



**Mwangi v Kenya Power and Lighting Company (Tribunal Appeal
E012 of 2022) [2024] KEET 393 (KLR) (26 March 2024) (Judgment)**

Neutral citation: [2024] KEET 393 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
TRIBUNAL APPEAL E012 OF 2022
D.K MWIRIGI, CHAIR, B.H WASIOYA & F.S IBRAHIM, MEMBERS
MARCH 26, 2024**

BETWEEN

PAUL NJUGUNA MWANGI APPELLANT

AND

KENYA POWER AND LIGHTING COMPANY RESPONDENT

JUDGMENT

1. Paul Mwangi Njuguna (“the Appellant”) is a resident of Kitale with three-phase and single-phase electric power supply for his cottage industry of account number 27717867 and residence of account number 17233495, respectively.
2. The Kenya Power and Lighting Company (“the 1st Respondent” or “KPLC”) is a limited liability company registered under the [Companies Act](#), whose mandate is to distribute and supply electricity across the country.
3. The Energy and Petroleum Regulatory Authority (“the 2nd Respondent” or “EPRA” or “the Regulator”) is a body corporate established under Section 9 of the [Energy Act](#), 2019, to, inter alia, regulate the generation, importation, exportation, transmission, distribution, supply and use of electrical energy.
4. In a Notice of Motion dated 4th July 2022, the Appellant petitioned the Tribunal in respect of an unresolved dispute arising from an alleged erroneous bill of KShs. 417,972 for the month of August 2021 for the cottage industry.
5. The Appellant raised a complaint with the 1st Respondent regarding the disputed bill. While the complaint was still pending, the 1st Respondent disconnected power supply to the Appellant, prompting the him to refer the matter to the 2nd Respondent on 1st December 2021.



6. On 6th January 2022, the 2nd Respondent directed the 1st Respondent to reconnect power supply to the Appellant, which direction was not implemented, and the Appellant remained without electricity supply until June 2022.
7. Following the Appellant's appeal to the Tribunal, the 1st Respondent raised a Preliminary Objection ("PO") on grounds, set out in its submissions dated 30th September 2022, that the Tribunal lacked jurisdiction to hear and determine the dispute.
8. The 2nd Respondent supported the 1st Respondent's PO, submitting that the plaintiff prematurely moved the Tribunal and that mediation by the 2nd Respondent was an essential compulsory condition precedent before the Tribunal assumes jurisdiction.
9. On 9th November 2022, the Tribunal dismissed the Preliminary Objection for lack of merit.

B. Appellants Case

10. The Appellant resides in Kitale where he operates a cottage industry known as Elgon Fine Enterprises Ltd that processes edible oils. The 1st Respondent has provided three-phase and single-phase electric power supply for the cottage industry under account number 27717867 and the homestead under account number 17233495, respectively.
11. The Appellant avers that his monthly bills used to range from KShs. 20,000 to 40,000, which he has been paying promptly.
12. In the month of August 2021 the Appellant received from the 1st Respondent a bill of KShs. 417,972; which bill was, in his view, strange, curious and unusual, prompting him to make an inquiry on the accuracy of the meter reading and the billing.
13. The Appellant avers that upon reporting the anomaly, the 1st Respondent agreed to check the issue. Thereafter, the bill returned to normal the following month of September 2021.
14. The Appellant avers that his effort to have the August 2021 bill rectified and the entire issue resolved was not received well, and the 1st Respondent proceeded to disconnect the three-phase power supply to the cottage industry.
15. The Appellant states that in November 2021, he was summoned by the 1st Respondent and instructed to sign an undertaking to pay the disputed amount, which he declined, as the bill was erroneous and had to be corrected before any payments thereon.
16. Upon disconnection of the three-phase power supply, the Appellant lodged a complaint (Ref No 21993404) with the 2nd Respondent on 1st December 2021.
17. Before resolution of the dispute by the 2nd Respondent, the 1st Respondent disconnected power for the residential account, which was not in arrears, but on account of the unpaid disputed bill of KShs. 417,972 that resulted from alleged wrongful billing.
18. On the 6th January 2022 the 2nd Respondent, vide an email, instructed the 1st Respondent to reconnect power to the homestead, pending resolution of the subject complaint, which instruction was not implemented by the 1st Respondent.
19. Both the cottage industry and residence remained without electricity supply from November 2021 to June 2022 when the 1st Respondent reconnected them and installed check meters for the two accounts.



20. The Appellant avers that exactly 7 days after reconnection of supply and installation of the checkmeters, the 1st Respondent coerced him to sign an undertaking to pay the disputed amount, failing which the power supply would be disconnected.
21. The Appellant has been injured by the acts of the 1st Respondent since he has been out of business from November 2021 to 10th June 2022 when power was restored.
22. The Appellant prays for judgment against the 1st Respondent for: -
 - a. A Permanent Injunction to be issued restraining the 1st Respondent by himself, his servant, agent employee and/or any other persons working under their authority from interfering with the use, supply and enjoyment of the Appellant's power connection until the final hearing and determination of the Appeal herein.
 - b. A Permanent Injunction to be issued restraining the 1st Respondent by himself, his servant, agent employee and/or any other persons working under their authority from interfering with the use, supply and enjoyment of the Appellant's power connection until the final determination of this suit.
 - c. An order be issued directing the 1st Respondent to rectify the erroneous bill for the month of August 2021.
 - d. Damages for loss suffered as a result of the 1st Respondent's acts of disconnection of power from November 2021 to June 2022.
 - e. Costs of the suit.
 - f. Any other relief or order the Honourable Tribunal may deem expedient to grant.

C. 1st Respondent's Response and Submissions

23. In rebuttal, the 1st Respondent states that it does not agree that the Appellant's monthly bills ranged from KShs. 20,000 to 40,000 and that he used to pay those bills promptly.
24. The 1st Respondent states that on 9th June 2022, the Appellant made a payment of KShs. 50,000 to offset the outstanding bill thus leaving an outstanding debt of KShs. 385,184.84 as at 19th July 2022 on his Account No. 27717867.
25. The 1st Respondent avers that the Appellant complained of the consumption and in response, the 1st Respondent installed a check meter on 10th June 2022. The check meter reported 0% error thus the Appellant agreed to pay the outstanding bill.
26. The 1st Respondent avers that it is a stranger to the Appellant's averments set out in paragraphs 16, 17 and 18 hereinabove regarding:-
 - a. reference of the dispute by the Appellant to the 2nd Respondent,
 - b. 2nd Respondent's instruction to KPLC to reconnect power supply pending determination of the dispute, and
 - c. the Appellant's residence and cottage industry remaining without electricity supply from November 2021 to June 2022.



27. The 1st Respondent states that disconnection of power supply to Appellant's residence (Account No. 17233495) was to compel the Appellant to settle the outstanding debt on the account 27717867. Meters for both accounts are in same meter box and the account holder is the same person.
28. The foregoing action by the 1st Respondent was in exercise of powers given under the Energy Act, 2019 to discontinue power supply to premises in respect of which electricity charges remain outstanding, or to disconnect power to other premises belonging to the same consumer owing outstanding charges.
29. The 1st Respondent denies that it coerced the Appellant to sign an undertaking to pay the disputed amount and avers that if the Appellant incurred any losses, which is denied, the Appellant has no one else to blame but himself as the Appellant is the author of his own misfortune for failing to honour the supply agreement between himself and the 1st Respondent, thereby occasioning power supply to be discontinued.
30. In response to the prayers sought by the Appellant, the 1st Respondent avers that the same are untenable and will only amount to engaging this Honorable Tribunal in an academic exercise.
31. In its defence, the 1st Respondent filed a witness statement signed by Mr. Judah Kipsat Kipkorir, a Senior Technician Commercial Services and Sales based at its Kitale Office, together with a list and bundle of documents dated 24th February 2023 and a supplementary list of documents dated 28th February 2023.
32. At the hearing on 7th March 2024, the above named witness of the 1st Respondent informed the Tribunal that the disputed bill of KShs. 417,972/= for August 2021, arose as a result of underbilling of the Appellant's account for the period starting in November 2020 and ending in August 2021.
33. He informed the Tribunal that the underbilling was brought about by the sudden increase in the Appellant's electricity consumption in November 2020, and for the next 10 months, his consumption was way higher than his normal (historical) consumption.
34. Due to this sudden increase in consumption, the 1st Respondent's Integrated Customer Management System (INCMS) flagged it as an anomaly, and rejected the meter readings from November 2020 to July 2021 and continued to produce estimated bills which were in the range of his historical consumption before November 2020.
35. Consequently, the Appellant was under billed from November 2020 to July 2021. Upon noticing the consistent anomaly in the Appellant's account, the 1st Respondent looked into the issue and rectified the underbilling. In August 2021, the Appellant was billed for all the unbilled units that he had consumed since November 2020, and that is why his bill amounted to KShs. 417,972.
36. The 1st Respondent's witness informed the Tribunal that the sudden increase in the Appellant's consumption was brought about by additional load following installation of new processing machinery at his premises. The witness visited the premises and even took photographs of the new machinery. He also installed a check meter at the Appellant's premises and the same confirmed that the primary meter was in good working condition. He shared the results of the check meter with the Appellant and thereafter the Appellant paid a sum of KShs. 50,000.
37. In his pleadings and testimony, the Appellant stated that before receiving the disputed bill in August 2021, his monthly average bill ranged between KShs. 20,000/= to KShs. 40,000/=. This allegation can easily be confirmed or discredited by simply referring to the billing statements of the Appellant's account. The relevant billing statements herein are part of the bundle of documents filed by both parties in this suit. In the months prior to August 2021, the bills due from the Appellant were as follows:



- a. 26/7/2021 KShs. 36,745.00
 - b. 01/7/2021 KShs. 6,200.00
 - c. 01/6/2021 KShs. 5,940.00
 - d. 01/5/2021 KShs. 6,312.00
 - e. 30/3/2021 KShs 5,462.00
 - f. 30/1/2021 KShs. 153.00
 - g. 02/1/2021 KShs. 564.00
38. From the figures above, it is easy to conclude that the Appellant's allegation that his monthly bill before August 2021 averaged between 20,000/= to 40,000/= is false and misleading.
39. As per the Tribunal's directive given during the hearing on 7th March 2024, the 1st Respondent has attached the billing statements showing the Appellant's consumption before the disputed period starting in November 2020. The attached billing statement shows the Appellant's consumption from January 2019 to November 2020. The same will give this Tribunal a clear understanding of what the Appellant's normal historical consumption was. Below is a highlight of the Appellant's consumption for eight months prior to November 2020:
- a. 26/10/2020 KShs. 5,957.00
 - b. 23/9/2020 KShs. 1,495.00
 - c. 31/8/2020 KShs. 3,488.00
 - d. 01/8/2020 KShs. 2,887.00
 - e. 01/7/2020 KShs. 10,688.00
 - f. 02/6/2020 KShs. 8,917.00
 - g. 30/4/2020 KShs. 2,862.00 (h) 02/4/2020 KShs. 2,104.00
 - i. 01/3/2020 KShs. 353.00
40. The billing statement for the years 2019 and 2020 show that at no time did the Appellant's monthly bill range from 20,000 to 40,000 as alleged.
41. After the issue was rectified in August 2021, the Appellant was billed for all those unbilled units. The billing statements show that in the months following August 2021, the Appellant's monthly bill increased.
42. The bill for September 2021 was KShs. 38,499/=, October 2021 KShs. 30,419/= and November 2021 KShs. 22,113/=. The fact that his monthly bills after August 2021 increased, corroborates the 1st Respondent's position that there was a stark increase in consumption from November 2020. Otherwise, the Appellant's bills after August 2021 would have reverted to his normal historical consumption of about KShs. 1,000 to 6,000/= per month.
43. Had the 1st Respondent's INCMS not flagged and rejected the sudden high consumption which were recorded from November 2020, which ultimately resulted in the subject underbilling herein, his bills from November 2020 to July 2021 would have been similar to the ones he received in September, October and November 2021.



44. The disputed period started in November 2020 and ended in August 2021. This is a period of about 10 months. It is the 1st Respondent's contention that the Appellant suddenly increased his consumption in November 2020. As such, the 1st Respondent's INCMS flagged this stark increase as an anomaly and rejected the actual consumption during this period.
45. It therefore recorded estimates based on the Appellant's normal consumption. After August 2021, as per bills for the months of October and November 2021, the Appellant, without any objection paid bills which ranged between KShs. 30,000 and 40,000/=.
46. In view of the aforementioned, it is not absurd to conclude that if the aforesaid bills reflected his monthly consumption during the disputed period, then his total consumption for the 10 months would have amounted to a figure close to the disputed bill of KShs. 417, 972/=.
47. As such, it is clear that there was a case of underbilling with regards to the Appellant's account. The Appellant's claim is that the disputed bill was erroneous. Considering the facts that have been pleaded by the parties herein and the evidence on record, nothing supports this claim.
48. On the contrary, the facts pleaded and the evidence on record corroborate the position that the disputed bill was brought about by a case of underbilling.
49. In *John Kanyungu Njogu vs Daniel Kimani Maingi* [2000] eKLR, the Court of Appeal held as follows:

“On the undisputed fact, it is entirely probable that the accident was caused by the negligence of the second defendant. It is equally probable that it was caused by the negligence of the defendant. And it is also equally probable that it was caused partly by the negligence of the deceased. Without the advantage of divine omniscience, I cannot know which of the probabilities herein coincides with the truth. And I cannot decide the matter by adopting one or the other probability without supporting evidence. I can only decide the case on a balance of probability if there is evidence to enable me to say that it was more probable than not that the second defendant wholly or partly contributed to the accident.”
50. The inference from the aforementioned decision is that when the court is faced with two probabilities, it can only decide the case on a balance of probability, if there is evidence to show that one probability was more probable than the other. Applying the same test to the circumstances herein, the facts and evidence show that it is more probable that there was a case of underbilling than computation of an erroneous bill.
51. The 1st Respondent installed a check meter at the Appellant's premises. This is a fact that has been acknowledged by the Appellant. The results of the check meter have also been produced as evidence before this tribunal. There has been no objection as regards to the validity or authenticity of the check meter results by the Appellant. In fact, the check meter results also form part of the bundle of documents that the Appellant is relying on.
52. The check meter results show that the Appellant's meter was in good working condition and therefore could not have recorded an anomaly in units consumed. This therefore counters to good effect the allegation that the disputed bill may have been occasioned by faulty equipment. This leaves only one probable explanation for the bill recorded in August 2021, which is a underbilling. 53. Where there is a case of underbilling, the 1st Respondent can easily rectify the situation by billing all the unbilled units. That is what happened in August 2021. The 1st Respondent billed the Appellant for all the unbilled units consumed in the disputed period at once. The bill of KShs. 417,972/= is therefore justified.



53. The Appellant alleges that he suffered loss as a result of disconnection of electricity between November 2021 to June 2022. He claims that his cottage industry was out of business due to the 1st Respondent's action of disconnecting his electricity. The Appellant is essentially claiming damages for loss of business.
54. To support his claim for damages he filed a handwritten record of sales that his business allegedly made in March 2021 to August 2021. He also filed copies of receipts that were allegedly issued in respect to the aforementioned sales. The receipts were unsigned.
55. During the hearing, the 1st Respondent objected to the production and admission of the receipts as evidence, by virtue of the fact that they were unsigned, and therefore their genuineness could not be authenticated.
56. In *Jamuto Enterprises Limited v County Government of Meru* [2021] eKLR, the court held as follows:

“It is trite law that loss of business is a form of special damages must first be pleaded and then strictly proved. See *Ouma v Nairobi City Council* (1976) eKLR 304.”
57. In the aforementioned case, *Peter Mark Gershom Ouma v Nairobi City Council* [1976] eKLR: the court observed as follows:

“Special damage”, on the other hand, means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise of the trial.....

.....Special damages’, on the other hand, are such as the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional in their character, and, therefore, they must be claimed specially and proved strictly.

Thus for a plaintiff to succeed on a claim for special damages he must plead it with sufficient particularity and must also prove it by evidence. As to the particularity necessary for pleading and the evidence in proof of special damage the court's view is as laid down in the English leading case on pleading and proof of damage, *Ratcliffe v Evans* (1892) 2 QB 524 where Bowen L J said at pages 532, 533:

The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”
58. In *Mary Gathoni Weru v Mt. Kenya Bottlers Limited* [2021] eKLR, the court quoted the decision in *David Irungu Mwangi v Attorney General* [2018] eKLR as follows:
 55. Secondly, the petitioner did not produce audited accounts for the business. What he produced were hand written document he said proved that the company was doing well businesswise. There was no profit and loss account or balance sheet to show how much the company or the business made in terms of profit and loss to justify the claim that the business was doing as well as the



petitioner put it. That would enable the court determine whether the company or business really made profit or loss. Independently audited accounts would have been necessary as proof of the company's financial muscle for purposes of considering compensation if any. The petitioner did not even produce records of the state of the business when he was finally released.....

57. It must be appreciated that a claim for loss of business is akin to special damages for it is intended to show that the claimant did suffer actual and not perceived loss. Compensation is to return the party to as nearly the same level he was before as possible. This requires proof of the actual loss suffered. From the evidence on record on this claim, I am not satisfied that the petitioner did enough to assist the court come to a reasonable and justifiable conclusion.”
59. As highlighted above, the Appellant filed some handwritten records and unsigned receipts purportedly issued by his business, to support his claim for damages for loss of business. There is no document produced to prove or show whether the business was making a profit or loss.
60. There is no document on record to prove that the business was indeed doing well and making a profit. The claim for damages herein is based on a hopeful assertion by the Appellant, that the business was doing well. As such, there is no document on record that this Tribunal can use to determine the business' financial muscle, and therefore consider whether it is entitled to any compensation.
61. In view of the aforesaid, the claim for damages herein should therefore fail.
62. Further, it has to be noted that the receipts filed herein are unsigned. In *Mugo Mungai & 4 others v Official Receiver & Provisional Liquidator (Capital Finance Limited and Pioneer) & 2 others* [2019] eKLR, the court while with the question of admissibility of an unsigned document, held as follows:
- “ 13. Taking a cue from the holding in the above cited decisions I find that the law is clear that documents without a maker are not admissible in evidence before the court. Section 66 of the Evidence Act provides inter alia that secondary evidence includes certified copies given under the provisions contained in the Act, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; copies made from or compared with the original; counterparts of documents as against the parties who did not execute them; oral accounts of the contents of a document given by some person who has himself seen it.
14. In conclusion I find that an unsigned document has no probative value as the contents genuineness cannot be proved. It is worth noting that documents do not prove themselves; a witness must be examined to prove the documents. The evidence of the contents of the document is hearsay evidence unless the author thereof is known or identifies himself as owning the document.”
63. In view of the aforesaid, the unsigned receipts produced by the Appellant, have no probative value..
64. In view of the foregoing, the 1st Respondent submits that the bill of KShs. 417,972/= is justified. The evidence on record proves that the meter which recorded the consumed units which were eventually billed was in good working condition.
65. The only reason why the Appellant was billed for all the consumed units at once in August 2021 was because of the underbilling which has been discussed at length herein above.



66. As such, the 1st Respondent urges this Honourable Tribunal to dismiss the Appellant's suit with costs to the 1st Respondent.

D. Appellant's Rejoinder to 1st Respondent's Response and Submissions

67. Having noticed a wrong interpretation of the Appellant's case during the hearing, counsel for the Appellant clarified that his client's contention is that from the time he entered into the electricity supply contract with the 1st Respondent, his bill has always been linear and determinable. For the disputed period, in the year 2020, the range was clearly KShs 0 to 40,000 and nothing out of the ordinary.
68. It is on the basis of this fact that the bill for the month of August 2021 was disputed as being erroneous and requiring correction. The Appellant is ready and willing to settle the corrected bill.
69. The 1st Respondent admits in paragraph 16 of its statement of defence dated 12th September 2022 that indeed there was a disconnection of power for account numbers 27717867 and 17233495 all belonging to the Appellant.
70. To buttress this, the 2nd Respondent admits in paragraph 3 of its statement of response dated 5th August 2022 that the Appellant's complaint about the erroneous, inflated, and disputed bill for the month of August 2021 was brought to its attention vide a complaint lodged on its portal on 1st December 2021.
71. In the said paragraph 3 of its response, the Regulator notes that upon receipt of the complaint, it forwarded it to the 1st Respondent vide its email dated 2nd December 2021.
72. The 2nd Respondent further admits that the Appellant made a follow-up on its initial complaint on 3rd January 2022.
73. That in response to the said follow-up, the 2nd Respondent wrote to the 1st Respondent on 6th January 2022 requesting it to respond to its earlier email of 2nd December 2022 and accordingly issued directions on the handling of the complaint by the Appellant.
74. It is noteworthy to state at this point that the 2nd Respondent's order directing the 1st Respondent to restore power alluded to in paragraphs 3 and 5 of its response was not honored neither was its email responded to necessitating the filing of this appeal.
75. It is clear from the foregoing that:
- a. The Appellant received an erroneous inflated bill in the month of August 2021.
 - b. Upon receipt of the abnormal bill, the Appellant through the firm of Kiarie and Company Advocates made a formal complaint in writing to the Manager of Kenya Power, Kitale branch seeking his intervention, all in vain.
 - c. Subsequently, the Appellant filed another formal complaint with the 2nd Respondent but the issue at hand remained unresolved.
76. That as a result of the disconnection, the Appellant could not manufacture the edible oils causing him huge financial losses.
77. The 1st Respondent in paragraph 12 of its statement of defence notes that the Appellant's electricity account was underbilled from November 2020 and July 2021 and that during the same period, the customer increased his load which resulted in a sharp rise in consumption resulting in the disputed bill of KShs 417,972 for the Month of August 2021.



78. It is noted that the 1st Respondent is not clear on what led to the erroneous disputed bill of August 2021. On one hand, the witness talks of underbilling which led to a recalculation of the bill and issuance of a recalculated one in August 2021, and on the other hand, there is a mention of an increase in the load leading to a sharp rise in consumption resulting in the disputed bill of KShs 417,972.
79. The 1st Respondent is unable to explain the genesis of the disputed bill; he is clutching at straws in an attempt to explain the erroneous bill.
80. Assuming it was underbilling as averred and that there was a recalculation, one wonders why the said recalculation was not done for each month, transparently, explained to the customer in an accountable manner as expected of public bodies before issuing the recalculated bill.
81. At the hearing of this case, upon asking the 1st Respondent's witness as to whether there was such communication the response was negative which shows that there was a lack of good faith in the dealings.
82. Be that as it may, besides stating that there was underbilling, there is no material placed on record to back the aversion whatsoever or at all. No document has been produced that supports the assertion. It is baseless with no feet to stand on. The company ought to have produced and supplied this Tribunal with a document in support of the underbilling and rebilling schedule duly stamped and signed.
83. Under the supply contract, the Appellant has the sole responsibility of making payments as and when the same is due. Accordingly, the Appellant kept on receiving bills from the 1st Respondent, settling them as expected, and at all times the 1st Respondent received the payment and cleared the Appellant as expected.
84. Clearly it is the work of the 1st Respondent to read its customers' meters, generate bills, and send them over to the said customers for settlement. The alleged error if any, cannot be attributed to the Appellant and consequently the same cannot be visited on him. The Appellant cannot be made to pay for the mistakes of the 1st Respondent who is in charge of reading its meters and issuing bills.
85. If anything upon noticing an anomaly, the 1st Respondent was duty-bound to communicate to the Appellant and make him understand what the 1st Respondent was doing and then agree on a way forward. That was never done. It has not been done even after the Appellant moved to this Tribunal. There is actually no truth in the allegations. Numerous complaints were filed with the 1st Respondent and the 2nd Respondent who wrote to KPLC asking it to address the complaint without success.
86. That notwithstanding, the 1st Respondent has not proved the underbilling claim nor has he supplied materials to that effect.
87. Furthermore, the check meter did not detect any anomaly as alluded by the 1st Respondent. It in fact confirms the Appellant's allegation that the bill was erroneous and must be rectified and put within the required margins.
88. The gist of this matter is that the Appellant has been a consumer of the 1st Respondent's services for 10 years operating the same account and his record of usage and bill margins have been regular, definite and determinable.
89. Specifically, in the disputed period, in 2021, the range is clearly a determinable one of KShs 0 to 40,000.
90. However, unlike his normal bills, the Appellant, devoid of any explanation from the 1st Respondent and without having enlarged his consumption rate and scale registered an unprecedented bill of KShs 417,972 in the month of August 2021.



91. As expected, this clearly erroneous and unjustified bill was disputed by the Appellant, and a complaint was recorded with the 1st Respondent who agreed to look into the matter and review the said erroneous bill.
92. Subsequently in month of September 2021, his bill went back to the normal parameters of KShs38,499/= and in October, his bill further went down to KShs 30,419 which bills were settled in full and the payment accepted by the 1st Respondent.
93. The assertion that the Appellant's bill range has always been linear is not only evidenced by the attached monthly bills as received from the 1st Respondent but also by the 1st Respondent's check meter whose results are captured in the 1st Respondent's letter dated 14th July 2022.
94. Mathematically and as per the check meter, the output results and difference are 183 units for one week. For four weeks, the total number of units will be 732 units. The total bill for such a month shall be $732 \text{ units} \times 25 \text{ KShs} = \text{KShs. } 18,300$. If a fuel charge and other charges are added to this figure, it will get to the normal range.
95. There being a genuine dispute over the bill as received for August 2021, it was expected that the 1st Respondent would seek to have the issue resolved amicably by explaining any inconsistencies or errors to the Appellant when the complaint came in.
96. Instead of resolving the complaint as registered by the Appellant herein, the 1st Respondent, without notice, with an ulterior motive, and in bad faith on 8th November 2021 dispatched personnel from its Kitale office with instructions to descend on the Appellant's premises, disconnect his power supply despite there being a pending unresolved dispute over the erroneous bill for the month of August 2021.
97. On a visit to the 1st Respondent's offices in Kitale with a view to having the issue resolved amicably considering that the Appellant herein was willing and is still willing to settle the rectified bill, the 1st Respondent, instead coerced the Appellant into signing an undertaking to pay the erroneous bill which he declined.
98. Having determined that the 1st Respondent was unwilling to amicably address and resolve the issue of the disputed bill for the month of August, the Appellant filed a formal complaint with the 2nd Respondent on 1st December 2021.
99. It is the 2nd Respondent's testimony that having looked at the complaint and having determined that the same was meritorious, it directed the 1st Respondent vide its email dated Thursday 6th January 2022 to resolve the Appellant's complaint, and restore power to his other accounts that were not in arrears and not a subject of any dispute.
100. Despite this clear direction by the 2nd Respondent, the 1st Respondent did not act on the direction and instruction as expected and required.
101. The said disobedience of the Regulator's directive by the 1st Respondent is confirmed by the 2nd Respondent in Paragraph 5 of its submissions.
102. The Appellant being an entrepreneur, operating a cottage industry suffered huge losses arising from the disconnection of his power for a period of 8 months.
103. Specifically, the Appellant's power was disconnected on 8th November 2021 and a reconnection was made in June 2022.
104. For a period of 8 months the Appellant was unable to run his business that is entirely dependent on power.



105. In the process the Appellant suffered huge losses in terms of business and profits that he makes monthly for the eight months that he was in darkness and out of business.
106. For purposes of computing damages to be awarded for losses suffered by the Appellant as a result of the actions and inactions of the 1st Respondent, we have attached the Appellant's monthly income summaries for purposes of guiding this Tribunal in arriving at specific damages to be awarded to the Appellant in this matter.
107. For purposes of helping this Tribunal in the said computation, it will be noted from the attached monthly income summaries and the receipts thereof that on average the Appellant makes a total of Kenya Shillings Three Hundred Thousand (KShs 300,000) per month from his sales.
108. The Appellant lost an average of KShs 300,000 per month for eight months translating to Kenya Shillings Two Million Four Hundred Thousand (KShs. 2,400,000).
109. That the costs of this suit be borne by the 1st Respondent. It is settled law that costs shall follow the event, unless the Tribunal shall for good reasons otherwise order. We pray that the 1st Respondent be condemned to pay the costs of the suit.
110. From the 1st Respondent's own bills and check meter, it is clear that the Appellant herein was served with an erroneous bill that has no justification whatsoever or at all.
111. Being aggrieved, the Appellant complained to both the 1st and 2nd Respondents about the erroneous bill for the month of August 2021.
112. Instead of resolving the said issue and or complaint, the 1st Respondent proceeded to disconnect the Appellant's power which action greatly injured the Appellant's business.
113. In the circumstances, we pray that this Tribunal grants all the prayers sought in the Appeal and plaint dated 4th July 2022 herein, being:
 - a. An order be issued directing the 1st Respondent to rectify the erroneous bill for the month of August 2021 and bring it to the acceptable margin for the disputed period.
 - b. A permanent injunction be issued restraining the 1st Respondent by himself, his servants, agents, employees, and or any other persons working under their authority from interfering with the use, supply, and enjoyment of the Appellant's power.
 - c. Damages for loss suffered as a result of the 1st Respondent's act of disconnection of power from November 2021 to June 2022 as calculated herein.
 - d. Costs of the Suit.

E. Analysis and Determination

114. Having considered the documents on record and submissions made by the Appellant and the 1st and 2nd Respondents herein as well as the law, we have established that the issues for determination are:
 - a. Whether the bill of KShs. 417,972 for the month of August 2021 was justifiable.
 - b. Whether the Appellant is entitled to damages for loss suffered as a result of the 1st Respondent's act of disconnection of power from November 2021 to June 2022.



(A) Whether the bill of KShs. 417,972 for the month of August 2021 was justifiable

115. In its submissions and testimony of its witness, the 1st Respondent had difficulties explaining the genesis of the contentious bill. The 1st Respondent attributes the disputed bill to underbilling occasioned by rejection of actual meter readings by KPLC's INCMS on account of the readings translating into higher consumption than the historical and/or a sudden increase in the Appellant's load.
116. Be that as it may, the responsibility to generate accurate bills lies squarely with the 1st Respondent.
117. With regard to rejection of unusually high meter readings by KPLC's INCMS as pleaded, the witness was at pains to explain why, when there were also unusually low or high readings in the billing statements as presented in paragraphs 37 and 39 herein above, the INCMS did not reject them.
118. Even one event of rejection of actual meter readings by the INCMS was reason enough to investigate the Appellant's account and take corrective action, but the 1st Respondent remained unmoved for ten months, only to come up with the contention that he could not even explain to the Appellant.
119. At the hearing on 7th March, 2024 the Tribunal gave very specific directions for the 1st Respondent to provide in its submissions a detailed record of month by month number of units consumed and corresponding bills raised for the period prior to November 2020 so as to enable us understand the Appellant's consumption trends.
120. Despite those very specific directions, the billing statement provided by the 1st Respondent for December 2018 to October 2020 is a raw printout from their Billing System and does not meet the requirements of the Tribunal. Nevertheless, we were able to extract meter readings and consumption in kWhrs as set out below.

Month Meter Reading kWhrs Used Bill (KShs.)

December 2018 3684 -

January 2019 3686 2 31.00

February 2019 3688 2 31.00

March 2019 3691 3 47.00

April 2019 3743 52 810.00

May 2019 3743 0 0.00

June 2019 3743 0 0.00

July 2019 3743 0 0.00

August 2019 3743 0 0.00

September 2019 3748 5 83.00

October 2019 3754 6 99.00

November 2019 3752 -2 35.00

December 2019 3782 30 467.00 January 2020 3821 39 600.00

February 2020 3844 23 353.00

March 2020 3982 138 2,134.00



April 2020 4168 186 2,862.00

May 2020 4752 584 8,917.00

June 2020 5060 308 10,868.00

July 2020 5189 129 2,887.00

August 2020 5344 155 3,488.00

September 2020 5410 66 1,495.00

October 2020 5665 255 5,957.00

121. From the foregoing it is abundantly clear that there is no discernible pattern in the Appellant's electricity consumption. It therefore follows that there was no believable basis for the averment by the 1st Respondent that the Appellant's monthly bills for November 2020 to July 2021 should have been in the region of KShs. 40,000 to result into the bill of KShs. 417, 972/= for August 2021.
122. The irresistible conclusion is that the bill of KShs. 417, 972/= for August 2021 is not justifiable and therefore not due from the Appellant.

(B) Whether the Appellant is entitled to damages for loss suffered as a result of the 1st Respondent's act of disconnection of power from November 2021 to June 2022

123. Before delving into merits or otherwise of this issue, it is necessary to review the circumstances leading to the disconnection as well as the conduct of the parties in the dispute.
124. When the Appellant received the contentious bill and lodged a complaint with the 1st Respondent, KPLC was required to resolve the same within seven (7) days as set out in Part G Customer Care of its own Stima Charter: Service Delivery Standards.
125. In stead of addressing its customers complaint, the 1st Respondent disconnected the Appellant's power supply in November 2021. Following the Appellant's reference of the dispute to the 2nd Respondent on 1st December 2021, the Regulator's intervention the day after did not yield anything until reminded by the Appellant on 3rd January 2022.
126. On 6th January 2022, the 2nd Respondent wrote to the 1st Respondent requesting KPLC to respond to its email of 2nd December 2022. In the same communication, the Regulator also directed the 1st Respondent to restore the Appellant's power supply, pending resolution of the dispute.
127. The Regulator's direction was ignored prompting this appeal before the Tribunal filed on 4th July 2022. Given the timelines in KPLC's Service Delivery Standards and Section 23 of the Energy Act, 2019, a complaint should subsist for no more than ninety days between the 1st and 2nd Respondents.
128. The Appellant's complaint remained unresolved by the 1st and 2nd Respondents for more than two hundred days.
129. When the Appellant appealed to the Tribunal, its hearing was put on hold pending disposal of the PO raised by the 1st Respondent. In support of the PO, the 2nd Respondent argued that the appeal offended the Energy (Complaints and Disputes Resolution) Regulations, 2012. Regulation 5 of the same states that:
 1. A person carrying out any undertaking under the Act shall establish procedures that shall be approved by the Commission for handling complaints relating to the undertaking.



2. The procedures contemplated in paragraph (1) shall conform to the guidelines set out in the First Schedule

The First Schedule - Guidelines for Complaints Handling Procedures, states that:

1. Procedures for dealing with complaints relating to any undertaking or activity performed pursuant to a licence or permit under the Act shall explain(a) how other persons can gain access to the procedures;
 - b. how the procedures work;
 - c. the timeframes within which the procedures may be carried out;
 - d. the complainant's right to access the Commission if dissatisfied with the respondent's decision or the way it has been reached; and
 - e. any other matter of relevant importance
 2. Every person carrying out any undertaking or activity pursuant to a licence or permit under the Act shall-
 - a. promptly, fully, and fairly deal with every complaint with the objective of ensuring satisfaction of the complainant, and
 - b. ensure that their staff, representatives, agents, sales people or independent contractors are aware of the approved procedures and their obligations under them.
 3. In the event that any complaint is not resolved to the complainant's satisfaction, person carrying out an) undertaking or activity pursuant to a licence or permit shall inform the complainant or their right to have their complaint referred to the Commission as a dispute between the two parties.
 4. In preparing the procedures contemplated in paragraph 1, the guiding principles are that those procedures shall to the extent possible(a) be simple, quick and inexpensive:
 - b. preserve or enhance the relationship between the parties;
 - c. take account of the skills and knowledge that are required for the relevant procedures;
 - d. observe the rules of natural justice;
 - e. place emphasis on conflict avoidance; and
 - f. encourage resolution of complaints without formal legal representation or reliance on legal procedures.
130. It is a finding of the Tribunal that the Appellant remained without power supply for a prolonged period of about eight (8) months because of non-adherence by the 1st Respondent and the Regulator to applicable provisions of the *Energy Act*, 2019; the Energy (Complaints and Disputes Resolution) Regulations, 2012. In addition, KPLC did not comply with its own Service Delivery Standards.
131. The Tribunal, while acknowledging that the Appellant may have suffered some loss, restrains itself from awarding any damages for the simple reason that the burden to prove for special and general damages was upon the Appellant and he did not discharge that burden to the required standard.



F. Disposition

133. Accordingly, having given due consideration to the pleadings, submissions and the law and considering the circumstances of this case, the Tribunal therefore makes the following orders:

- a. The bill of KShs. 417, 972/= for August 2021 is not justifiable and therefore not due from the Appellant. Any sums of monies paid by the Appellant towards this disputed bill to the 1st Respondent, should be refunded forthwith.
- b. The costs of the Appellant to be borne by the 1st Respondent.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MARCH 2024.

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MS. DORIS KINYA MWIRIGI - VICE CHAIRPERSON

.....

ENG. BUGE HATIBU WASIOYA - MEMBER

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MR. FEISAL SHARIFF IBRAHIM - MEMBER

