



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 275 OF 2019**

**KENYA COMMERCIAL BANK KENYA LIMITED.....PLAINTIFF**

**VERSUS**

**NAIROBI CITY WATER & SEWERAGE COMPANY.....DEFENDANT**

**RULING**

1. The Plaintiff's suit is in respect of disconnection of its water supply by the Defendant over a contested Bill of Ksh.36,731,441.8. The Plaintiff sought various reliefs which include a mandatory injunction compelling the Defendant to reconnect the water and a declaration that the Bill is null and void.
2. The Defendant filed a Statement of Defence and denied the Plaintiffs claim. The Defendant contended that water connection was illegal and unmetered.
3. The Defendant has filed a Notice of Preliminary Objection dated 27<sup>th</sup> January, 2020 on the following grounds:
  1. **That this honourable courts lacks jurisdiction to hear and entertain the present suit pursuant to the provisions of sections 119(1) as read with Section 121 (2) of the Water Act No.43 of 2016, Laws of Kenya.**
  2. **The suit is bad in law and an abuse of this honourable court's process.**
4. The Plaintiff filed the grounds of opposition dated 12<sup>th</sup> February, 2020 as follows:
  1. **The honourable court has Unlimited and Original jurisdiction to entertain all matters being civil or criminal in nature by virtue of Article 165 (3)(a) of the Constitution of Kenya.**
  2. **The present proceedings are not in the nature of an appeal against the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under their authority so as to invoke the jurisdiction of the Water Tribunal.**
  3. **The dispute presently before the honourable court does not stem from a business contract or at all as per the provisions of Section 121(2) of the Water Act.**
  4. **The Plaintiff's suit and application presently before the honourable court seeks injunctive orders amongst other orders that can only be granted by this court.**
  5. **That based on the nature of the orders sought in the suit and application before the court, the Water Tribunal is not properly seized of jurisdiction and as such the matter is properly before the honourable court.**
5. I have considered the Preliminary Objection, the grounds of opposition and the submissions filed by the respective counsel for the parties.
6. As stated in the celebrated case of **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors (1969) EA 696:**

**“...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”**

Sir Charles Newbold P. added as follows at page 701:

**A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”**

7. Section 121 of the Water Act provides for the jurisdiction of the Water Tribunal.

**Section 121 (1)**

**“The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.”**

**Section 121 (2)**

**“In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.”**

8. The Dispute herein is not in the nature of an appeal, nor does it relate to water resources or a business contract.

9. This court is therefore in agreement with the decision in the case of **Murang’a County Government v Murang’a South Water & Sanitation Company Ltd & another [2019] eKLR** where the court held in a Constitutional Petition that a dispute involving the hiking of water Tariffs did not stem from a business contract and therefore falls within the jurisdiction of the High Court.

10. I would distinguish the dispute herein from the cited case of **Augustin Michael Murandi & 2 others v Nolturesh Loitoktok Water and Sanitation Co. Ltd (Succession in title of National Water Conservation and pipeline Conservation [2017] eKLR** which involved a water selling dispute.

11. The upshot is that I find no merits in the Preliminary Objection and strike out the same with costs.

**Date, signed and delivered at Nairobi this 23<sup>th</sup> day of July, 2020**

**B. THURANIRA JADEN**

**JUDGE**