



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

**AT MOMBASA**

**CIVIL SUIT NO. 67 OF 2013**

GANGES PLASTICS LTD.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY ..... DEFENDANT

**RULING**

This Notice of Motion application is brought pursuant to section 3A of the Civil Procedure Act order 51 rule 1 and order 40 rules 2(1), 3, 4, 5, 8 and 10 of the Civil Procedure Rules.

It seeks a mandatory injunction to compel the Defendants to supply electrical power to the plaintiffs leased premises situated at plot No. 9695/18 located off Refinery Road in Changamwe Mombasa pending the hearing and determination of this suit.

The grounds are that, the plaintiff is a new and bonafide lessee of the Commercial premises situated on plot No. 9695/18 located in Changamwe area Mombasa.

It is also the bonafide owner of the assets and machinery contained in the said premises having purchased them from NIC Bank who were exercising their right of power of sale over the said assets.

The Plaintiff had leased the premises from Kenya National Trading Corporation vide a letter dated 15th April, 2013 which agreement was executed by all parties.

The plaintiff paid the required deposit of the rent equivalent to three months rent.

It also paid a deposit of Ksh. 5 Million as the requirements of the Tri-Partite agreement entered into between the Plaintiff NIC Bank and the previous owners of the said assets.

Upon making an application for supply of power the plaintiff discovered that the previous tenants of the subject premises had accrued a debt with the Defendants amounting to Ksh. 22 million which debt remains unpaid.

The plaintiff filed through its agents requisite forms as required by the Defendants and submitted them on 2nd May, 2013 with the resultant act by the Defendants of refusing to supply power as per request.

This application is opposed on the grounds that the Plaintiff was aware that power had been disconnected because of a debt of Ksh. 22 million.

The tri-partite agreement dated the 15th April, 2013 was between the plaintiff, Kenya National Trading Corporation and NIC Bank. The sale was of a going concern. The Plaintiff took over the business at the suit premises. It knew that the machines would have required power to operate. It further knew that power supply had been disconnected.

In the further Replying Affidavit of Darius Ochola an Assistant Superintendent Engineer with the Defendant,

**“It is conceded, that there was a previous tenant of the proposed supply location who was Cables and Plastics Limited. It is this Cables and Plastics Ltd. who was indebted to the Defendant to the tune of Ksh. 22,797,004/=”.**

Discussions were held with a view to getting the debt and an agreement reached but Cables and Plastics defaulted as a result of which the Defendant declined to supply power to the Supply Location now said to be occupied by the Plaintiff.

The Deponent avers that its the Defendants believe that the plaintiff is acting in Cahoots with previous tenant to avoid the prompt and due settlement of the debt.

In the case of Eldoret White Castle Hotel Ltd. Vs Kenya Power & Lighting. Gacheche, J. Was confronted with a similar situation as obtains in this suit whereby orders were being sought to compel the Defendants Kenya Power and Lighting to restore the supply of electricity to White Castle Hotel and to further refrain in future from disconnecting the supply to the said hotel on the basis of a disputed sum of Ksh. 3,941,388/=.

She did rely on the authority of Gusii Mwalimu Investment Company Ltd and others – Vs – Mwalimu Hotel Kisii Ltd. . C.A.(Kisumu) 160 of 1995 where the Court of Appeal citing paragraph 948 of Vol 124 of the Halsburys Laws of England 4th Edition held that;

**“a mandatory Injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However if the case is clear and one which, the court is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if defendant attempted to steal a march on the Plaintiff..... a mandatory injunction will be granted on an interlocutory application”.**

In the present case its is admitted that the debt of Ksh. 22 million belongs to Cables and Plastics Ltd which is a separate entity from the plaintiffs Ganges Plastics Ltd. The Defendant expresses its frustrations in following payment or settlement of the said debt. There was no contract between Defendant and the plaintiff for the supply of electricity which was allegedly consumed by a 3rd party.

The plaintiff is suffering considerable financial losses as a result of the refusal by the Defendant to supply it with power because of a debt belonging to a 3rd party.

This is a clear case. There is no law that has been cited that allows the Defendant to claim payment of a debt belonging to a third party from another party.

I am Satisfied that this application has merit. A mandatory injunction is hereby granted compelling the Defendants to supply electrical power to the plaintiffs leased premises situated at plot No. 9695/18 located off Refinery road Changamwe Mombasa upon payment of the requisite fees and excluding the debt of Ksh. 22 Million which clearly belongs to a third party.

Costs in the cause.

Ruling dated and delivered in open court this **21st** day of **June, 2013**.

**In the presence of:-**

Counsel for the Plaintiff Miss Muthee

Counsel for the Defendant Kiarie

Court clerk Musundi

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**M. MUYA**

**JUDGE**

**21ST JUNE, 2013**

**Mr. Kariuki:** We apply for leave to appeal. I apply for a temporary stay before filing a formal application.

**Miss Muthee:** We object

**Court:** Leave to file appeal is granted as prayed. Counsel to file a formal application for stay.

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**M. MUYA**

**JUDGE**

**21ST JUNE, 2013**