



**Shalimar Limited v Kenya Power & Lighting Co. Limited (Tribunal
Case 1 of 2022) [2023] KEET 82 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEET 82 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
TRIBUNAL CASE 1 OF 2022**

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

MARCH 24, 2023

BETWEEN

SHALIMAR LIMITED PETITIONER

AND

KENYA POWER & LIGHTING CO. LIMITED RESPONDENT

RULING

1. The Petition herein arises from a case that was filed in the High Court of Kenya at Nairobi, in HCCC No. E123 of 2019. The parties by consent requested the court to have the case transferred to this Tribunal for hearing and determination. Accordingly, the court made an order transferring the file to this Tribunal.
2. Through a Petition dated the 25th of October 2019 supported by the affidavit of Ishwar Aildasani, the Petitioner herein seeks the following prayers
 - a. A declaration that the Respondent's action of disconnecting or threatening to disconnect the electricity supply from the Petitioner's property known as Shalimar Gallant developed on Plot No. 209/2158, Parklands Road, Nairobi without notice or any lawful outstanding bill having been duly issued by the Respondent is illegal and without any valid justification or lawful basis whatsoever and contrary to the provisions of the Energy Act No. 1 of 2019.
 - b. A declaration that by disconnecting or threatening to disconnect electricity supply from the Petitioner's property known as Shalimar Gallant developed on LR No. 209/2158, Parklands Road without notice or any valid basis, the Respondent breached the terms of the Supply Contract signed with the Petitioner and the provisions of the Energy Act No.1 of 2019 and the Regulations made thereunder.



- c. An order directing the Respondent to reconcile the accounts and to render to the Petitioner a true, proper and accurate Statement of Account in respect of Meter No. 0040016114363(Reference No. E21122017040051)
 - d. An order rescinding the Bill/Demand for KShs. 3,858,250.26 by the Respondent.
 - e. An order restraining the Respondent, its officers, servants or authorized agents and each of them- from unlawfully disconnecting the electricity supply from the Petitioner's property known as Shalimar Gallant developed on Plot No. 209/2158 situated on Parklands Road, Nairobi without any lawful or justifiable cause.
 - f. Appropriate damages for inconvenience and anxiety suffered by the Petitioner as may be assessed by this Honourable Tribunal.
 - g. Any further directions such as this Honourable Tribunal may deem fit
 - h. Cost of this Petition
3. The Petitioner herein is the registered owner of all that commercial property known as Shalimar Gallant being developed on Plot No. 209/2158 located on Parklands Road, Nairobi whose development consists of several offices and shops for sale to prospective purchasers.
 4. The Petitioner and the Respondent entered into an electricity supply contract. The Respondent supplied the electricity to the Petitioner. The Petitioner was allocated Meter No.0040016114363 (Reference No. E21122017040051) which was installed on the Petitioner's property, namely Plot No. 209/2158 on Parklands Road, Nairobi. The said connection under Meter No. 0040016114363 supplies electricity to the lifts, the basements (4 levels), borehole pump, washrooms and all the common areas within the commercial building known as Shalimar Gallant.
 5. Further, pursuant to several other supply contracts signed between the Petitioner and the Respondent, the Respondent supplied and connected other 157 meters to the said Petitioner's property known as Shalimar Gallant for use by the various Tenants/Purchasers who will occupy the various shops and (offices) in the building on completion of the project.

Petitioner's Case

6. The Petitioner avers that subject to payments of periodical monthly bills issued by the Respondent from time to time, the Respondent was legally bound to perform its contractual obligations under the various supply contracts signed with the Petitioner and to supply electricity to the Petitioner's premises known as Shalimar Gallant without any interruptions or other conditions whatsoever.
7. On the 11th April 2019 the Petitioner avers that the Respondent illegally and without any notice or justifiable cause whatsoever disconnected electricity from the Petitioner's premises, and the Respondent has refused to reconnect the electricity to date, despite several requests from the Petitioner.
8. The Petitioner avers that initially, the reason cited by the Respondent for disconnecting the power supply from the subject premises was that Meter No. 60534856 registered in the name of the Contractor N.K Brothers had an outstanding bill for KShs. 475,980.01. The said amount was promptly paid on 11th April 2019 by the Contractor. The Petitioner however avers it is not the registered owner of the said Meter/Account. Furthermore, the Respondent had no justification whatsoever to disconnect power from the Petitioner's meter.
9. The Petitioner further avers that soon after settlement of the amount outstanding in the Contractor's meter/account aforesaid, the Respondent demanded the Petitioner to pay a substantial sum of KShs.



- 3,558,250.26, being the alleged outstanding bill in Account No. 2288714 which is registered in the name of one N. N. Ghelani and not the Petitioner as a precondition for re- connecting the power supply into the Petitioner's premises.
10. The Petitioner contends that the Respondent's action of disconnecting electricity supply from its premises is illegal and that the Defendant's demand for payment of KShs. 3,558,250.26 from the Petitioner is fraudulent, fictitious and without any factual or legal basis.
 11. The Petitioner avers that it is not and has never been the registered owner of meter No. 50008484 or account No. 2288714 as alleged. It states that meter No. 50008484 is not located within Plot No. 209/2158 Nairobi which has been in the ownership and occupation of the Petitioner for over five (5) years to date.
 12. The Petitioner averred that the said meter No. 50008484 is registered in the name of N.N. Ghelani, the former owner of Plot No. 209/2158 Nairobi who has not resided on the property for the last five (5) years.
 13. The Petitioner averred that last bill dated 3rd September 2014 issued by the Respondent shows that the previous reading for meter No. 50008484 was 50865 units and the current reading is 217412 units yet the said meter is not available within the Petitioner's premises. The Petitioner says that the Respondent has not disclosed or furnished it with any previous bills issued in respect of the said account since September 2014, if at all the said meter has been in active use as alleged.
 14. The Petitioner states that on October 2017, the Respondent accepted and processed the Petitioner's application to supply and connect electricity into the subject property and the Petitioner duly paid to the Respondent the total sum of KShs. 3,393,969/= being the tabulated cost of supply as advised by the Respondent. The payment was accepted and power was supplied and connected to the property and the Petitioner has been using the electricity since January 2019 without any demands from the Respondent or interruptions whatsoever.
 15. The Petitioner states that according to the Respondent's policy, the Petitioner's application for connection of power into the subject premises should have been rejected and no electricity would have been supplied to the property if indeed any bill was due and owing from the Petitioner under the subject account. The Respondent has subsequent thereto supplied and connected a total of 157 meters for use by other offices and shops in the premises in the name of the Petitioner.
 16. The Respondent had erroneously credited the sum of Kshs.3,393,969/= paid by the Petitioner to meter No. 50008484 which does not belong to the Petitioner but the error was eventually corrected after receiving the Petitioner's complaint. The Petitioner avers that the said error constitutes conclusive evidence that the Respondent has been treating the Petitioner as if it is the registered owner of meter No. 50008484, which is manifestly erroneous.
 17. The Petitioner reiterates the foregoing and states that it does not owe the Respondent any outstanding bill and neither has the Respondent issued any bill in respect of Meter No. 00400161114363 (Reference No. E21122017040051), which the Petitioner has failed to settle and consequently, the disconnection of electricity supply from the Petitioner's premises is blatantly illegal, high handed and purely meant to punish and inconvenience the Petitioner, who is an innocent developer.
 18. The Petitioner states that as a direct consequence of the illegal disconnection of power from the Petitioner's premises as aforesaid, the Petitioner continues to suffer substantial inconvenience, loss and damages and the various works being undertaken on the suit premises have stalled.



Respondent's Case

19. The Respondent filed their response to the Petition dated 16th August 2022 and a witness statement dated 24th August 2022 of Daniel Okubi and contended that meter No.50008484 and/or account No. 2288714 which was registered in the name of N.N. Ghelani was situated on Plot No.209/2158 and had an outstanding Electricity Bill of Kshs.3,649,584.00 and when their officers visited the suit property sometime in July 2018 on the follow up on the outstanding bill on the said meter, they were informed that the bill had been settled by the current owner of the Suit Property on 3rd August 2018, leading them not to disconnect electricity on the suit property.
20. Further to the foregoing, the Respondent states that the Petitioner has been occupying the property from 2014 to 2017, notwithstanding them occupying the property when the last reading was done on the 26th of October 2017. Therefore, the Respondent cannot claim not to know the whereabouts of the original meter for AC.2288714 in debt. The Respondent further stated that sometime in July 2018 they followed up on the said outstanding Bill and met people on the Suit property and they were informed that the bill had been settled and details of the wire transfer were given to the officials of the Respondent who confirmed that the amount had been receipted on 3rd August 2018, having received the said amount from the Petitioner to clear the bill on meter No.50008484 and or account No. 2288714 registered in the name of N.N Ghelani. That after one month the receipt was reversed and payment was transferred to account 106366824 after the Petitioner complained that there was an error. Further the Respondent's witness testified that the said meter has never been removed from the suit property nor has it ever been reported as stolen. Therefore, to the best of their understanding, it is only the Petitioner who could explain the whereabouts of the meter.
21. The Respondent further stated that sometime in July 2018 they followed up on the said outstanding Bill and met people on the suit property and they were informed that the bill had been settled and details of the wire transfer were given to the officials of the Respondent who confirmed that the amount had been receipted on 3rd August 2018 having received the said amount from the Petitioner to clear the bill on meter No.50008484 and or account No. 2288714 registered to N.N Ghelani. That after one month the receipting was reversed and payment transferred to account 106366824 after the Petitioner complained that there was an error.
22. The Respondent avers that the Petitioner has been in occupation of the said Property since 2014 to 2017 and a system conversion to for AC 2288714 was moved with the last correct recorded reading of 50865 and on 26th October 2017 the actual site reading of 217412 was taken and a bill of KShs 3,649,584.00 was raised and served upon the Petitioner.
23. That further to the foregoing, sometime in July 2018 the Respondent did a site visit of the said Property and found a new building coming up in the said property, and on follow up from the contractor, the Respondent referred them to an office a few blocks away from the site where they met a Mr. Aziz whom they issued a copy of the statement requesting for payment of the debt in AC 2288714. That on follow up the Respondent's staff were informed that the debt had been settled on or before 3rd August 2018 by the Petitioner but calculatingly the payment was reversed and transferred to account Number AC. 106366824 by the Petitioner.

Analysis and Determination

24. We have considered the record and submissions made by the Petitioner and the Respondent. Having analyzed the arguments of both parties and the authorities they submitted before this Tribunal, the following matters are for determination. The issues to be determined by this Tribunal are:



- a. Whether the Defendant's action of disconnecting electricity supply from the Petitioner's property is lawful
- b. Whether the Petitioner has any liability from account number AC 2288714 which has accrued a bill of KShs. 3,649,584.00.

Whether the Defendant's action of disconnecting the electricity supply from Petitioner's property is lawful

25. The Petitioner herein entered into a separate supply contract for electricity with the Respondent. It is not in dispute that there was a new connection which is meter No. 50008484 or account No. 2288714. In fact, the Respondent herein wrote a letter to the Petitioner dated the 6th of October 2017 where it provided a supply contract form and gave a cost of KShs. 3,494,969
26. The Petitioner herein paid for the supply KShs. 3,393,969 on the 12th of February 2018 but the money was transferred to the wrong account, while the correct account was E21122017040051. The Respondent wrote a letter on 18th September 2018 to request for the amount to be transferred to the correct account, which was done.
27. The supply contract between the Petitioner and the Respondent herein with reference E21122017040051 with meter No. 0040016114363 was a new supply contract and was not related to Account No. 2288714. Therefore, for there to be a disconnection under the said meter as a result of non-payment of bills, such non-payment could only arise from Meter No. 0040016114363.
28. The Petitioner herein applied for a new connection and paid for it and the Respondent, after receiving the payment, provided a new connection to the Respondent for a newly erected building. At no point, did the Respondent raise any issue concerning Account No. 2288714.
29. Power supply in Kenya is unique as all Kenyans rely on one dominant supplier who is the Respondent herein, it is surprising as to why it would opt to disconnect power to meters that were not in default of payments and thus inconveniencing a customer on account of a separate meter under a different supply contract. Such an act is not only inconvenient but also oppressive. As stated in the case of Robai Kadili Agufa and another versus Kenya Power and Lighting Company (2015) eKLR, the Respondent is a public body charged with the responsibility of supplying electricity to customers and, it is true that at the moment, it is only the Respondent that distributes and supplies electricity to consumers throughout the country and has that monopoly. For that reason, it should not use its position to penalise and oppress customers.
30. One contract should not be a reason to disconnect a separate meter under a different supply contract. Those contracts are separate and distinct. Even though the Respondent herein took the premises from the original owner of the property, having the meter in his custody should not have been reason enough to disconnect power as the Petitioner herein knew it had provided a separate connection. The Respondent had options for recovering the amount owed under AC 2288714. As such it was not lawful to disconnect power for account 0040016114363

Whether the petitioner is liable to the accrued bill of 3,649,584.00.

31. It is a fact that the Petitioner purchased the property and has occupied it since the year 2014. In his witness statement, Ishwar Aildasani, stated that the seller paid the last bill of KShs. 11,061.41 on 4th September 2014. He also stated that the contractor N.K brothers cleared a bill of 475,980 on meter number 1113497.



32. In his statement Daniel Mukabi stated that the meter with an outstanding bill was 2288714. He also stated that the account had been disconnected for non-payment on 12 February 2016. He also stated that the meter was not removed by KPLC from the site but had accrued the bill before removal. He also stated that by the time the meter went missing, it was in the custody of the Petitioner. The Petitioner denied the existence of the meter at his property.
33. The Petitioner's witness stated in its witness statement and before this Tribunal that he was aware that Account No. 2288714 was opened and registered to N.N Ghelani from whom he bought the subject property and that the Petitioner was served with a bill of Kshs. 11,061 under the said account which was paid. In 2017, the Petitioner's witness said that the premises were in possession of contractors, N.K Brothers who had a different meter, being Account number 60534856.
34. From the Petitioner's witness statement, it is acknowledged that the meter belonged to the previous owner of the land from whom they bought the land. The Petitioner herein was also served with the bill soon after purchasing the property from N.N Ghelani, a bill that he acknowledges was paid. This shows that he knew that Account No. 2288714 was the previous owner's account when it was in occupation of Plot 209/2158. This conflicts with the other statement that the said meter was not on its premises.
35. It should be noted that when a party purchases a property, he purchases it in the condition it is in and gains possession of the property. It is the finding of this Tribunal that the meter was in the custody of the Petitioner. The Petitioner neither applied for the change of the account name nor the termination of the account. In the witness statement, Mr Okubi explained the process of termination and recovery of meters which the Petitioner neither followed nor adhered to after the purchase of the property.
36. The Petitioner herein acknowledged that he was served with a bill of the previous owner of the land by the Respondent soon after purchasing the property. The petitioner knew the meter was at its premises and if units were consumed afterwards, it was during a period that he had taken possession of the land, Therefore, the units consumed under account No. 2288714, were consumed when the land was in occupation of the Petitioner. Accordingly, the Petitioner is liable to pay KShs. 3,649,584.00 for the consumed units.

Disposition

37. Based on the findings above, the Tribunal makes the following orders.
 - a. That the disconnection of power by the Respondent on Meter No. 0040016114363 (Reference No. E2112017040051) was unlawful. The Tribunal also finds and holds that the separate connection done by the Respondent herein for the new premises erected on the land constituted a separate contract for the supply of electricity.
 - b. That the Respondent herein could not use the accrued bill from meter No. 50008484 or Account No. 2288714 to disconnect power for Meter No. 0040016114363 (Reference No. E21122017040051).
 - c. That the Petitioner herein, as the owner of the land, was in the custody of the meters after purchasing the land. Therefore, the Petitioner was responsible for the energy units consumed on the land after the time of purchase and is therefore liable to pay KShs. 3,649,584.00.
 - d. That the Respondent should pursue payments for meter No. 50008484 or Account No. 2288714 separately and restore connection for meter No. 0040016114363 (Reference No. E21122017040051).



e. Each party shall bear its own costs

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

.....

MS. DORIS KINYA MWIRIGI

VICE CHAIRPERSON

.....

ENG. BUGU 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

