



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**MISC. CIVIL APPLICATION NO. 12 OF 2013**

**JUMA HOLDINGS LIMITED .....APPELLANT/APPLICANT**

**VERSUS**

**KENYA POWER & LIGHTNING**

**COMPANY LIMITED. .... DEFENDANT/RESPONDENT**

**RULING**

By way of a Notice of Motion application dated the 19th February, 2013 expressed to be brought under order 42 rules 6(i) and (6) of the Civil Procedure Rules and Section 1A and 3A of the Civil Procedure Act, the applicant seeks a temporary injunction on the ruling delivered on 6th day of February by Honorable Odenyo in Chief Magistrate's Civil Case Number 1146 of 2012.

Secondly that an order do issue to the Respondent to reconnect the Appellant's power supply in Account Number 0443858-01.

The grounds are that the applicant has already commenced the process of appeal against the ruling of the learned trial magistrate.

That the appellant has suffered a lot of prejudice for having filed its suit in Chief Magistrate's Civil Case number 1146 of 2012 in June, 2012 under certificate of urgency the ruling was delivered on the 6th February, 2013.

That no prejudice will be visited on the Respondents if the orders are granted.

That the appellant operates the business of a Restaurant at Bamburi Beach and power supply is of essence in that kind of business.

In his supporting affidavit Aliz Kasim Lakha a director of the appellant company depones at paragraph 7 that in Chief Magistrate's Civil Case Number 1146 of 2012 the Appellant did demonstrate that it had cleared its bills with the Respondents.

This application is opposed. John Mutisya, a customer service officer with the Defendant company has in his replying affidavit deponed that the Appellant is the holder of electricity account number 0443858-01 situated on MN/1/1521 Bamburi road and from record in the Defendants offices the premises were leased out to Archegno Africa Ltd on or about 3rd September, 2007 for a term of five (5) years and three (3) months.

Further that by a letter received from the Lessees Advcoate Khaminwa & Khaminwa dated 17th December, 2008 the outstanding bill as at that date amounted to Ksh. 3,424,903/=.

It is further deponed that although the Lesse had undertaken to settle the outstanding electricity bills, they were not settled fully and the outstanding bill as at 10th May, 2012 when the plaintiff filed Chief Magistrate's Civil case Number 1146 of 2012 stood at Ksh. 4,121,749.

That the Lessee on 10th May, 2012 issued 5 cheques for purposes of offsetting the accrued electricity bills which cheques were dishonoured by the Bank upon presentation and the cheques were not replaced nor had the account been settled.

It is further deponed that the appellant does not deserve the grant of orders sought because

**(a) The prayers being sought in the application are the same prayers which were sought in the first application dated 5th June, 2012 in Chief Magistrate's Civil Case Number 1146 of 2012.**

**(b) The prayer for reconnection of power to account Number 0443858-01 was dispensed with in the ruling dated 6th February, 2013 and is therefore *Res Judicata*.**

This applicaion is expressed to be brought under order 42 rule 6(i) and 6 of the Civil Procedure Rules and Section 1A and 3A of the Civil Procedure Act.

Order 42 rule 6(i) provides,

**“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but the Court appealed from may for sufficient cause order stay of proceedings of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty on application being made, to consider such application and to make such orders thereon as may to it seem lust, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.**

**2. No order for stay of execution shall be made under (1) unless**

**(a) The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) Such security as the Court orders for due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.**

**..(6) Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks fit just provided the procedure for instituting an appeal from a subordinate Court or tribunal has been complied with”.**

In the grounds of appeal for the Notice of Motion dated 19th of February, 2013 it is indicated that the Appellant has already started the process of appeal against the ruling of the learned trial magistrate but there is no indication as to whether there is full compliance with the institution of the appeal from the subordinate Court as required under order 42 rule 6.

Further order 42 rule 6(i) relates to stay of execution where an appeal has been filed already.

I have perused annextures marked “JM6” in the Respondents replying affidavit sworn on 22nd March, 2013 and the customer statement dated 11th May, 2011 to 10th May, 2012 and I am satisfied that cheque payments were done for purposes of settling the electricity bills totaling Ksh. 4,262,713 but these cheques were dishonoured by the bank upon presentation.

This is as per annexure “**JM 7**” customers statement. The copies of the dishonoured cheques are also annexed as “**JM – 6**”.

In the present case it has not been demonstrated as to how the applicant will suffer substantial loss unless the order is made.

Indeed it is the Respondent who has demonstrated that its Ksh. 4,262,713/= still stands due and owing.

The upshot is that I find this application to be without merit and its dismissed with costs.

Ruling delivered dated and signed this **3rd** day of **April, 2014** .

.....

**M. MUYA**

**JUDGE**

**3RD APRIL, 2014**

**In the presence of:-**

Counsel for the Applicant absent

Learned Counsel for the Respondent Mr. Mokanya holding brief Umara

Court clerk Musundi