



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 364 OF 2013

DJOE GATEBU KAMAU.....APPLICANT

VERSUS

KENYA POWER & LIGHTING CO LTD.....DEFENDANT

RULING ON INTERIM RELIEF

1. The Defendant is an electric power supply company and is currently a monopoly in the country. The Plaintiff's case against the Defendant is that he has a power supply contract with the Defendant at his restaurant business on **Plot No. 13330/10/2 Roysambu, Nairobi**; that on or about 27th August 2013 the Defendant disconnected the power supply only five (5) days after connection without any explanation or justification; and that the Defendant's action was thus arbitrary, unfair, unreasonable and high-handed and has occasioned him loss and damage. He seeks the main reliefs of mandatory injunction (for reconnection of the power supply), appropriate permanent injunction and damages.

2. Together with the plaint the Plaintiff filed **notice of motion dated 29th August 2013**. He seeks appropriate temporary mandatory injunction (to compel the Defendant to reconnect the electricity supply) and appropriate temporary restraining injunction, both pending disposal of the suit. The Plaintiff has also sought interim mandatory injunction (for reconnection of the power) and interim prohibitory injunction pending disposal of the application. This ruling concerns only that interim relief.

3. The Defendant filed **grounds of opposition dated 11th September 2013** and **replying affidavit** sworn by one **Muturi Nguire**, the Defendant's Debt Controller. The grounds of objection emerging therefrom include –

(i) That the application lacks merit and does not meet the requisite legal conditions for grant of the orders sought.

(ii) That the Plaintiff has not made full and faithful disclosure to the court.

(iii) That the Defendant entered into a power supply contract with the Plaintiff on account of a fraud committed upon it by the Plaintiff and others, particulars of which include –

a. Power to the same premises (**Plot No 13330/10 Roysambu**) on account of the owner thereof was disconnected because of an unpaid a bill of KShs 146,845/35.

- b. The application by the Plaintiff for power supply quoted **Plot No. 13330/10/2 Roysambu** (which did then not exist in the Defendant's data base) to conceal the fact that power supply to the same premises had been disconnected for non-payment of a huge bill.
- c. As Plot No. 13330/10/2 Roysambu did not show up on the Defendant's data base, the supply applied for was approved, and subsequently connected, with collusion of some employees of the Defendant.
- d. It subsequently turned out that Plot No. 13330/10/2 Roysambu did not in fact exist and the number was used only to deceive the Defendant into supplying power to the same premises.
- e. The Plaintiff does not in fact carry on any restaurant business in the premises and was one of the tenants in the premises who had accumulated the huge bill and had agreed, along with the owner of the premises and other tenants, to pay the bill, but did not pay.

(iv) That in the circumstances the supply contract entered into between the Plaintiff and the Defendant was tainted with illegality and fraud, and the Defendant was entitled to terminate it.

4. These are very serious allegations made by the Defendant against the Plaintiff. If true, they would justify the Defendant's action. They will no doubt be the main issues to be canvassed when the application is heard and when the action goes to trial after the Defendant files its defence.

5. As of now, the Plaintiff has not made any answer to these very serious allegations made under oath.

6. In the circumstances I am not satisfied that the interim relief sought will be in the interests of justice, and I decline to grant it. It is so ordered. Costs will be in the cause.

DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2013