

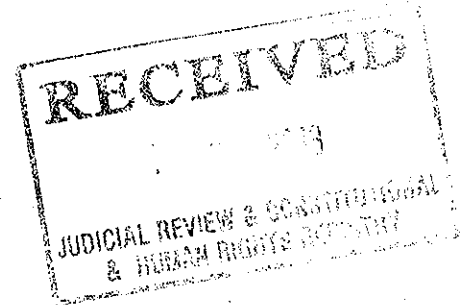
REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 878 OF 2013

IN THE MATTER OF: ARTICLES 10, 22, 23, 35 AND 46 OF THE CONSTITUTION OF KENYA AND CHAPTER 1 OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF: THE WATER ACT, 2002

IN THE MATTER OF: THE ENERGY ACT, 2006

IN THE MATTER OF: CONSUMERS PROTECTION ACT, 2012



BETWEEN

CONSUMERS FEDERATION OF KENYA (COFEK)

Suing through its officials namely **STEPHEN MUTORO,**
EPHRAIM KANAKE and **HENRY OCHIENG**.....

APPLICANT/PETITIONER

~VERSUS~

ENERGY REGULATORY COMMISSION.....	1 ST RESPONDENT
KENYA ELECTRICITY GENERATING CO. LTD.....	2 ND RESPONDENT
KENYA POWER & LIGHTING CO. LTD.....	3 RD RESPONDENT
WATER RESOURCES MANAGEMENT AUTHORITY.....	4 TH RESPONDENT
CABINET SECRETARY, MINISTRY OF ENERGY & PETROLEUM.....	5 TH RESPONDENT
CABINET SECRETARY, MINISTRY OF ENVIRONMENT, WATER & NATURAL RESOURCES.....	6 TH RESPONDENT
HON. ATTORNEY-GENERAL.....	7 TH RESPONDENT

CERTIFICATE OF URGENCY

I, **HENRY KURAUKA** an Advocate of the High Court of Kenya, hereby certify that this Application is urgent.

1. The Petitioner is Kenya's independent, self-funded, multi-sectoral, non-political and non-profit Federation committed to consumer protection, education, research, consultancy, litigation, anti-counterfeits campaign and business assessment and rating on consumerism and customer-care issues and registered for that purpose under Cap. 108, Societies Act.
2. The Petitioner avers that at all material times the 2nd respondent owed the 4th respondent over **Kshs. 630,000,000.00** being arrears for utilizing water in generating electricity.
3. The Petitioner avers that the 1st, 2nd, 3rd and 4th Respondents have unilaterally agreed to impose the said sum of **Kshs. 630,000,000.00** on electricity consumers by increasing

electricity charges through levying an additional 5 cents for every kilowatt per hour per unit consumed.

4. The above agreement allows the 3rd respondent to increasing electricity charges through levying additional 5 cents for every kilowatt per hour per unit consumed.
5. The petitioner avers that the said agreement will occasion an additional consumer expenditure on electricity bills to the consumers whose representation, views and participation was not and has not been sought by the 1st, 2nd, 3rd and 4th Respondents contrary to the constitution and the Consumers Act, 2012.
6. The Petitioner avers that the timing of the said agreement is not right because the 1st respondent is likely to approve the new electricity tariffs as sought by the 3rd respondent thus causing the consumers to suffer great loss and damage hereof.
7. The electricity consumers are most affected because the burden on them is huge by the said action yet they were not involved in the said agreement. Thus consumers cannot be compelled to pay for private debts and whose origin remain unclear.
8. The actions by the respondents offend both Article 46 of the Constitution and the Consumer Protection Act, 2012 both of which guarantee consumer rights.
9. The Petitioner avers that the respondents made no efforts to seek and involve consumers on a matter that centrally affects their lives and their livelihoods.
10. The Petitioner avers that the National Assembly is currently debating VAT Bill 2013 whose implications, if passed, will increase tax on electricity from 12% to 16%. Therefore, implementing the said agreement will put financial pressure on electricity on consumers hereof.
11. Further, the respondents' action is against the Jubilee Government's manifesto to lower the cost of living.
12. The Petitioner avers that the respondents are capable of working out a mechanism to absorb their respective direct costs so that no extra burden is passed to the consumers thereof.
13. The Respondents' decision complained hereof is unconstitutional, unjustified, unlawful, capricious, unreasonable, irrational, malicious, against core values, in bad faith, unilateral, biased, tantamount to discrimination and the rules of natural justice and the rule of law.
14. The Petitioner and members of the public stand to suffer irreparable loss and great inconvenience if the respondents are allowed to implement the said agreement.

Dated at Nairobi..... this day of 2013


KURAUKA & CO.

ADVOCATES FOR THE APPLICANT/PETITIONER

DRAWN & FILED BY:-

Kurauka & Co. Advocates

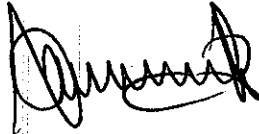
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NAIROBI



TO BE SERVED UPON:

- a) ENERGY REGULATORY COMMISSION
- b) KENYA ELECTRICITY GENERATING CO. LTD
- c) KENYA POWER & LIGHTING CO. LTD
- d) WATER RESOURCES MANAGEMENT AUTHORITY
- e) CABINET SECRETARY, MINISTRY OF ENERGY & PETROLEUM
- f) CABINET SECRETARY, MINISTRY OF ENVIRONMENT, WATER & NATURAL RESOURCES
- g) HON. ATTORNEY-GENERAL