



**Maridadi Flowers Limited v Kenya Electricity Transmission Co Ltd (Tribunal  
Case E018 of 2022) [2022] KEET 791 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEET 791 (KLR)

**REPUBLIC OF KENYA  
IN THE ENERGY & PETROLEUM TRIBUNAL  
TRIBUNAL CASE E018 OF 2022**

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

**OCTOBER 12, 2022**

**BETWEEN**

**MARIDADI FLOWERS LIMITED ..... CLAIMANT**

**AND**

**KENYA ELECTRICITY TRANSMISSION CO LTD ..... RESPONDENT**

**RULING**

1. The claimant alleges that it is the registered owner of property known as LR No 425/81 (original LR No 425/21/24) measuring about eighty two decimal nought nine (82.09) hectares or thereabouts, situated in Naivasha Sub-county within Nakuru County (hereinafter referred to as the suit property) and has at all material times since acquisition on or about the March 17, 2015 been in possession of the property whereon it carries on flower farming on large scale commercial basis.
2. The claimant further states that on diverse dates between the year 2020 and 2021, the respondent sought, was granted consent by the claimant, way leave through the suit property. The respondent proceeded to construct and complete a 400/220/132kV Olkaria-Lessos-Kisumu transmission line through the suit property so as to strengthen its geothermal plants in Olkaria and link between the Eastern and Western parts of its national grid.
3. The claimant further alleges that despite the fact that the respondent took possession of the suit properties, commenced and completed its project through the land in January/February 2021, compensation in respect to the wayleave remains unpaid.
4. The claimants through their statement of claim dated the 2nd of September 2022, claim against the respondent: breach of contract and failure to pay wayleave compensation and accrued interest on delayed payments.



5. The respondents, on the other hand, denies the claim by the claimants stating that the claimants have failed to furnish the respondent with the certificate of title to the suit properties to inform the registration of easement and compensation.
6. On September 14, 2022, the tribunal requested the parties to file submissions in respect to whether the tribunal was clothed with the necessary jurisdiction to hear and determine this matter.
7. Both parties filed their respective submissions on jurisdiction which we wish to summarize them as follows:-

### **Claimant's Submission**

8. The claimants counsel filed written submissions dated September 20, 2022. They submit that section 36 of the Act (the [Energy Act, 2019](#)) confers exclusive jurisdiction to the tribunal to hear all matters relating to energy and gives the tribunal original civil jurisdiction on any dispute between a licensee and a third party or between licensees and has power to grant equitable reliefs including but not limited to injunctions, penalties, damages and specific performance. It is their submission that the dispute before the tribunal falls within the energy sector and thus the tribunal has the requisite jurisdiction to hear the matter pursuant to section 36 and section 175 of the [Energy Act, 2019](#).
9. Further, counsel submitted that section 175 of the [Energy Act](#) provides the forum that has the appropriate jurisdiction to handle matters arising from wayleaves and rights of way whereby the same are for use for energy resources and infrastructure.
10. Relying on the case of [Elijah Mutabi and 10 others v Kenya Power & Lighting Company Limited](#) [2020] eKLR counsel submitted that the Energy and Petroleum Tribunal has original jurisdiction in civil matters .

### **Respondent's Submission**

11. In rebuttal, counsel for the respondent submitted that the claimant's case is a claim for breach of contract and failure to pay wayleave compensation and accrued interest of delayed payments. Counsel further stated that the dispute the claimant's ownership of the suit property since the claimant has failed to prove the same.
12. Counsel further averred that contrary to the provisions of section 26 (1) of the [Land Registration Act](#) which provides that the certificate of title shall be taken as *prima facie* evidence that the person named as the proprietor of land is the absolute and indefeasible owner, the claimant has failed to make good its ownership over the suit property.
13. Counsel similarly relied on the provisions of section 175 of the [Energy and Petroleum Act](#) which highlights payment of wayleave compensation.
14. Counsel further submitted that pursuant to the above mentioned section and the [Environment and Land Court Act](#) No 9 of 2011, section 13 (1) vests original jurisdiction in hearing and determination of this case under the Environment and Land Court.
15. Counsel cited the case of [AKM v NNN](#)(2019) eKLR where the honourable judge in determining the jurisdiction of the Environment and Land Court stated as follow;

“On the other hand, the jurisdiction of the ELC Court is limited by article 162 (2) and (3) of the Constitution of Kenya and section 13(2) of the ELC Act No. 19 of 2011. Article 162 (20) (b) states that ELC Court has the mandate to hear and determine disputes relating to



use and occupation and title to land. The provisions of section 13 (2) of the ELC Act clearly gives power to ELC to hear and determine disputes relating to *inter alia*, environment, land use planning, title, boundary disputes, land administration and management, choses in action or other instruments granting enforceable interests in land among other related issues...”

16. Counsel also cited the case of *Samuel Kamau Macharia and another v Kenya Commercial Bank and 2 others*, Application No 2 of 2011, where the Supreme Court pronounced itself thus;

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law... Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.....”

17. According to the respondent’s Counsel, the Environment and Land Court shall be in a better position to determine issues at stake considering the nature of the claim.

### **Issues for Determination**

18. Whether the tribunal has the jurisdiction to hear this matter.

### **Analysis and Determination**

19. In any litigation, jurisdiction is central. A court of law cannot validly take any step without jurisdiction. 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.”

20. 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 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."

21. The claimant's position is that the Energy and Petroleum Tribunal 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 Environment and Land Court.
22. The claimant avers that the tribunal has the relevant jurisdiction to hear and determine this matter pursuant to section 36 (1) and (3) of the [Energy and Petroleum Act](#).
23. Section 36 of the [Energy and Petroleum Act](#) 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.
24. We shall start by looking at the section 36 (3) by defining the parties to a dispute brought under section 36(3). The two parties under section 36 (3) are a licensee and a third party. Section 2 of the [Energy and Petroleum Act](#) defines a licensee to mean a holder of any licence issued under the Act. However, the Act fails to define who a third party is. The [Black's Law Dictionary](#) defines a third party as a person not connected to a contract but may be affected by its outcome.
25. 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 claimant and the respondent is based on an agreement that the respondent will utilize the claimant's parcel of land in the construction of transmission lines while the claimant on the other hand will receive compensation from the respondent from the utilization of their parcels of land. Therefore, both the claimant 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 claimant is neither a licensee nor a third party.



26. Having established that the claimant 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.
27. Section 175 of the [Energy and Petroleum Act](#) in addressing the issue of compensation where wayleave has been sought and granted states that:
- "175. If any difficulty or questions arises as to the amount, entitlement to compensation or person entitled to compensation payable under this act, the determination shall be made in accordance with the provisions of the relevant law."
28. Although the [Energy and Petroleum Act](#) makes provision for rights of way, wayleaves and use of races and infrastructure and compensation, section 175 refers the determination of any dispute that may arise touching on ownership, use of land, compensation to the relevant law other than the Energy Act.
29. Section 148 of the [Land Act](#) provides for compensation in respect of public right of way. It states that;
- "148. Compensation in respect of public right of way
- (5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the court to determine the amount and method of payment of compensation and the court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation."
30. The court referred to in the above cited provision is the Environment and Land Court pursuant to section 150 of the [Land Act](#) which states that;
- "150. Jurisdiction of the Environment and Land Court
- The Environment and Land Court established in the Environment and Land Court Act and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act."
31. The broad jurisdiction of the Environment and Land Court is donated by article 162 of the [Constitution](#) which establishes the three tiers of Kenya's superior courts. It provides thus:
- "(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the Courts mentioned in clause (2).
- (2) Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to—
- a. ; and
- b. the environment and the use and occupation of, and title to, land.
- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)".



32. Further, section 13 of the *Environment and Land Court Act* provides for the jurisdiction of the court that is envisaged under article 162(2) (b) which reads:

"13. Jurisdiction of the court

1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under article 162(2)(b) of the Constitution, the court shall have power to hear and determine disputes—
  - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b. relating to compulsory acquisition of land;
  - c. relating to land administration and management;
  - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and, in respect of matters falling within the jurisdiction of the court."

33. From the provision under section 13 above, the Environment and Land Court has original and appellate jurisdiction to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources. It also provides that the court shall have the jurisdiction to hear any other disputes relating to environment and land.

34. In the case of *National Land Commission v Afrison Export Import Limited & 10 others* [2019] eKLR the court stated that;

"A plain reading of the above constitutional and statutory framework on the jurisdiction of the Environment and Land Court reveals that the Environment and Land Court which is the court contemplated under article 162(2)(b) of the Constitution, has a broad constitutional jurisdiction to hear and determine disputes relating to the environment and the use, occupation, and title to land."

35. Despite the vast jurisdiction vested into the Energy and Petroleum Tribunal by section 36 (1) of the Act, it is imperative to note that the claim before this tribunal extends outside the scope of the *Energy and Petroleum Act* as it involves enforceable interests in land.

36. This matter being one of compensation emanating from the use of land clearly falls under the purview of the *Land Act* and therefore can only be heard and determined by the Environment and Land Court.

37. Flowing from the foregoing analysis of the law, the facts and authorities, the conclusion becomes irresistible that this tribunal lacks the jurisdiction to hear and determine the claim before it.

## DISPOSITION

38. In light of the aforesaid, this suit is struck out for want of jurisdiction.



39. Each party shall bear its own costs.

**DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER 2022.**

**In the Presence of:**

.....

**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: DORIS KINYA MWIRIGI**

