



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL CASE NO.118 OF 2002

MOSES OBI NYACHIRO - - - - PLAINTIFF/APPLICANT

VERSUS

KENYA POWER & LIGHTING CO. LIMITED - DEFENDANT/RESPONDENT

RULING

1. By an application dated **15th October 2014** brought by way of Notice of Motion under **Order 40 Rules 1 and 2** of the **Civil Procedure Rules**, the Applicant sought Orders as follows:
 - a. **THAT this application be certified urgent and be heard exparte in the first instance.**
 - b. **THAT an interim mandatory injunction be issued directing the Respondent to reconnect electricity supply to the applicant's premises to wit WEST MUGIRANGO/NYAMAIYA/2099.**
 - c. **THAT a temporary injunction be issued restraining or interfering (sic) with the Applicant's electric energy supply, pending the hearing and determination of this suit.**
 - d. **Costs.**

2. The application was supported by the applicant's affidavit sworn on **15th October, 2014** and on the grounds that:
 - a. **The Applicant is a consumer of electric energy supplied by the Respondent.**
 - b. **The Respondent disconnected electricity supply to the applicant on the pretext that there are outstanding bills to be cleared by the Applicant.**
 - c. **The Respondent has failed to reconnect electricity supply in spite of the Applicant's request.**
 - d. **THAT the Respondent disconnected electricity supply to the Applicant without issuing the mandatory statutory Notice of 14 days.**
 - e. **The Respondent's action is unlawful and violates Section of the Electric Power Act (No.11 of 1997).**
 - f. **THAT the Respondent has instructed an Auctioneer to embarrass the Applicant in recovery purported outstanding bills.**
 - g. **THAT the Applicant has incurred immense loss at the said power disconnection.**
 - h. **THAT this is a fit application which tilts in favour of the orders sought.**

3. In the applicant's said affidavit in support of the application, the applicant expounded on the grounds listed on the body of the application and added that the Respondent had, from time to time and for no justifiable reason, been disconnecting electricity supply to his business premises thereby subjecting his business to a lot of economic loss. The Respondent therefore sought for a mandatory injunction to direct the Respondent to reconnect electricity supply to his business and a

- temporary injunction to restrain the Respondent from disconnecting or interfering with his power supply pending the hearing and determination of the main suit.
4. The Respondent did not file any replying affidavit in opposition to the applicant's said application despite having been granted 14 days by this court on 11th March 2015 to make a response.
 5. In essence therefore, the Applicant's application dated 15th October 2014 was unopposed by the Respondent who never attended court on 11th November 2015 for the hearing despite having been duly served with the hearing notice.
 6. The Applicant's case is that electricity supply to his premises was disconnected on 5th September 2014 for no apparent or justifiable reason and has not been reinstated to-date.
 7. This court takes judicial notice that the respondent is the sole and only supplier of electricity in this country.
 8. The importance of electricity in any business or residential premises cannot be gainsaid or overemphasized.
 9. I have perused the Respondent's defence filed and noted that in the said defence. The Respondent alleges that the Applicant owes it the sum of **Kshs.97,473.40** in respect to unpaid bills. One would have expected the Respondent to lodge a counter-claim in its defence for the said unpaid bills. This was not the case.
 10. The Respondent has not given this court the opportunity to know or understand what justifies its continued refusal to restore power supply to the Applicant's premises.
 11. For the above reasons, I am satisfied that the applicant's application meets the conditions set out in the celebrated case of **Giella -vs- Cassman Brown [1973] EA 358** for the grant of orders of interim injunction.
 12. I therefore grant prayer number (b) only of the Notice of Motion dated **15th October 2014**. For purposes of clarity, it is hereby ordered that an Interim Mandatory injunctions is issued directing the Respondent to reconnect electricity supply to the Applicant's premises situate at **WEST MUGIRANGO/NYAMAYIYA/2099**.
 13. The Respondent shall raise bills for the power supplied from the date of the reconnection of power and the applicant shall be obliged to promptly settle those bills. The disputed previous bills if any shall be the subject of the main suit which I note has never been listed by the applicant for hearing since the inception of this case over 13 years ago.
 14. The applicant is hereby directed to list the main suit for hearing within 30 days from today's date.
 15. It is so ordered.

Dated, signed and delivered in open court this 11th day of December 2015.

HON. W. OKWANY

JUDGE

In the presence of:

- Bigogo for Bosire Gichana for the Plaintiff.
- No Appearance for the Defendants.

- Ogega: Court clerk