



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 474 OF 2016

JOSEPH NZYOKI MWANTHIAPPELLANT

- V E R S U S -

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

(An appeal arising from the ruling and order given on 4th day of July 2016 by Hon. K. I. Orenge SRM in CMCC 5798 of 2015 at Nairobi Milimani Commercial Courts)

JUDGEMENT

1) Joseph Nzyoki Mwanthi, the appellant herein, filed an action against Kenya Power and Lighting Company Ltd, the respondent herein before the Chief Magistrate's Court vide Nairobi CMCC No. 5798 of 2015. In the aforesaid suit, the appellant sought for *inter alia*;

- a) A declaration that the disconnection of electricity supply to plot number A1-114, Kayole Estate, Nairobi is irregular, unlawful, malicious, contrary to the Energy Act against public policy and in violation of the Rules of Natural Justice.*
- b) A mandatory injunction compelling the defendant by itself, its servants agents and/or employees to unconditionally reconnect and restore supply of electricity to the plaintiff's premises to wit plot number A1-114 Kayole Estate, Nairobi on account of electricity account number 2329443-01.*
- c) A permanent injunction restraining the defendant by itself, its servants, agents, employees or otherwise from interfering with supply of electricity to the plaintiff's premises plot number A1-114 Kayole, Nairobi in violation of the Energy Act.*
- d) Loss of rental income at the rate of ksh.84,000/= per month from 1st June, 2015 until date of reconnection of power onto the plaintiff's premises to wit plot number A1-114 Kayole, Nairobi.*
- e) General damages for loss of consumer goodwill.*
- f) Interest on (d) and (e) at court rates plus costs of the suit.*

2) Upon being served, the respondent opposed the suit by filing a preliminary objection whereof it claimed that the matter was *res judicata*. The appellant filed the motion dated 8/12/2015 in which he applied for *inter alia* a mandatory order of injunction to compel the respondent to reconnect electricity to his premises. The respondent filed *inter alia*, a preliminary objection to challenge the jurisdiction of the trial court. Hon. Orenge, learned Senior Resident Magistrate heard the application and eventually upheld

the preliminary objection by dismissing both the appellant's suit and application. Being aggrieved by the dismissal order, the appellant preferred this appeal.

3) On appeal, the appellant put forward the following grounds in his amended memorandum.

1. THAT the honourable magistrate erred in law and in fact in finding and holding that the dispute between the appellant and the respondent was a dispute relating to charges as envisaged under Section 61(3) (a) of the Energy Act.

2. THAT the honourable magistrate erred in law and in fact in finding and holding that he had no jurisdiction to hear and determine the dispute in CMCC No. 5798 of 2015.

2A. THAT the honourable magistrate erred in law and in fact by totally disregarding the appellant's submissions on the issue of jurisdiction thereby arriving at the wrong conclusion.

3. THAT the honourable magistrate erred in law and in fact in finding and holding that the Energy Regulatory Commission has power to grant orders of Temporary Mandatory Injunction.

4. THAT the honourable magistrate erred in law and fact by failing to find and hold that even where a dispute falls within the jurisdiction of the Energy Regulatory Commission only a court of law is seized of the necessary jurisdiction to grant orders of Temporary Mandatory Injunctions pending the hearing and determination of any such dispute.

4) When the appeal came up for hearing, learned counsels recorded a consent order to have the appeal disposed of by written submissions.

5) I have re-evaluated the arguments presented before the trial court. I have also considered the rival submissions. Though the appellant put forward a total of four (4) grounds of appeal, I am of the view that the main ground which commends itself for consideration is whether or not the trial court had jurisdiction to hear and determine the dispute. According to the appellant, the trial magistrate erred by holding that the dispute between the parties relates to charges as envisaged under Section 61(3) (a) of the Energy Act. The appellant pointed out that the dispute that existed as at the time of filing the suit was based on unjustified and illegal disconnection of electricity supply. The respondent on the other hand is of the opinion that the dispute revolves around the question over charges of electricity consumption. The respondent argued that the appellant had failed to settle his bills therefore the respondent was entitled to disconnect power which was in arrears. The respondent argued that the trial court therefore had no jurisdiction to entertain the dispute which in any case is the preserve of the Energy Regulatory Commission pursuant to the provisions of Section 61(3) (a) and Section 59 (3) of the Energy Act. In his ruling which he delivered on 4/7/2016, Hon. Orange, held *inter alia* that the dispute between the parties herein relate to charges of power consumed pursuant to Section 61(3) (a) of the Energy Act, therefore the dispute should have been referred to Energy Regulatory Commission for determination. Consequently, the learned Senior Resident Magistrate held that the court had no jurisdiction to entertain the matter. I have on my part considered the sort of reliefs sought by the appellant in the plaint. It is apparent from the plaint that the dispute is over the charges and or supply of electricity. In my view, the dispute is a matter which is reserved by statute to be heard and determined by the Energy Regulatory Commission under Section 61(3) (a) of the Energy Act. The Energy Act also provides for any person who is dissatisfied with the decision of the Energy Regulatory Commission to file an appeal with the Energy Tribunal under Section 108 of the aforesaid Act. I am therefore convinced that the learned Senior Resident Magistrate properly dismissed the suit for want of jurisdiction.

6) In the end, I find no merit in this appeal. It is dismissed in its Entirety with costs to the respondent.

Dated, Signed and Delivered in open court this 22nd day of September, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

.....for the Respondent