



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 311 OF 2016

HON. KENNEDY ODHIAMBO NYAGUDI.....PLAINTIFF/APPLICANT

- V E R S U S -

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT/RESPONDENT

RULING

1) Hon. Kennedy Odhiambo Nyakundi, the plaintiff herein, took out the motion dated 25.11.2016 in which he sought for inter alia:

a) spent

b)spent

c) *An order to compel Kenya Power & Lighting Co. Ltd, the defendant herein to forthwith release to the applicant the documents in the defendant's possession namely:-*

i. A copy of the applicant's application for supply of electricity to the applicant's farm.

ii. A copy of the quotation for electricity supply pursuant to the application above.

iii. A copy of the receipt acknowledging the receipt of the installation and/or connection fees.

iv. A copy of the duly executed electricity supply contract between the plaintiff and the defendant.

v. A written report of the findings of the defendant's investigators and/or loss adjustors following investigations conducted by the defendant arising from the plaintiff's several complaints herein

d).spent

e). *Cost of the applicant.*

2) The plaintiff/applicant filed an affidavit he swore in support of the motion. The defendant filed the replying affidavit of Emil Kirui to oppose the motion.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have also considered the rival written submissions. The

plaintiff has submitted that he has requested the defendant to furnish him with the report compiled by the in investigation and loss adjustors which he requires to establish his claim but the defendant declined. The plaintiff further argued that the defendant has no good reasons to refuse to supply the plaintiff the required information. The plaintiff alluded that the defendant was actuated by malice and was acting in bad faith.

4) It is the submission of the defendant that the dispute between the parties is a commercial dispute hence it does not fall within the provisions of Article 35 of the Constitution. With respect, I agree with the submissions of the defendant. It is also clear from the defence that the defendant has admitted that the plaintiff applied for the supply of power and that a survey was done and a quotation prepared before payment was made. It is further admitted that the plaintiff duly paid for the connection fee in terms of the quotation. It is also admitted that a contract for the supply of a Three (3) phase of 415 volts was executed. In my view, the provisions of access to information Act is not applicable in this case. The application for discovery can only be done under the provisions of the Civil Procedure Act and the Rules therein. It would appear the plaintiff has moved too fast to seek for discoveries even before the provisions of Order 11 of the Civil Procedure Rules have been complied with. I think in my view that the application is premature.

5) A cursory look at the defendant's defence will reveal that the documents the plaintiff seeks to be given are in respect of matters which the defendant appears to admit therefore the orders sought are not justified.

6) One of the documents the plaintiff has demanded to be supplied is the report of the loss adjustors. The defendant has denied being in possession of the aforesaid document. It is pointed out that the report is usually done by independent claim specialists employed by insurance companies to investigate claims on their behalf. With respect, I agree with the defendant that an order to compel it to supply such a report cannot be justified in the circumstances.

7) In the end and on the basis of the above grounds, I find no merit in the motion. The same is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant