoing, the Applicant is not entitled any compensation for power disconnection, loss of business earnings and aggravated damages.

(d) Whether the Respondent should be compelled to install pre-paid (token) meters for the Applicant's electricity accounts at Santiago Flats?

54. As to whether the Respondent should be compelled to install pre-paid (token) meters for the Applicant's electricity accounts at Santiago Flats, reference is made to paragraph 50 above.
55. It is also to be noted that for such developments with a large number of rental units like Santiago Flats, individual metering of each of the units makes it impractical to provide standby power supply should it be required.
56. Central metering for the whole block of flats by the Respondent is more appropriate, and then the property owner to provide sub-meters for each of the units. If each unit is to be metered by the Respondent, then pre-paid meters are preferred.
57. These two modes of metering would allow each tenant to have control on their consumption and management of the account serving him, instead of the property owner being an intermediary between each tenant and the Respondent as is the case with the current impugned metering arrangement.
58. The order that commends itself for us to make is to refer the issue of whether or not to install pre-paid meters to EPRA to be dealt with in accordance with the governing law and regulations.

E. Disposition

59. Flowing from the foregoing, we hereby make the orders set out in paragraphs 60 to 65.
60. The Applicant's claim is partially successful to the extent that the Respondent has not proved any outstanding bills owed on account numbers 41031998, 41032210, 41034166 and 138233374.
61. The Respondent is ordered to immediately reconnect power supply to account numbers 41031998, 41032210, 41034166 and 138233374 unconditionally.



62. The Applicant is not entitled to any compensation for power disconnection, loss of business earnings and aggravated damages.
63. No orders are made for installation of pre-paid meters.
64. Each party to bear its costs.
65. A copy of this judgement be send to the Director General of EPRA so that appropriate steps are taken to ensure that:
 - a. A thorough audit of all electrical energy meters is carried out to ascertain those that are in service and those that are not in service so that the same are recalled, leading to maintenance of a correct record of the number of active electricity accounts.
 - b. The Energy (Complaints and Disputes Resolution) Regulations, 2012 are reviewed to be consistent with all provisions of the Energy Act, 2019.
 - c. The Respondent and all other licensees handle complaints in compliance with all provisions of the Energy (Complaints and Disputes Resolution) Regulations, 2012.
 - d. The Respondent and all other licensees cease and desist from issuing electrical energy meters for premises whose electrical installations have not been inspected and certified safe for connection to a supply of electricity.
 - e. Electrical installation works for all premises are carried out in accordance with Section 151 of the Energy Act, 2019.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2023.

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MR. KIOKO KILUKUMI

SC CHAIRPERSON

.....

MS. DORIS KINYA MWIRIGI

VICE CHAIRPERSON

.....

ENG. BUGE HATIBU WASIOYA

MEMBER

.....

ENG. FIDELIS MULI KAVITA

MEMBER

.....

MS. DOROTHY JEMATOR

MEMBER

.....

MR. FEISAL SHARIFF IBRAHIM



MEMBER

SIGNED BY: KIOKO KILUKUMI

**THE JUDICIARY OF KENYA. ENERGY AND PETROLEUM TRIBUNAL ENERGY AND
PETROLEUM TRIBUNAL DATE: 2023-03-24 15:22:27+03**

