Power Struggles: Unmasking the Thieves behind the KPLC Heist

By Jerotich Seii

In Kenya, corruption conjures up images of a favourite pair of well-worn and spit-polished shoes that one cannot bear to throw out. We roll the word on our tongues and give it pet names, such as scandals, hustling, deals, cat-walking, growing legs, eating and *kitu kidogo*, to name a few. The word "theft" is rarely used in public because it would entail *naming* the thieves and allowing ourselves to experience the full extent of the violation, complete with a sense of guilty silence and complicity. The euphemisms we use ensure that we never *unmask* the perpetrators beyond the frontline scapegoats, who in any case, almost always get off scot-free.

Now, a true story:

An 80-year-old lady sits in her daughter's living room and asks animatedly, "What did Twitter say today? Eh heh? Oooh, I really want to thank Twitter for helping me. I have been suffering so much that I wished I was back in the days of *ukoloni,* where things worked, at least. . ." That this old mama can long nostalgically for the good ol' days of colonialism is indeed a damning indictment on the state of Energy Capture in Kenya today.

This pensioner, who is convinced that Twitter is an actual person, had been faithfully paying her "lifeline consumer" electricity bill – consistent at Sh1,000 every month – for five years until it inexplicably leaped up to an eye-watering Sh62,000, resulting in the summary disconnection of her electricity. Fortunately, and in response to an online alert, an off-grid solar power distributor has since provided a domestic solution for her. Pro bono. However, pro bono solutions – to fill the gap created by fraudulent bills – cannot be the solution for the more than 6.6 million electricity consumers in Kenya today.

The #SwitchOffKPLC campaign

Since January 2018, the Kenya Power and Lighting Company (KPLC) has found itself in the throes of an Alamo-type siege advanced by an organically mobilised and extremely angry battalion of Kenyans from all walks of life in a **highly political** but absolutely non-partisan, non-class based and non-ethnicised action for Energy Justice.

The #SwitchOffKPLC campaign that started on Twitter and has since spread through wider social media spaces has unleashed an unprecedented and massive outcry against KPLC following nine consecutive months of shocking and fraudulent fleecing of electricity consumers. This campaign has partly been fuelled by KPLC's "pay-first-ask-questions-later" motto, which left many consumers with inflated bills that they were forced to pay to avoid being disconnected.

With more than a thousand detailed emails sent to the SwitchOff hotline and thousands more shared online, the trends demonstrate how electricity consumers have been pistol-whipped half to death by these rabid cartels that prowl the hallways of Kenya's energy sector. These cartels hide behind endless technical jargon and are fronted by ruthless "customer care" and field staff. Consumers are more than ever aware of how it is that they are misused and abused victims of an **equal opportunity heist** that is perfected year in, year out.

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What is powerful about the #SwitchOffKPLC campaign is the relatability of the theft. When ordinary Kenyans attempt to fathom corruption scandals that are in the millions and billions, the zeroes become far too many to compute but this is not because we are stupid; it is rather because we have been traumatised to the point of absolute numbness. Or cynicism. The theft is therefore rendered abstract and quickly placed aside. What the #SwitchOffKPLC campaign does is that it highlights, in simple terms, the extra tens or hundreds and thousands of shillings that individual Kenyans are forced to part with for no reason other than blatant theft. And what an eye-opener it has been. Consumers are fed up. They are acting.

Unholy trinity

Let us start at the beginning.

The 96-year-old Kenya Power and Lighting Company (which has been rebranded as Kenya Power), is one of the oldest monopolies in Kenya. Kenyans have been born, lived and died paying monthly dues – unquestioningly – to this behemoth of a parastatal that has always been quick to remind them that electricity is a privilege that can be withdrawn at any moment for any number of reasons. With a 50.1 per cent government stake and approximately nine other shareholders owning between 0.0065 and 1.46 per cent of the company, KPLC is *de facto* controlled by a tightly-knit group of actors, said to include Mama Ngina, the mother of President Uhuru Kenyatta, and some well-known, self-styled tycoons.

The KPLC *trinity* is completed by the Kenya Electricity Generating Company (KenGen) and the Kenya Electricity Transmission Company (KETRACO). KenGen, KETRACO and KPLC are responsible, respectively, for the generation, transmission and distribution/sale of geothermal, hydro, wind, fuel oil, biomass and gas turbine electricity in Kenya. Other collaborators include the Geothermal Development Company (GDC), the Kenya Nuclear Electricity Board (KNEB) and the Rural Electrification Authority (REA). The Electricity Regulatory Commission (ERC) is responsible for establishing and adjusting a dizzying array of fixed and variable tariffs that form the pricing for pre- and post-paid electricity uptake in Kenya. These bodies fall under the Ministry of Energy and Petroleum (MoEP) that has executive oversight over all operations related to electricity generation in Kenya. Alongside the *trinity* and *regulator* are the Independent Power Producers (IPPs) that produce diesel-powered thermal and wind energy for sale to KPLC (the sole distributor) under Power Purchase Agreements (PPAs).

Notwithstanding periodic recommendations and gaps analyses, Kenya's electricity outlook appears bright, with a 2020 projected on-grid capacity of 5,040MW up from 2,295MW in 2015. At least that's what glossy annual reports, technical assessments and public relations jamborees say. With all the right sounds being made about renewable and sustainable energy – including the non-renewal of [unsustainable] diesel thermal IPP contracts *(which mean nothing because some of the IPP contracts run through 2032)*, "Last Mile" connectivity, rural electrification and affordable off-grid solutions – one might wonder why electricity consumers are up in arms.

Enter the murky and less rosy side of electricity generation that has for decades relied on the ignorance of consumers to play around with tariffs that correlate with the *type* of power being generated. Despite on-paper and even infrastructurally tangible and renewable energy projects, IPPs that run diesel-powered thermal stations, as well as the recently signed Sh200 billion Lamu Coal Power Station, enjoy disproportionate PPA preferential treatment by KPLC. This means that wind, hydro and geothermal electricity remain unused or underutilised with "capacity charges" that accrue to consumers regardless.

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Lake Turkana Wind Power is one such example where Sh75 billion has been spent to construct the largest wind farm in Africa covering 40,000 acres and set to produce 310MW, with possible corporate profits of up to Sh136 billion over the next 20 years. Although this is an ostensibly clean and renewable energy venture, the fact remains that this project was undertaken without due consideration of and consultation with the local communities of Laisamis constituency in Marsabit County, which resulted in a 2016 law suit filed against the investors and the Marsabit County Government. The judges threw out the case in April 2018 on "technical grounds", showing once again that big bucks trump local communities. All the time. Which makes us wonder whether our quest for justice isn't, after all, quixotic.

Through deliberately poor diligence on the part of the MoEP and the National Land Commission (NLC), the 428km-long power line from Loiyangalani to Suswa is yet to be completed by KETRACO, with disastrous penalties for consumers who have so far paid Sh5.7 billion in "deemed energy" fines, with a further monthly fine of Sh1 billion starting in July 2018 until the power line is complete. If we study the ministry's role in the signing of contracts with the now bankrupt Spanish company, Isolux, and the subsequent awarding of a new Sh9.6 billion contract to a Chinese firm – paid for by yours truly – you will suffer many sleepless nights and begin to be filled with a belly-rumbling rage. Might I add that since 2015, some Chinese investors have also been eyeing the expansion of wind power ventures in Marsabit. Be very, very afraid.

The shocking disregard for local communities, be it in terms of consultation, socio-environmental impact or the right to draw down from the profitability of energy/extractive ventures, is evidenced right across the board in places like Turkana (where oil has further complicated matters) and the god-awful Lamu Coal Power Station, which threatens (for the sake of the greed of a few investors) a pristine ecosystem, a globally recognised World Heritage location and the livelihoods of some of the oldest East African coastal communities.

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Oh, and we haven't even begun to engage with the hare-brained scheme that is the Kenya Nuclear Electricity Board. The investors (who we will tackle very soon) include a mishmash of Kenyan companies, bilateral partners, international corporations and multilateral financial institutions – all of who come with glib development and partnership-speak and a feigned concern for the people of Kenya.

Cartels and robber barons

To understand how the ordinary Kenyan is being used to finance these get-rich-quick schemes, it is important to note that under the 2018 Medium Term Budget Policy Statement (BPS) and under Uhuru Kenyatta's "Big Four" plan, taxpayers will fund an annual amount of Sh100 billion over a period of 25 years (a total of Sh2.14 trillion) to 20 private power projects contrary to the law and without regard for electricity consumers and taxpayers' rights. These and other mind boggling amounts are stealthily conveyanced through the Integrated Financial Management Information System (IFMIS) that has deliberately designed loopholes perfect for such disbursements. Therefore, it becomes clear – despite the clean energy jargon – that there will have to be a sustained and systematic sabotage of the generation and transmission of cheaper, cleaner electricity for sale to consumers in order to justify the Sh2.4 trillion. We are already experiencing this because even in the face of heavy rains and resultant increase in hydro power capacity, our electricity bills continue to rise. The voracious diesel-driven appetites of the IPPs must be fed. Profits must be made.

When we consider that Kenya is one of the top seven most expensive power producers in Africa, which in addition to burdening consumers, is a serious impediment to the growth of local industry and a deterrent to foreign investment, it is not rocket science to compute how our *real* economic potential will never be fully realised, as it has already been sacrificed on the altars of numerous cartels.

Is your skin crawling yet?

Dig a little deeper and the pus of collusion, subterfuge and theft will begin to ooze freely, wafting its putrid stench across the landscape of consumers already heavily burdened by a rapidly encroaching recession and incredibly high costs of living. Meanwhile, the Energy Regulatory Commission, rather than providing ethical checks and balances, appears to be colluding with the MoEP, IPPs and KPLC to ensure the highest possible electricity tariffs, which are further inflated at the point of billing and enforced in an illogical yet draconian manner on frustrated and desperate consumers. The collusion exposes an intricate network of IPPs and KPLC contractors whose true owners are hidden behind layers of front-end companies whose trails often terminate abroad. Despite the seemingly iron-clad wall of secrecy, inside informers continue to share details with well-placed whistleblowers who are dedicated to alerting consumers, the media and relevant arms of government.

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The integrity questions worth asking are: 1) **Who** are the real owners and beneficiaries of the IPPs and KPLC contractors? and 2) **Where** do the conflicts and interests lie when it comes to MoEP and KPLC (the *trinity)* operations? It can be safely assumed that the latter will be easier to uncover than the former, as seen in the April 2018 KPLC internal audit report that highlighted an impressive array of mid-level staff caught in a dragnet of illegal tendering manoeuvres amounting to a "few" billion shillings. In a threadbare public relations move, these junior heads will surely roll as the Office of the Director of Public Prosecutions (ODPP) initiates a criminal investigation into the matter. The former will – in fine Kenyan tradition – remain obfuscated and the untold hundreds of billions will disappear into nameless, faceless black hole-type accounts.

Then came the "big gaffe" by KPLC in its Annual Report of June 2017, where Sh10.1 billion was conveniently tucked away in the books as an asset or something like that when in fact it should have been registered as a loss. It has been speculated that KPLC (the historical cash cow for *ad hoc* government needs, including election campaigns) approved the siphoning of these funds.

An alternative theory is that the then incumbent government demanded an artificial lowering of the fuel tariffs as one of its campaign strategies or lies, depending on your perspective. In either case, the Sh 10.1 billion had to be recovered before the shareholders caught wind of the scam. It is important to add that the culture of theft of monies from KPLC started decades ago where successive regimes had managing directors and cronies who shamelessly and systematically looted the parastatal — but that is a story for another day.

The class action suit

Between September and December 2017, KPLC recovered an initial Sh2 billion through an ill-concealed overbilling and double billing system that affected pre- and post-paid consumers, throwing household budgets into complete disarray. The Kenya National Bureau of Standards (KNBS) reported that electricity prices hit a five-year high in 2017.

In January 2018, KPLC admitted to a four-month overbilling spree and claimed that the bills were linked to backdated fuel costs incurred due to the persistent drought, resulting in lowered hydro power capacity and an over-reliance on fuel-generated electricity, as well as the introduction of new meters and billing systems that suffered from *teething* glitches and erroneous billing. The few of us who ignited this campaign in January 2018 were initially driven by our anger regarding our individual domestic bills. We saw that fixed and variable tariffs did not add up. That successive months were billed based on "estimates". That we received multiple bills in a single month. That our pre-paid token values were as erratic as a drunk driver. That these spikes in our pre-/post-paid bills suspiciously coincided with the end of the [first] electioneering period of 2017.

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In my case, between September 2017 and May 2018, I have had to fork out a whopping Sh167,722 to KPLC for post-paid bills that ranged between Sh11,000 and Sh37,400. For simple domestic consumption! With three months of "estimates" billed at Sh 51,000 and random "credits" worth Sh 9,500, and Sh41,500 of that gross amount dedicated to fuel tariffs, I can only wonder at the suffering faced by millions of Kenyans who live under the pay-first-questions-later motto of KPLC.

What piqued our attention, however, were the inconsistent but ever-increasing fuel tariffs, which allowed us to understand the steady collusion between diesel-powered IPPs and KPLC's constant untruths about low hydro power capacities, hitches with geo thermal production, and of course, the slower than molasses power line construction from Loiyangalani to Suswa. Ultimately, we realised that this battle could never be fought or won individually. Many consumers, armed with their collective horror stories, outrage and the law, were determined to #SwitchOffKPLC.

When Apollo Mboya (surely a courageous lawyer of our times) saw through this mischief, he filed a two-pronged class action suit on behalf of consumers against KPLC. The first was to obtain an injunction that would halt further "recovery" of the Sh10.1 billion and seek restitution for all consumers who had been fraudulently overbilled. Court orders to that effect were issued on 12 January, 2018. The second is strategically focused on the KPLC monopoly and shady dealings with IPPs that violate Constitutional provisions in Article 201, paragraph 8 (e) of the Fourth Schedule that distributes functions between the national and county governments. Also explored are contraventions related to the Energy Act, the Public Procurement and Asset Disposal Act, the Public Finance Management Act, the National Government Loan Guarantee Act, the Consumer Protection Act and the 2018 Budget Policy Statement.

Many Kenyans following the court case and wider campaign have understood the importance of what Mr. Mboya is doing on behalf of consumers. He steadfastly carries on, supported by the Electricity Consumers Society of Kenya and concerned citizens in the face of attacks by the Consumers Federation of Kenya (COFEK), social media trolls and, of course, the hopelessly inept KPLC spin doctors. It is evident that the quest for justice will become ever more dangerous as Mr. Mboya inches closer to the real faces behind the theft.

Five months on and not surprisingly, KPLC has yet to comply with the court order to desist and cease the overbilling of consumers, opting instead for weak public relations stunts replete with apologies and broken promises. Customer Care remains catatonic and equipment continues to malfunction. It is business as usual at KPLC. Or is it?

The consumer-focused questions worth asking are: 1) By **how** much has KPLC defrauded its consumers to date? 2) **Which** consumers have been defrauded? and 3) **When** will consumers receive a refund/credit? KPLC remains mum and will likely do so until the legal determination of the matter. Meanwhile, consumers continue to receive erratic and inordinately high bills. (It has since been exposed that KPLC **deliberately** tampered with the Integrated Consumer Management System (ICMS)that facilitated the illegal inflation of consumer bills.)

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The KPLC heist may not be as sizeable as South Africa's ESKOM that is still reeling from the effects of the #guptafiles that exposed the theft of billions of rands by specific families and cartels but we are definitely hot on the heels of what could be a continental scandal. The KPLC heist looms significantly over the lives and times of millions of Kenyans who have come together in their thousands under the #SwitchOffKPLC campaign on behalf of others. These men and women have activated a revolution and are daring to imagine a different Kenya. We are collectively determined to cut off the heads of the Medusa-like snakes that have held us hostage since 1922.

In straight-speak, we are going after the energy sector thieves and we will unmask them. And then, we are coming after you.

To be continued. . .

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