



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 159 OF 2017

FRANCIS MUGARAMI KAMAU

JAMES NGUGI KIREI

AMOS MWANGI NGURU(Suing as Chairman

Treasurer & Secretary of Cornerstone Faith Assembly).....**PLAINTIFF**

- V E R S U S -

NAIROBI CITY WATER & SEWERATE CO. LIMITED.....DEFENDANT

RULING

1) This ruling is the outcome of two motions taken out by Francis Mugarami Kamau, James Ngugi Kirei and Amos Mwangi Nguru the applicant herein. In the motion dated 18.7.2017 the applicant sought for the following orders:

1. THAT owing to the urgency of the instant application service thereof be dispensed with, the same be certified as urgent and it be heard ex parte in the first instance.

2. THAT upon hearing this application ex parte, this honourable court be and is hereby pleased to issue an order of interim injunction preventing the respondent either by itself, its agents, servants and/or employees from harassing the applicant and/or its agents, servants or employees by demanding settlement of unjustified water bills and/or dismantling and carting away the water resources management authority installed water meters, pending the hearing and determination of the application herein inter parties.

3. THAT upon hearing this application inter parties, this honourable court be and is hereby pleased to issue an order of interim injunction preventing the respondent either by itself, its agent, servants and/or employees from harassing the applicant and/or its agents, servants and/or employees by demanding settlement of unjustified water bills and/or dismantling and carting away the water resources management authority installed water meters, pending the hearing and determination of the suit herein.

4. THAT the costs of the application be borne by the respondent in any event.

2) In the second motion dated 9/10/2017, the applicant sought for:

1. That this application be certified urgent, be heard on priority basis and ex-parte in the first instance.

2. That the respondent by itself, its servants or agents or anyone acting on its behalf be ordered to immediately re-install the water meter dismantled on 6/10/207 from the applicant's premises DGAORETTI/RITUTA/5450 pending the hearing and determination inter-partes of this application.

3. That the defendant/respondent by itself, its servants or agent be restrained by way of a temporally injunction from interfering with the applicant's water meter or demanding payment of the disputed water bills or in any other manner from harassing the applicant pending the hearing and determination of this application inter-partes.

4. That the defendant/respondent by itself, its servants or agents be restrained by way of a temporally injunction from interfering with the applicant's water meter or demanding payment of disputed water bills or in any other manner from harassing the applicant pending the hearing and determination of the main suit herein.

5. That costs of this application be provided for.

3) The plaintiff/applicant filed the affidavit of service of one George Olouch Rathing sworn on 17.10.2017, to show that the aforesaid motions were served but elicited no response from Nairobi City Water & Sewerage Co. Ltd. This court therefore permitted the plaintiff/ applicant to prosecute the same exparte.

4) I have considered the grounds stated on the face of the motions and the facts deponed in the affidavits filed in support. I have further considered the oral submissions made by Mr. Muchira, learned advocate for the plaintiff/applicant. It is the submission of the plaintiff/applicant that in 2014 it sunk a borehole on its premises known as Dagoretti/Riruta/5450 upon obtaining the requisite approvals. It is said that the respondent did not install its meter in the borehole despite having been informed by the applicant but it waited until 2016 when it purported to demand payment of ksh. 2 million.

5) It is said that parties went into negotiations and agreed to have the respondent install its meter to run denovo. The plaintiff also informed this court that it has settled all its bills. It is stated that the parties failed to agree on the outstanding bills sent to the applicant because by then there was no meter to determine the actual outstanding amount.

6) The applicant has complained that the respondent has continued to sent its officers to harass and threaten to disconnect the meter. The aforesaid facts are not controverted and this court has no reason to doubt the truth of those assertions.

7) In the end, I am convinced that the aforesaid motions have merit.

I grant prayer 3 of the motion dated 18.7.2017 and prayer 4 of the motion dated 9.10.2017.

8) Costs of the aforesaid motions to abide the outcome of the suit.

Dated, Signed and Delivered in open court this 31st day of October, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant