



Odongo v Petroleum Institute of East Africa & another (Tribunal Case E007 of 2025) [2025] KEET 4 (KLR) (Civ) (4 September 2025) (Judgment)

Neutral citation: [2025] KEET 4 (KLR)

**REPUBLIC OF KENYA
IN THE ENERGY & PETROLEUM TRIBUNAL
CIVIL
TRIBUNAL CASE E007 OF 2025
KIOKO KILUKUMI, CHAIR, D.K MWIRIGI, VICE
CHAIR, B.H WASIOYA & F.S IBRAHIM, MEMBERS
SEPTEMBER 4, 2025**

BETWEEN

KEPHER OJIL ODONGO APPELLANT

AND

PETROLEUM INSTITUTE OF EAST AFRICA 1ST RESPONDENT

CLIVE CETEWAYO MUTISO 2ND RESPONDENT

JUDGMENT

1. The Energy Dealers Association (the Appellant) complaint was referred to the Energy and Petroleum Regulatory Authority (EPRA) by this Tribunal on 2nd May, 2024. EPRA did not render a determination within the prescribed sixty (60) period, prompting the Appellant to lodge an appeal with the Tribunal, by filing a memorandum of appeal dated 20th March, 2025.
2. Membership of the Appellant consists of importers, wholesalers and retailers of Liquefied Petroleum Gas (LPG).
3. The Petroleum Institute of East Africa, the 1st Respondent brings together registered owners and proprietors of branded liquefied petroleum gas cylinders. The membership consists of: Member - Brand
 - a. Rubis Energy Kenya - K-Gas
 - b. Hashi Energy Limited - Hashi Gas
 - c. Total Kenya Limited - Total Gas
 - d. Oil Libya Africa Limited - Oil Libya Gas



- e. National Oil Corporation - Supa Gas
 - f. Lake Gas Limited - Lake Gas
 - g. Vivo Energy Kenya Limited - Afrigas
 - h. Galana Oil Kenya Limited - Dell Gas
 - i. Proto Energy Limited - Pro Gas/Sea Gas
 - j. Tosha Petroleum - Tosha
 - k. Excellent Logistics Limited - E-Gas
 - l. Hass - Hass Gas
 - m. BOC Kenya - Handi Gas
4. The gravamen of the dispute is that the branded gas cylinders of the 2nd Respondent's membership are illegally refilled by members of the Appellant without permission or consent of the owners of the branded gas cylinders, occasioning loss of revenue.
 5. The illegal refilling exposes the public to dangers because there is no assurance of the necessary safety checks. In cases of injuries, the illegally refilled gas cylinders invalidate insurance covers, leaving consumers exposed to injury and loss of property, which cannot be covered by respective insurance policies.
 6. Both the Appellant and the Respondents are basically engaged in protecting the interests of their membership.

B. The Appellant's Case

7. It is the Appellant's case that the Respondents have been enforcing the law regulating the LPG sector, a role reserved to EPRA, the regulator, Directorate of Criminal Investigations (DCI) and the Office of the Director of Public Prosecutions (ODPP).
8. The Appellant contends that the Respondents have been harassing its members in the guise of enforcing the law.
9. It is the Appellant's contention that the role of the Respondents should be limited to that of whistle blower.

C. The Respondents' Case

10. It is the Respondents' case that the actions of the Appellant's membership amounts to criminal conduct. The Respondents asserts that Section 99(1)(m) of the *Petroleum Act*, 2019 provides that:
 - "99. Offences and attempted offences
 - (1) A person who—
 - (m) refills, rebrands, trades or otherwise deals with liquefied petroleum gas cylinders of another licensee for gain without the said licensee's prior written consent;"
 - commits an offence and shall on conviction, be liable to a fine of not less than—
 - i. one million shillings, or a term of imprisonment of not less than one year, or to both such fine and imprisonment; if the offence relates to paragraphs (a), (h), (k) and (p) or



- ii. ten million shillings, or a term of imprisonment of not less than five years, or to such fine and imprisonment, if the offence relates to paragraphs (b), (c), (d) (e), (f), (g), (i), (j), (l), (m), (n), (o) and (q).
11. Significantly, Regulation 46(1)(a) of the Petroleum (Liquefied Petroleum Gas Regulations), 2025 makes filling of gas cylinders without the prior written authority from the brand owners, a criminal offence.
 12. The Petroleum (Liquefied Petroleum Gas Regulations), 2025 makes it clear that a gas cylinder shall remain the property of the brand owner. It is provided that a person shall not undertake wholesale or retail of liquid petroleum gas in cylinders belonging to another brand owner without the prior written consent from the brand owner.
 13. The Liquefied Petroleum Gas Regulations, 2025 make provision that no person shall infringe on the brand of another brand owner. It is a legal requirement that a liquid petroleum gas cylinder shall, at all times, have the brand owner's distinguishing colour and mark. The brand owner whose permanent mark appears on the liquid petroleum gas cylinder shall be the presumed owner, irrespective of the party in custody or possession of the cylinder.
 14. It is the Respondents' case that when it has come to their notice that offences are being committed, they draw the attention of the regulator and the police to such criminal conduct for investigations and possible prosecution.
 15. The Respondents, as complainants, accompany the police and the regulator to identify gas cylinders belonging to their membership.
 16. The Respondents specifically denied effecting arrests, forcibly shutting down gas plants and impounding motor vehicles.
 17. The 2nd Respondent has deponed on oath that "...it is the Plaintiff's members who engage in illegal refilling, trading and dealing with LPG cylinders belonging to the members of the 2nd Respondent and as such, it is the Plaintiff's members who are distorting competition in their favour since they refill, trade and deal with LPG cylinders that do not belong to them and further pass them off to the unsuspecting consumer for profit at the detriment of the lawful brand owners"
 18. The Respondents have identified twenty-four (24) criminal cases where members of the Appellant have been charged with criminal offences for refilling, trading and dealing with LPG cylinders belonging to the members of the 2nd Respondent without the prerequisite written authorization. The prosecutions were instituted by the ODPP as demonstrated by the stamps on the face of the charge sheets. The search certificate is issued by the National Police Service.
 19. The Appellant's members notoriously feature in the public notices published by EPRA, the regulator regarding LPG malpractices.

D. Issues for Determination

20. Upon perusal of the pleadings and the written submissions, the Tribunal is of the considered view that the issues for determination are: -
 - (i) Whether the Appellant is entitled to the reliefs sought. (ii) Who should bear the costs of the Appeal?
 - (i) Reliefs



21. The Appellant seeks permanent injunction against the Respondents restraining them from “... conducting raids, by forced entry into ...” members of the Appellant’s refilling gas plants, making arrests of staff members working in the refiling gas plants; impounding vehicles and confiscating gas cylinders.
22. She also seeks an order directing EPRA to perform its mandate in respect of LPG gas cylinders
“without witnesses supplied by the 1st and 2nd respondents herein”
21. Finally, the Appellant seeks a declaration that the Respondents’ actions are illegal and infringement of their members’ rights to conduct legitimate business in a peaceful and lawful atmosphere.
22. The Appellant did not produce evidence on a balance of probability to prove that the Respondents were conducting raids, arresting members of staff and impounding vehicles of the Appellant’s members.
23. The evidence adduced by the Respondents clearly demonstrated that the raids were carried out by the police and EPRA, the regulator. All items impounded are listed in a search certificate bearing the emblem of the National Police Service.
24. There is sufficient evidence placed before the Tribunal that members of the Appellant are engaged in criminal activities in the LPG sector. Such a party is completely undeserving of equitable reliefs.
25. The evidence on records confirms that EPRA has been carrying out its mandate in so far as implementation of the law and the regulations governing refiling of gas cylinders in the LPG sector.
26. All citizens have a civil duty to report any criminal activities. It is therefore illogical and unlawful to seek an order to stop members of the 2nd Respondent from supplying to the relevant authorities witnesses who have been witnesses to criminal activities.
27. It has not been shown to our satisfaction that the Respondents are engaged in any illegal activity. There is no evidence that the Respondents infringed the right of members of the Appellant to conduct legitimate business. On the contrary, identified members of the Appellant have been charged with criminal offences arising from illegal refilling of gas cylinders.
28. We have no hesitation in concluding that the Appellant is not entitled to any of the reliefs she has sought from this Tribunal.
- (ii) Costs
31. Costs follow the event. An action instituted to shield illegal and criminal activities cannot attract favorable discretion from this Tribunal.
32. In light of the above, the appeal is dismissed with costs to the Respondents.
33. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF SEPTEMBER, 2025.

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MR. KIOKO KILUKUMI SC

CHAIRPERSON

.....



Ms. Doris Mwirigi

Vice Chairperson

.....

Eng. Buge Hatibu Wasioya Member

.....

Mr. Feisal Shariff Ibrahim

Member

SIGNED BY/FOR:

DORIS KINYA MWIRIGI

BUGE HATIBU WASIOYA

FEISAL SHARIFF IBRAHIM HON. KIOKO KILUKUMI

THE JUDICIARY OF KENYA.

ENERGY AND PETROLEUM TRIBUNAL

