



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 146 OF 2011

JAMES KIBUGI GITHINJI PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY LIMITED ...DEFENDANT

RULING

The plaintiff's electricity supply was disconnected by the defendant. Aggrieved by that action, he brought this suit for the following orders,

1. A declaration that the actions of the defendant in disconnecting the plaintiffs electricity supply based on retrospective billing is illegal and void.
2. An order do issue against the defendant/respondent ordering it to reinstate power to the plaintiff's premises registered as account number 74425 – 02.
3. That an order be issued against the respondent, restraining them from interfering with the plaintiffs power supply account no. 74425 – 02 and to keep the plaintiff so supplied provided always that the plaintiff pays the current bills when and as they fall due.
4. Costs of the suit.

Alongside the plaint the plaintiff filed an application by way of Notice of Motion, seeking interim order for the defendant to reinstate the power supply and be restrained from interfering with the said power supply pending the hearing of the suit. Dulu J, gave an order in favour of the plaintiff in a ruling delivered by Njagi J on 20th December, 2011.

The defendants subsequently filed a defence denying the allegations leveled against it by the plaintiff and pleaded that this court lacks jurisdiction to address this matter and that preliminary objection shall be raised. Indeed on 2nd November, 2015 a Notice of Preliminary Objection dated 29th October, 2015 was filed in court.

The following grounds are set out there in,

- i. Pursuant to provisions of Section 61 (3) of the Energy Act 2006 the Honourable court lacks jurisdiction over the subject of the suit herein.
- ii. The jurisdiction of the subject matter is under the Energy Regulation Commission established under Section 4 of the Energy Act, 2006.

iii. For want of jurisdiction the Honourable Court ought to dismiss the plaintiff's suit and application with costs.

Both counsel have filed submissions which I have noted. In the case of **Mukisa Biscuit Manufacturing Company Limited Vs. West End Distributors Limited [1969] EA 696** Sir Charles Newbold P. stated as follows with regard to a preliminary objection, it is one which,

“.....raises a pure point of law which is argued on assumption that all 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 exercise of judicial discretion.”

In the case of **Owners of Motor Vessel “Lillian S.” Vs Caltex Oil (K) Limited (1989) KLR** Nyarangi JA stated as follows,

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”

To enable the court resolve the matters raised in the notice of preliminary objection and the respective positions taken by the parties, I have had to go back to the plaint and in particular paragraph 6 thereof which states as follows,

“6. That the defendant in the month of December, 2010 came to the plaintiff's premises and disconnected the electricity to the said premises and issued the plaintiff with a notice to pay for electricity for the period stretching back to December, 2003 to October 2010.”

Section 61 (3) of the Energy Act 2006 reads as follows,

“(3) If any dispute arises as to –

- a) Any charges; or**
- b) The application of any deposit; or**
- c) Any illegal or improper use of electrical energy; or**
- d) Any alleged defects in any apparatus or protective devices or**
- e) Any unsuitable apparatus or protective devices;**

it shall be referred to the Commission.”

In view of the pleadings and submissions presented by both learned counsel before me, it is instructive to set out the provisions of Section 61 (4) of the Energy Act aforesaid. It reads as follows,

“(4) Where any dispute referred to in subsection (3) has been referred to the Commission, or has otherwise been taken to court before notice of disconnection has been given by the licensee, the licensee shall not exercise any of the powers conferred by this section until the determination of the dispute.”

The dispute between the parties herein is related to charges. Going by paragraph 6 of the plaint cited above, the offending action by the defendant which the plaintiff has complained of was before the plaintiff came to court. By then it had not been referred to the Commission. It follows therefore that by the provisions of sub section (4) above, this court is divested of jurisdiction which is clearly conferred upon the Commission.

Without saying more, the Notice of Preliminary objection must be upheld. I hold I have no jurisdiction to deal with this matter and must down my tools. The end result is that the suit is incompetent and must be struck out with costs.

Dated, signed and delivered at Nairobi this 14th Day of June, 2016.

A. MBOGHOLI MSAGHA

JUDGE