



**Hamisi v Kenya Power & Lighting Company (Tribunal Case
E032 of 2022) [2023] KEET 83 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEET 83 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
TRIBUNAL CASE E032 OF 2022
KIOKO KILUKUMI, CHAIR, D.K MWIRIGI, VICE CHAIR, B.H WASIOYA, F. M
KAVITA, SAMUEL MAINA KARANJA, D JEMATOR & F.S IBRAHIM, MEMBERS
MARCH 24, 2023**

BETWEEN

ALI HAMISI APPLICANT

AND

KENYA POWER & LIGHTING COMPANY RESPONDENT

RULING

1. The Applicant is the holder of electricity account number 15467368. He avers that in the month of October 2018, he received an exaggerated electricity bill of Kshs. 175,017.00 through invoice number 201810DC0020401517 dated 23rd October 2018 for the alleged consumption of power for the period between 19th September 2018 and 18th October 2018. The Applicant found the electricity bill to be unreasonable in view of the average monthly bills he had received prior to October 2018.
2. The Applicant claims that he disputed the bill and wrote a letter to the Respondent seeking investigations into the bill since it was not the normal trend of his consumption considering he is a domestic consumer. The Applicant further avers that the Respondent allegedly declined to acknowledge receipt of the letter but retained a copy of the said letter.
3. The Applicant further avers that instead of responding to the complaint by the Applicant or investigating the meter through which the Applicant receives electricity, and with the intention of contravening Section 160(1) of the *Energy Act*, 2019 the Respondent warned the Applicant by text message notification that it would disconnect the Applicant's power supply.
4. The Applicant further alleges that since then, the Respondent has not attempted to resolve the Applicant's complaint nor has it shown interest in investigating the bill or the meter supplying the Applicant with electricity.



5. On their part, the Respondent responded to the Applicant's claim by raising a Preliminary Objection on the grounds that this Honorable Tribunal lacks the jurisdiction to hear and determine the Applicant's suit as the same offends the provisions of Sections 159(3), 160(3) of the Energy Act, together with Regulations 2, 4, 7 and 9 of the Energy (Complaints and Dispute Resolution) Regulations, 2012 as read together with Article 159(2)(c) and 169(1)(d) and (2) of the Constitution of Kenya, 2010 and sections 9(2) and (3) of Fair Administrative Action Act, 2015.

Appellant's Submissions

6. The Applicant's counsel filed written submissions dated 27th February 2023. They submit that Section 36 of the Energy Act confers jurisdiction to the Tribunal to hear and determine the dispute herein in the first instance. It is their submission that there is an exception to the doctrine of exhaustion which is also provided for under Section 9(4) of the Fair Administrative Actions Act.
7. On the jurisdiction of the Energy & Petroleum Tribunal, counsel submitted that Section 36 (3) of the Energy Act grants the Tribunal original civil jurisdiction on any dispute between the licensee and a third party. Counsel submitted that it was common knowledge that the respondent was a licensee according to the Act. It was submitted that under subsection (5) the Tribunal had powers to grant equitable reliefs.
8. Relying on the case of Nathan Ombati Soire & 7 Others v Kenya Power & Lighting Company Limited (2021) eKLR counsel submitted that there are certain instances when the alternative dispute mechanism may not be ideal.
9. Counsel further submitted that while under section 11 (i) of the Energy Act the Authority has the mandate to investigate and determine complaints or disputes between parties over any matter relating to licenses, the Tribunal also has original civil jurisdiction on any dispute between a licensee and a third party or between licensees pursuant to Section 36 of the Energy Act.
10. It was the counsel's submission that the distinction between the mandates of the Authority and the Tribunal is that the Authority has an additional mandate to investigate, on top of determining disputes. The Authority, therefore, becomes the judge, jury and executioner, so to speak, which is against the precepts of natural justice and the Kenyan Justice system, therefore, qualifying the matter being placed before this Tribunal as an exception to the Doctrine of Exhaustion provided for under Section 9(4) of the Fair Administrative Actions Act.
11. Counsel further submitted that under Regulations 7 of the Energy (Complaints and Disputes Resolution) Regulations, 2012, both the Applicant and the Respondent have a duty to refer a dispute to the Authority should the dispute remain unresolved.
12. Counsel also submitted that under the First Schedule to the Energy (Complaints and Disputes Resolution) Regulations, 2012, the Respondent has a mandate under the guidelines to have a dispute handling mechanism and to ensure that in the event that a complaint is not resolved satisfactorily, the Respondent should inform the complainant of their right to have their complaint referred to the Authority as a dispute between the parties.

Respondent's Submission

13. In rebuttal, counsel for the Respondent submitted that sections 3, 9, 10; 11(e), (f), (i), (k) & (l); 23; 24; 36; 40; 42; 159(3); 160(3); 167; 168 and 224(2)(e) of the Energy Act, 2019 as read with Regulations 2, 4, 7 and 9 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 gives the Authority jurisdiction to handle disputes similar to the one that the Applicant has filed herein.



14. Counsel relied on the case of *Adero Adero and Another v Ulinzi Sacco Society Limited* where it was held that:
- “Having taken the view that this court had no jurisdiction to entertain the matter, it follows that it could not transfer the same to another court. In that regard it is trite law that where a cause is filed in court without jurisdiction, there is no power on that court to transfer it to a court of competent jurisdiction.”
15. Counsel submitted that the subject matter of this claim against the respondent is purely alleged faulty meter, billing and intended disconnection as illustrated by the Applicant’s pleadings.
16. On the doctrine of exhaustion, it was the Respondent’s counsel’s submission that the doctrine imposes an obligation on parties to exhaust any alternative dispute resolution mechanism before embarking on a Court Process.
17. Counsel cited the cases of *Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR and Dhow House Limited v Kenya Power and Lighting Company (Constitutional Petition E058 of 2021)* to emphasize the need to adhere to the dispute resolution avenues available in law.
18. It was submitted that Article 159 (2) (c) of *the Constitution* expressly recognizes alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. Article 169 (1) (d) on the other hand makes provision for the establishment of any other court or local tribunal by an Act of Parliament. Counsel urged that the Energy and Petroleum Regulatory Authority and the Energy and Petroleum Tribunal are such creatures of Parliament created by the *Energy Act*.
19. According to the Respondent’s counsel Sections 3, 9, 10, 11(e), (f) (i) (k) and (l); 23, 24, 36, 40, 42, 159 (3), 160 (3) 167; 168 and 224 (2) (e) of the *Energy Act* together with Regulations 2, 4, 7, and 9 of the Energy (Complaints and Disputes Resolution) Regulations 2012 vest jurisdiction on the Authority to handle the disputes arising in this case.
20. Counsel relied on the Supreme Court cases of *Albert Chaurembo Mumba & 7 others v. Maurice Munyao & 148 others; SC Petition No 3 of 2016 and United Millers Ltd v. Kenya Bureau of Standards, Directorate of Criminal Investigations & 5 Others* where the Court stated that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.
21. Counsel further submitted that under Section 9(2) and (3) of the Fair Administration Act, the court could not review an administrative action or decision unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any written law were first exhausted. He argued that whereas the applicant’s case was couched as a claim against the Respondent, on keen perusal, it is revealing that it is purely a complaint to be pursued by the applicant before the Energy and Petroleum Regulatory Authority.



22. The Respondent submitted that Section 9 of the Fair Administrative Actions Act deprived this Tribunal of jurisdiction to entertain the suit in the first instance. The Tribunal was thus urged to dismiss the suit with costs to the respondent.
23. Counsel relied in the case of *Night Rose Cosmetics v Nairobi County Government & 2 Others* [2018]eKLR where the honourable Court in upholding a Preliminary Objection on the ground that not all available mechanisms had been exhausted held;

“I should emphasize that the use of the word shall in Section 9 of the [Fair Administrative Action Act](#) is worth noting. The classification of statutes as mandatory and directory is useful in analyzing and solving the problem of what effect should be given to their directions. There is a well-known distinction between a case where the directions are imperative and a case where they are directory....”
24. The Respondent further submitted that a party cannot move the Tribunal in glaring contradiction of the judicial hierarchical system as provided for by the law. The [Energy Act](#) has provided very clear dispute settlement mechanisms while section 9 of the [Fair Administrative Action Act](#), 2015 deprives this Honourable Tribunal the jurisdiction to entertain this claim at first instance.
25. He relied on the cases of *Mutanga Tea & Company Ltd vs. Shikara Limited & Another*, *Republic vs. Public Procurement Administrative Review Board and Energy Sectors Contractors Association*, *Zoech-Zhepedc-Nginu Ex parte Kenya Power & Lighting Company Limited*, *Geoffrey Muthinja & Another vs. Samuel Muguna Henry & 1756 Others* and *Josiah Tatiya Kipelian vs. Dr. David ole Nkadienye & 2 Others*.

Issues For Determination

26. Whether the Tribunal has the jurisdiction to hear the matter before it.

Analysis And Determination

27. In any litigation, jurisdiction is central. A court of law cannot validly take any step without jurisdiction. If a Court finds that it lacks jurisdiction to hear and determine a matter, it is obligated to halt the proceedings. It cannot expand or arrogate to itself jurisdiction which is not conferred upon it by the law. The Supreme Court in the matter of Interim Independent Electoral Commission [2011] eKLR stated as follows:

“Assumption of jurisdiction by Courts in Kenya is a subject regulated by [the Constitution](#), by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in *Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited* [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

The *Lillian ‘S’* case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the



Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

28. The Supreme Court in the case of Republic –vs- Karisa Chengo & 2 Others (Supreme Court Petition No. 5 of 2015) 2017 eKLR, delivered itself as follows;

“Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court’s operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from the Constitution or legislation.....

In addition to the above, we note that pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and ELRC as stated above. From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of Courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

29. The Applicant’s position is that the Energy and Petroleum Tribunal has jurisdiction over this matter. It is also the Applicant’s position that the Energy and Petroleum Regulatory Authority has jurisdiction over this matter. The Respondent’s contention on the other hand is that the matter before this tribunal falls within the jurisdiction of the Energy and Petroleum Regulatory Authority.
30. The dispute between the parties from the pleadings concerns the alleged exaggerated bills from the Respondent for electricity consumption on the Applicant’s account, the subsequent threat of disconnection of power supply to the Applicant’s residence and the alleged refusal by the Respondent to investigate the Applicant’s meter and respond to his complaint. Both parties agree that such matters are governed by the Energy Act which was enacted to regulate the production, supply and use of electricity among other purposes. The Act establishes an Energy and Petroleum Regulatory Authority (“the Authority”) and an Energy and Petroleum Tribunal (“the Tribunal”) under Sections 9 and 25 respectively to perform various functions under the Act.
31. The Fair Administrative Actions Act under Section 9(2) provides that the High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. Section 9(3) further provides that the High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted; direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
32. In the case of Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR while reiterating the importance of exhausting all mechanisms of dispute resolution the Court of Appeal held;

“There is no doubt that the respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by Section 77 of the Act. The section



provides not only a forum through which the respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one, specifically tailored by the legislators to meet needs such as the respondent's. In our view, the most suitable and appropriate recourse for the respondent was to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance. In terms of *Republic v National Environment Management Authority* (supra), we discern no exceptional circumstances in this appeal that would have warranted the bypassing of the statutory appellate process by the respondent. Her contention that she disregarded the appeal because it could not afford her an opportunity to question the procedure followed by the appellant is in our view, without basis because Section 77 has placed no fetter to the jurisdiction of the Public Service Commission. There is no requirement for instance that reasons for the decision be availed to an aggrieved party before he can prosecute an appeal before it."

33. In *Rich Productions Ltd. V. Kenya Pipeline Company & Another*, Petition No. 173 Of 2014, the High Court explained why it must be slow to undermine prescribed alternative dispute resolution mechanisms thus:

"The reason why *the Constitution* and the law establish different institutions and mechanism for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. While the Court retains the inherent and wide jurisdiction under Article 165 to supervise bodies such as the 2nd respondent, such supervision is limited in various respects, which I need, not go into here. Suffice to say that it (the court) cannot exercise such jurisdiction in circumstances where parties before it seek to avoid mechanisms and processes provided by law, and convert the issues in dispute into constitutional issues when it is not."

34. In *Republic v. The National Environmental Management Authority*, CA No 84 Of 2010 the Court of Appeal upheld a decision of the High Court, which declined to entertain a judicial review application by a party who had a remedy, which he had not utilized, under the National Environment Tribunal. The Court reiterated that where Parliament has provided an alternative remedy in the form of a statutory appeal procedure, it is only in exceptional circumstances that an order of judicial review will be granted.
35. The Applicant's submission is that there are certain instances when the alternative dispute mechanism may not be ideal.
36. In the case of *Republic v National Environment Management Authority Ex parte Sound Equipment Ltd*, [2011] eKLR, the Court of Appeal observed thus: -

"... Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made and judicial review granted, it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it. "



37. In *Republic vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court discussed the exceptions to the doctrine of exhaustion thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*)

38. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.
39. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively.
40. It is the Applicant's submission that the distinction between the mandates of the Authority and the Tribunal is that the Authority has an additional mandate to investigate, on top of determining disputes. The Authority, therefore, becomes the judge, jury and executioner, so to speak, which is against the precepts of natural justice and the Kenyan Justice system, therefore, qualifying the matter being placed before this Tribunal as an exception to the Doctrine of Exhaustion provided for under Section 9(4) of the Fair Administrative Actions Act.
41. From the pleadings before this Tribunal, it is clear that the Applicant is of the view that the Authority has the mandate to determine this dispute. The Applicant's only point of contention is that the Authority has an additional mandate to investigate, on top of determining disputes and on that basis qualifies the matter herein being placed before the Tribunal as an exception to the Doctrine of Exhaustion.
42. Placing reliance on the above-cited cases of *Republic v National Environment Management Authority Ex parte Sound Equipment Ltd*, [2011] eKLR and *Republic vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA)* it is this Tribunal's opinion that the reasons relied upon by the Applicant do not qualify as exceptions to the doctrine of exhaustion.
43. The applicant also avers that the Tribunal has the relevant jurisdiction to hear and determine this matter pursuant to Section 36 of the Act which states that;



1. The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act .
 2. The jurisdiction of the Tribunal shall not include the trial of any criminal offence.
 3. The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.
 4. The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.
 5. The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.
44. Section 2 of the Act defines a licensee to mean a holder of any license issued under the Act. Further, it defines a consumer as any person supplied or entitled to be supplied with electrical energy or petroleum. However, the Act fails to define who a third party is.
 45. The Black's Law Dictionary defines a third party as a person not connected to a contract but may be affected by its outcome.
 46. Considering the above definition, it is clear that a third party is a person, other than the principal party to an agreement or dispute. The relationship between the Applicant and the Respondent is based on an agreement that the Respondent will supply electricity to the Applicant which will be billed monthly while the Applicant on the other hand will offset on a monthly basis the bill accrued from the utilization of the electricity. Therefore, both the Applicant and the Respondent are primarily involved in the agreement and cannot be considered as third parties. This, therefore, means that the dispute between the parties herein does not fall under the scope of Section 36(3). While the Respondent is a licensee, the applicant is neither a licensee nor a third party.
 47. Having established that the Applicant cannot be considered a third party and therefore the provisions of Section 36(3) do not apply in this matter, it is important to consider the provisions of Section 36(1) which gives the tribunal jurisdiction to hear and determine all matters relating to the energy and petroleum sector.
 48. Despite the vast jurisdiction vested into the Energy and Petroleum Tribunal by Section 36(1) of the Act, Courts have consistently held that an aggrieved party must first exhaust all dispute resolution mechanisms provided under the law before proceeding to court.
 49. It is therefore of importance that if there exists any organ or body in place competent to hear and determine this matter then this matter should be first heard and determined by that body or organ before the jurisdiction of this tribunal can be invoked.
 50. The Respondent on the other hand contends that the Authority has the necessary jurisdiction to hear and determine this matter pursuant to Section 11 (e), (f), (i), (k) and (l), Section 159(3) and Section 160(3) of the Act.
 51. Section 11 provides as follows;
 11. The Authority shall have all powers necessary for the performance of its functions under this Act and in particular, the Authority shall have the power to—



- e. make and enforce directions to ensure compliance with this Act and with the conditions of licenses issued under this Act;
- f. issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled;
- (i) investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act;
- k. issue orders or directions to ensure compliance with this Act;
- l. impose such sanctions and fines not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days;

52. Section 159 of the Act provides for instances when the meter is defective. Section 159(3) states that disputes arising from the Section should be referred to the Authority. It states that;

- 2. If any dispute arises under this section as to recalculation of electrical energy consumed by consumer or as to interference with any meter, such dispute shall be referred to the Authority for determination.

53. Section 160 of the Act provides for instances when supply of electrical energy may be refused or discontinued. According to Section 160 (3) disputes arising under that Section are referred to the Authority. The provision stipulates;

- 3. If any dispute arises as to;
 - a. any charges;
 - b. the application of any deposit;
 - c. any illegal or improper use of electrical energy;
 - d. any alleged defects in any apparatus or protective devices; or
 - e. any unsuitable apparatus or protective devices, it shall be referred to the Authority.

54. Regulation 2 of the Energy (Complaints and Disputes Resolution) Regulations 2012 states that;

- (2) These regulations shall apply to any person who has a complaint or a dispute regarding any license, permit, contract, code, conduct, practice or operation of any party or any matter regulated under the Act.

55. Regulation 4 provides for the nature of complaints and disputes to which the regulations apply. It provides that;

- 4. These regulations shall apply to complaints and disputes in the following areas-



- a. billing, damages, disconnection, health and safety, electrical installations, interruptions, licensee practices and procedures, metering, new connections and extensions, reconnections, quality of service, quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmission, distribution, supply and use of electrical energy.
 - (b)
 - (c) any other activity and/or matter regulated under the Act.
56. Regulations 7 and 9 sets out the procedure for the reference to the Authority of the disputes and the manner the proceedings will be conducted.
57. In *Nathan Ombati Soire & 7 Others v Kenya Power and Lighting Company PLC* Civil Case No. 2 of 2021(2021)eKLR the Court held that;

“The Authority is empowered to resolve disputes relating to disconnection of electricity supply by a licensee such as the respondent. The Authority is also empowered to issue orders in writing requiring acts to be performed or prohibiting acts from being performed or done, and may prescribe periods upon which such acts shall be performed or such conditions shall be fulfilled under Section 11 (f) of the Act. It follows that the Authority would have the power to order reconnection of electricity supply where it finds that the disconnection by the respondent was improper.”
58. The Applicant’s main claim is that the billing by the Respondent on his Account between 19th September 2018 and 18th October 2018 was exaggerated a dispute that clearly falls under the ambit of Section 159(3) and 160(3) of the Act.
59. This Tribunal notes that by a letter dated 6th October 2022, the Applicant informed the Respondent of his intention to refer the dispute to the Authority. However, the Applicant instituted this suit by a Reference of Dispute to the Authority. What remains unclear is why the Applicant did not lodge the said Reference with the Authority and instead instituted the claim before this Tribunal.
60. This Tribunal also notes that the Applicant has also admitted that this Tribunal may not have the jurisdiction to hear and determine the dispute before it and seeks in the alternative that the dispute be referred to the Authority.
61. In light of the aforesaid, this Tribunal finds that the Authority is sanctioned to resolve disputes as to the recalculation of electrical energy consumed by consumers or as to interference with any meter under Section 159(3). It is also authorized to resolve disputes relating to the disconnection of electricity supply by a licensee such as the Respondent under Section 160(3). The Authority is also empowered to issue orders in writing requiring acts to be performed or prohibiting acts from being performed or done, and may prescribe periods upon which such acts shall be performed or such conditions shall be fulfilled under Section 11 (f) above.
62. Flowing from the foregoing analysis of the law, the facts and authorities, the conclusion becomes irresistible that the Applicant’s failure to exhaust the internal dispute resolution mechanism and pursue the procedure set out in Regulations 5(20) and 7 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 renders this suit premature, we therefore do not have jurisdiction to entertain this claim at this stage.



Disposition

63. We direct that this matter be and is hereby referred to the Energy and Petroleum Regulatory Authority for hearing and determination pursuant to Section 159(3) of the [Energy Act](#).
64. Each party shall bear its own costs.

Dated and Delivered at NAIROBI this 24th day of **March 2023**.

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Mr. Kioko Kilukumi SC Chairperson

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Ms. Doris Kinya Mwirigi Vice Chairperson

..... Eng. Buge Hatibu Wasioya Member

..... Eng. Fidelis Muli Kavita Member

.....

Mr. Samuel Maina Karanja 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 17:24:40+03



The Judiciary of Kenya

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