



**Bonito Hotels Limited v Kenya Power & Lighting Company (Tribunal  
Case 022 of 2022) [2023] KEET 56 (KLR) (8 March 2023) (Judgment)**

Neutral citation: [2023] KEET 56 (KLR)

**REPUBLIC OF KENYA  
IN THE ENERGY & PETROLEUM TRIBUNAL  
TRIBUNAL CASE 022 OF 2022**

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

**MARCH 8, 2023**

**BETWEEN**

**BONITO HOTELS LIMITED ..... CLAIMANT**

**AND**

**KENYA POWER & LIGHTING COMPANY ..... RESPONDENT**

**JUDGMENT**

**Introduction and Background**

1. The claim herein was brought through a statement of claim dated the September 8, 2022. It seeks mandatory orders compelling the respondent to restore electricity in its premises, a mandatory injunction against the respondent from disconnecting power supply on account of the disputed meter readings and a declaration that the alleged readings of 4656.5 kWhrs units be footed by the Respondent.
2. The Claimant, being a consumer of electricity supplied by the Respondent through account number xxxx, avers that the Respondent herein issued it with a bill containing a disputed amount of Kshs 107,817. It states that the disputed amount was issued as a billing adjustment which it states was done without explanation from the Respondent.
3. The Claimant states that at the time it was issued with the billing adjustment as at the June 4, 2021, it had cleared all its arrears save for the disputed amount of Kshs 107,817. It claims that the Respondent, based on the disputed bill, went ahead to disconnect power from its premises.
4. The Claimant states that, on the June 10, 2021, it lodged a complaint at the Energy and Petroleum Regulatory Authority ('the Authority' or 'EPRA') on the disputed bill and the power disconnection. It claims that the Authority, on the June 21, 2021, ordered the Respondent to restore power and provide



- an explanation on the disputed bill. The Claimant also filed the matter at Bungoma Chief Magistrate's Court where its case was struck out on the grounds of jurisdiction.
5. The Respondent, through its response to the claim, denies the entire claim against it and states that the Claimant has an outstanding bill of Kshs 107,817. It also states that the Claimant was fraudulent on account of obtaining orders by false pretense and deponing a false and scandalous verifying affidavit. It seeks that the claim be dismissed with cost.
  6. The parties did not call any witnesses and agreed to have the matter disposed of through written submissions. The Claimant through its submissions submitted that it was over-billed. It relied on a number of authorities to argue that the Respondent failed to provide a comprehensive explanation as to how it arrived at a bill of Kshs 107,817. It argues that the actions of the Respondent were against national values, transparency, integrity, transparency and accountability as provided under Article 10 of the Constitution of Kenya, 2010.
  7. In its submissions, the Claimant prayed that the 4656.5 kWhrs (units) be footed by the Respondent.
  8. The Respondent in its submission submitted that the disputed bill was explained to the Claimant which it says was due to a faulty meter. It relied on its letter dated July 2, 2021 which had been annexed to its submissions. The letter stated that the disputed bill of Kshs 107,817 was due to bill adjustments. In justifying the bill adjustments, it stated in the letter that the Claimant's account had registered a reduced consumption of 3,996 kWhrs based on the reading on the June 20, 2021. It stated that the reduced consumption had led to a depressed bill of Kshs 92,524 which it had issued on the February 22, 2021.
  9. The Respondent asserted that by its investigations, it had discovered that the meter was faulty due to a burnt terminal. Due to the faulty meter, the Respondent stated that it had proceeded to estimate the cost for February which was based on average monthly consumption between April and May 2021. The average consumption was established to be 8635.5 kWhrs and the undercharged consumption was taken to be 4,656.5 kWhrs which as per the prevailing tariff culminated to a bill of Kshs 107,817.
  10. The Respondent claims that the bill had risen to Kshs 394,916.02. In concluding its submissions, the Respondent argued that Section 168 of the Energy Act, 2019 criminalized unauthorized, fraudulent and improper supply or use of electricity and also allowed it to disconnect supply in the circumstance. It also relied on Section 160 which allowed it to discontinue supply if the bill was not paid. It prayed for the claim to be dismissed with cost and to find its action of disconnecting supply justified and the outstanding bill of Kshs 107,817.00 to be due to the Respondent.

### **Analysis and Determination**

11. The Tribunal has carefully considered the pleadings, evidence and the written submissions by counsels of the respective parties and the authorities relied upon. Having analyzed the dispute, the Tribunal finds that the dispute rests on a single issue which is outstanding bill of Kshs 107,817.00. The Tribunal will not consider the claim of bypass as it is not a matter properly brought before this Tribunal and the Act has provided a specific procedure for it.

### **Whether the Claimant owes the Respondent the Bill of Kshs 107,817.00**

12. The issue before this Tribunal is the dispute between the Claimant and the Respondent on the bill of Kshs 107,817. The Claimant herein has opposed the bill of Kshs 107,817 which it submits that it was never provided with a comprehensive breakdown of the amount and its justification. The Respondent on the other hand submits that it clarified the bill through its letter dated July 2, 2022.



13. The Respondent herein attached documents to its submissions to justify the bill of Kshs 107,817. The documents comprised of letters from the Respondent to the Claimant which the Respondent submits gave a detailed breakdown of how it arrived at the bill. These documents had not been filed by any party. The Tribunal before proceeding to give its judgement inquired from the Claimant on whether they had seen the documents before as it had been addressed to them. The Tribunal gave the Claimant more time to study the evidence and give its response to the same.
14. The letter is in furtherance to a letter sent on the July 1, 2021. The letter states that the billing adjustment was due to a faulty meter. It gave an explanation to the Claimant that its account had registered a reduced consumption of 3,996 kWhrs from the reading that had been taken on February 20, 2021 which had led to a depressed bill of Kshs 92,524 issued on February 22, 2021
15. The Claimant, after been given an opportunity to respond based on the letter attached to the Respondent's submissions, did not provide any response specifically to the explanation given for the bill adjustments. They did not also dispute receipt of the letter before this matter was filed before this Tribunal.
16. In the letter, the Respondent claims that the meter was faulty as a result of a burnt terminal. The letter went on to explain that since the average monthly consumption at the time was 8635.5 kWhrs, then the consumption for February 2021 was 8635.5 kWhrs and thus the undercharged consumption was 4656.5 kWhrs which as per the prevailing base tariff, charges, taxes and levies, the bill for the undercharged units was Kshs 107, 817 VAT inclusive.
17. A look at the pleadings filed by the Claimant and its submissions provides no response to what was stated in the letter dated July 2, 2021. Even when the claimant was accorded an opportunity to respond to the same after it had filed its submissions, it never did so.
18. The Respondent's letter dated the July 2, 2021, provides a detailed explanation that gives a reasonable explanation on the bill adjustments. It is clear from the letter that the issue of burnt terminals can arise which can result to a faulty meter. Therefore, the only way for the Respondent is to estimate the amount consumed based on average consumption. The Claimant herein, did not dispute this mode of assessment that was provided by the Respondent.

### **Disposition**

19. Having looked at the Respondent's letter dated the July 2, 2021, which was addressed to the claimant, it is this Tribunal's determination that the letter gives a reasonable breakdown of the bill. The Claimant herein did not supply this Tribunal with any response to oppose the assessment that was done by the Respondent. Therefore, this Tribunal finds this appeal unmerited and it is disallowed.
20. There shall be no orders as to cost.

**DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MARCH 2023.**

**In the Presence of:**

**MR. KIOKO KILUKUMI, SC**

**CHAIRPERSON**

.....

**MS. DORIS KINYA MWIRIGI**

**VICE CHAIRPERSON**



.....  
**ENG. BUGE HATIBU WASIOYA**  
**MEMBER**

.....  
**ENG. FIDELIS MULI KAVITA**  
**MEMBER**

.....  
**MR. SAMUEL MAINA KARANJA**  
**MEMBER**

.....  
**MR. FEISAL SHARIFF IBRAHIM**  
**MEMBER**  
**SIGNED BY: DORIS KINYA MWIRIGI**

