



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 387 OF 2002

KENYA POWER & LIGHTING COMPANY LTD. PLAINTIFF

VERSUS

KENYA COLD STORAGE (FOODS) LIMITED 1ST DEFENDANT

KENYA COLD STORAGE (1964) LTD. 2ND DEFENDANT

YUSUF ALI ABDI 3RD DEFENDANT

J U D G M E N T

1. The Complaint herein was filed on 28th March 2002 and amended on 26th June 2002 solely to reflect the original Defendant's (now the 1st Defendant) name change. The Amended Complaint sought the sum of Shs. 3,977,247.45 as against the 1st Defendant for electricity consumed and billed by the Plaintiff monthly in relation to the Defendant's premises at Plot No. 9476/Shauri Moyo, Nairobi and Plot No. 106/12 Majengo Road, Mombasa.
2. The Defence and Counterclaim was filed herein by the 1st Defendant on 1st August 2002. Although admitting the supply of electricity to its premises, the 1st Defendant averred that by an electricity bill dated 9th February 2001, the Plaintiff had sought payment of the amount of Shs. 1,197,753/- from the 1st Defendant who agreed to liquidate the said sum by four equal monthly instalments of Shs. 299,438.25. The 1st Defendant maintained that it paid the first instalment due on or about 1st March 2001 but before it could pay any further instalments, the Plaintiff cut off the electricity supply. Then, and for some unknown reason, the Plaintiff had reconnected the power supply in October 2001 without the knowledge of the 1st Defendant, resulting in a wastage of electricity as, at the time, the 1st Defendant's business had collapsed as a result of what it termed the "unlawful disconnection" by the Plaintiff. In its Counterclaim, the 1st Defendant claimed general damages plus interest thereon as against the Plaintiff as a result of the loss of its business due to the disconnection.
3. In its Defence to Counterclaim, the Plaintiff denied that the disconnection was wrongful as the same was necessitated by the 1st Defendant's failure to pay for its monthly consumption. The Plaintiff put the 1st Defendant to strict proof of any damage that it had suffered as a result.
4. On 11th June 2012, the Plaintiff applied to amend its Amended Complaint in order to introduce two more Defendants to which there was no objection and leave was granted by **Musinga J.** on that day. The Re-amended Complaint introduced the two further Defendants namely Kenya Cold Storage (1964) Ltd as the 2nd Defendant and one **Yusuf Ali Abdi** as the 3rd Defendant. The Re-amended Complaint introduced a number of new paragraphs detailing how the original account No. 531979-01

had been opened in the name of the 2nd Defendant who incurred a debt of Shs. 1,790,412/-. This amount had not been paid and in an effort to recover the same, the Plaintiff transferred the debit to the 1st Defendant's account No. 535365-01, Mombasa. A dispute arose between the parties regarding the transfer of the account as the 1st Defendant refused to settle the same and it had to be transferred back. However, after the debt had been transferred to Mombasa, the 1st Defendant had come to the Plaintiff's offices and applied for electricity to be supplied under the name of the 1st Defendant and was contracted with an account No. 531979-02, in October 2000. Accordingly in the year 2001, the 3rd Defendant took over the 1st and 2nd Defendant's former premises and started to use the said account number 531979-02. The Re-Amended Plaint then went on to detail that the 3rd Defendant went to Court filing Nairobi *CMCC No. 5741 of 2001* and the Magistrate then ordered the Plaintiff to replace the 1st Defendant's account's name with the 3rd Defendant's name to which the Plaintiff complied. As a result of this seeming mix-up over accounts, the Plaintiff herein was claiming as against the 1st Defendant the sum of Shs. 1,237,619/15 for account No. 531979-02. It was claiming Shs. 1,790,412/- as against the 2nd Defendant which amount had never been disputed. Lastly, it was claiming Shs. 1,247,145.85 as against the 3rd Defendant again in respect of account No. 531979-02. This came to a total of Shs. 4,275,248/- as against all three Defendants.

5. The 3rd Defendant filed his Defence on 18th July 2012. He maintained that he was not privy to any dealings as between the Plaintiff and the 1st and 2nd Defendants prior to the year 2001. He was only bound to pay for electricity consumed and billed monthly by the Plaintiff to him, during the subsistence of his contract with the Plaintiff as from October 2001. He maintained that account No. 531979-02 was changed into his name and did not remain in the 1st Defendant's name as averred in paragraph 6A of the Re-Amended Plaint. He had not received any bills in respect of the account from the Plaintiff let alone in the amount of Shs. 1,247,145/85. He noted that in December 2006, the Plaintiff had instituted a suit against him for non-payment of his electricity bill. He had been ordered by the Court to pay Shs. 1,070,000/- being the cost of electricity consumed by him from 2001 to 2006. He had paid this amount through the Court, although there was no electricity bill shown to him by the Plaintiff as regards the consumption breakdown. As the Plaintiff never sent him any bills detailing electricity consumption, he started with effect from January 2007 to pay to the Plaintiff the amount of Shs. 50,000/- per month. He stopped consuming electricity in the years 2008 and 2009 and the Plaintiff cut off the electricity supply to his premises in 2010.
6. By a joint Statement of Issues dated 17th October 2011 the advocates for the Plaintiff and for the 1st Defendant (at that time) saw all the issues before this Court to be as follows:

“1. Whether the defendant entered into a supply contract with the plaintiff for the supply of electric energy to the premises at Plot Number 9476/Shauri Moyo Nairobi and Plot Number 106/12 Majengo Road, Mombasa.

2. Whether the defendant was allocated account numbers 531979-01, 535365-01 and 531979-02 respectively.

3. Whether the defendant's contract at Plot Number 106/12 Majengo Road, Mombasa was entered into in March 1995.

4. Whether the Account Number 531979-02 was opened in October 2000.

5. Whether by a bill dated 9th February 2001, the plaintiff sought payment of Kshs. 1,197,753.00 from the defendant in respect of account number 0531979-02.

6. Whether the defendant was supplied with electricity at its respective premises and failed, refused and/or ignored to pay when billed.

7. Whether the on 12th February 2001, the defendant entered into an agreement with the plaintiff to liquidate the outstanding bill of

Kshs.1,197,753.00 by four monthly instalments of Kshs.299,438.25.

8. Whether defendant paid the sum of Kshs. 299,438.25 on or about 1st March 2001 in respect of the first instalment.

9. Whether the plaintiff disconnected the supply of electricity to the defendant's premises without any notice to the defendant.

10. Whether the disconnection was legal and the defendant suffered loss thereon.

11. Whether the defendant owes the plaintiff the sum of Kshs.3,977,247.45.

12. whether the outstanding amount is Kshs.1,197,753.00.

13. Whether sometime in October 2001 the defendant reconnected power in respect of account number 0531979-02 without the knowledge of the defendant resulting in wastage of electricity as the defendant's business had collapsed.

14. Whether the plaintiff purported to send a bill of Kshs. 133,333.00 to the defendant on account of electricity which went to waste

15. Whether Chief Magistrate's Civil Case Number 5741 of 2001 – Yusuf Ali Abdi versus Kenya Power Lighting Company and Kenya Cold Storage (Foods) Limited is related to this suit.

16. whether there was a proper and legal demand.

17. Whether the defendant is entitled to the counter-claim.

18. Whether the plaintiff is entitled to the claim in the amended plaint.

19. Which party should bear the costs of this suit".

7. The 2nd Defendant having failed to appear, default Judgement was entered against it on 23rd July 2012. Costs were assessed at Shs. 135,800/- but the Decree was never settled despite the request for judgement to be entered in the total amount of Shs. 4,275,248/-together with interest at 12% per annum from 28th March 2002. It does appear that the Plaintiff has taken no further action as against the 2nd Defendant.
8. When this matter came before Court on 7th May 2013 at 3:15 PM, there was no appearance for the Defendants until after the Examination-in-chief of the first Plaintiff's witness had been taken. That first witness was **Julius Maina Mutahi** (P W 1) having been sworn in, stated that he was the Chief Engineer, Customer Service for the Plaintiff. He duly adopted his Statement of Evidence dated and signed on the 7th June 2012 as his Evidence-in-chief. He also had signed a Supplementary Statement dated 30th August 2012 which he also adopted as Evidence-in-chief. Further, he produced the Plaintiff's Bundle of Documents which had been filed on 14th November 2011 as Plaintiff's Exhibit No. 1. He also produced before Court, the Plaintiff's Further Bundle of Documents which had been filed on 1st February 2012 (Plaintiff's Exhibit No. 2) as well as the Plaintiff's Supplementary Bundle of Documents which had been filed on 9th of August 2012 (Plaintiff's Exhibit No. 3). He specified to Court that what the Plaintiff was claiming was clearly set out in the prayers in the Plaintiff's Re-Amended Plaint.
9. In his Statement of Evidence, PW 1 stated that he had been working with the Plaintiff since 1980 and in the year 2000 he was the Senior Customer Services Engineer. He noted that the Defendant (not specifying which of the Defendants) had been a customer of the Plaintiff's dating back to the early 1960s. He noted that the account holder for SRN. 531979-01 was Kenya Cold Storage

(1964) Ltd but later the account had been taken over by the 1st Defendant. In an effort to recover a debt of Shs. 1,790,412.10 the said amount was transferred in October 2000, by the Plaintiff from SRN. 531979-01 to SRN. 535365-01 which was also the 1st Defendant's account in Mombasa. The 1st Defendant had refused to settle the amount due and it had to be transferred back to SRN. 531979-01. However, while these transfers were going on, the 1st Defendant had applied for electricity to be supplied under its own name and, as there was no debt appearing on the account, the 1st Defendant was contracted under account number 531979-02 in October 2000. The 1st Defendant accumulated a further debt under its new account number amounting to Shs. 1,238,398.15. The 1st Defendant's supply was then terminated. PW 1 recounted that there had been an illegal removal of the meter so that the Plaintiff had concluded that the outstanding debt associated with the electricity supply totalled Shs. 3,028,102.15, communicated to the 1st Defendant by the Plaintiff's letter dated 3rd August 2001. PW1 then referred to various correspondence passing between the parties and he noted that the supply was later reconnected on 21st August 2001 as per Orders of the Court. In the witness' opinion the 1st Defendant did not have any defence to the Plaintiff's claim the same having been admitted by its letter received on 14th August 2010.

10. Under cross-examination, PW 1 was aware of the agreement between the Plaintiff and the 1st Defendant to settle the outstanding electricity account by way of instalments. He knew that the first instalment had been received by the Plaintiff in the amount of Shs. 292,000/-. The Plaintiff was to allow the 1st Defendant to continue operations after payment of the first instalment. The agreement was that the 1st Defendant was to pay both the arrears and to pay for electricity that it was consuming. It had failed to do so and, as a result, the Plaintiff discontinued the supply. PW 1 was not aware that the 1st Defendant had gone out of business but was aware that the electricity supply had been discontinued and was still disconnected. He had not been aware of any case regarding the same issue brought by the 3rd Defendant against the Plaintiff. However he had been aware of the said case brought by the 3rd Defendant as against the Plaintiff in the Chief Magistrate's Court in which he had appeared to give evidence but was unaware of what had transpired. He had also appeared to give evidence in the criminal case brought against the 3rd Defendant. He was not aware that the Court, in that case, had recommended that PW 1 should be prosecuted. Under re-examination, PW 1 remembered appearing in Court when the Plaintiff had sued the 3rd Defendant – it was for forging his signature. The 3rd Defendant had signed up some fraudulent documents after which the electricity supply had been put back.
11. A week later, the 1st and 3rd Defendants put forward their Defence before Court. DW 1 **Sadrudin Karim Kurji** took the oath and adopted his statement dated 2nd February 2012 as his Evidence-in-chief in this matter. He emphasised that there had been an agreement between the Plaintiff and the 1st Defendant for the arrears amount of Shs. 1.1 million, to be paid by way of four instalments of Shs. 299,000/- each. He noted that after the first instalment had been paid, the Plaintiff had disconnected the power and, as the Defendants were in the business of cold storage, all products deteriorated and the company had to be closed down. As a result, the 1st Defendant was seeking general damages as per its Counterclaim herein. DW 1 thereafter produced before Court the Defendant's Bundle of Documents dated 30th January 2012 as Defendant's Exhibit No. 1. In his Statement of Evidence, DW 1 stated that he was a director of the 1st Defendant company and it had entered into a contract for the supply of electricity with the Plaintiff and opened Account No. 0531979-02. The 1st Defendant had received a bill on or about 9th February 2001 from the Plaintiff in the amount of Shs. 1,197,753/-. Some three days later the 1st Defendant agreed with the Plaintiff that the former would liquidate the outstanding bill by way of four equal monthly instalments of Shs. 299,438.25 each. On the 23rd February 2001, the 1st Defendant paid the first instalment which was accepted by the Plaintiff. However DW 1 noted that, instead of waiting for the second instalment to be paid as per the agreement reached between the parties, the Plaintiff proceeded to disconnect the 1st Defendant's electricity supply without notice. DW 1 went on to say that a bill issued by the Plaintiff on 1st September 2001 clearly indicated that it had received its last payment on 23rd February 2001 in the amount of Shs. 299,438.25 and the net balance for the supply as at 1st September 2001 was Shs. 1,238,398.20. Without the 1st Defendant's knowledge, the Plaintiff reconnected its supply in October 2001. It thereafter sent a Bill for Shs. 133,333/- to the 1st Defendant on account of electricity which had been supplied to the 1st Defendant's premises at a time when they were not occupied by the 1st Defendant.

12. At paragraph 11 of the witness statement, DW 1 detailed that, at the time that the electricity was reconnected, the 1st Defendant's premises were occupied by **"another tenant, Yusuf Abdi Ali"**. The witness speculated that account numbers 531979-01 and 535365 that the Plaintiff claimed in its Plaint belonged to the 1st Defendant may have belonged to the other tenant, who is of course, the 3rd Defendant herein. The witness went on to state that on or about 6th August 2001 the said Yusuf Abdi Ali had written to the Plaintiff stating that he would only pay for power supplied to him from his contract date. He had indicated that the previous outstanding amount being Shs. 1,237,690/15 would be paid by the 1st Defendant herein. This was confirmed by a letter from the 1st Defendant to the Plaintiff dated 9th of August 2001. DW 1 stated that it was clear that by August 2001, the 1st Defendant was not in possession of the premises to which account No. 0531979-02 related. As a result, the statements prepared by the Plaintiff as from the 17th January 2003 up to 16th January 2009 did not concern the 1st Defendant at all but, presumably, the 3rd Defendant. Under cross examination, DW 1 confirmed that the 1st Defendant owed the Plaintiff the sum of Shs. 1,197,753/-. He further confirmed that after the 1st Defendant had paid the first instalment towards the outstanding amount of Shs. 1,197,753/-, the balance of the monies were due being Shs. 898,314.75. He stated that the products that they were storing were fresh produce like fish, meat, vegetables etc. It was best to leave it to nature rather than incur expenditure which would put DW 1 into bigger loss.
13. The Defendants then called the 3rd Defendant, the said **Yusuf Ali Abdi** as their second witness. He testified that he was in business as a butcher. He said that he had paid all the money that he had been ordered to pay by the Court. He had paid to the Plaintiff the sum of Shs. 1,070,000/-. The Plaintiff had sued him saying that he owed that money for the period 2001 to 2006. He was ordered by the Court to pay Shs. 50,000/- per month until total payments came to Shs. 1,800,000/-. He still continued to carry on his business but never received any bills for payment from the Plaintiff. He had paid for all the electricity he had consumed. He maintained that it was the Plaintiff who owed him between Shs. 400,000/- and Shs. 500,000/-. However, he was not really sure. There were documents available showing what he had paid. Such were attached to his witness statement and he produced them before Court as Defence Exhibit No. 2. along with his Witness Statement dated 18th July 2012. Thereafter DW 2 attempted to explain to the Court as regards the various Court cases which had ensued both in 2001 and 2006. In the latter case brought against him by the Plaintiff in December 2006, the Judge had ordered the decretal amount covering the cost of electricity consumed from 2001 to 2006, to be paid at Shs. 50,000/- per month. The documents he had produced before Court showed that he had paid in full in 2006. He was insistent that he owed no further monies to the Plaintiff and that if any monies were owed at all then such were owed by the 1st Defendant. I found the witness' evidence as to what he had paid, was ordered to pay by the Court and what was still owed to be confused and contradictory. He detailed that the statements produced by the Plaintiff before Court were only relevant and applicable to the 1st Defendant, not to him. They did not reflect the amounts that he had paid to the Plaintiff. He maintained that as regards the opening balance of the statement dated 13th of February 2007 being Shs. 1,197,753/-, such was owed by Kenya Cold (Foods) Storage Ltd., the 1st Defendant. Finally, in re-examination, the 3rd Defendant confirmed that all the amounts that he had paid were detailed in the cheques contained in his Bundle of Documents. He had paid all the amounts that he owed to the Plaintiff.
14. The Plaintiff's submissions were filed herein on 31st May 2013. They detailed that the Plaintiff claimed the total amount of Shs. 4,275,248/- as against the Defendants jointly and severally. The Plaintiff relied entirely upon the witness statements of PW 1, as well as its Bundles of Documents. Those documents demonstrated that on the balance of probability, the 1st and 3rd Defendants owed to the Plaintiff, the monies claimed. The Plaintiff noted that DW 1 had admitted in his evidence, that the Plaintiff was owed by the 1st Defendant the amount of Shs. 1,197,753/-. The Plaintiff had accepted that one instalment of Shs. 299,438.25 had been paid which left the balance owing of Shs. 898,314.75. The Plaintiff was entitled to judgement in respect of such difference. Turning to the 3rd Defendant, the Plaintiff maintained that in *CMCC No. 5741 of 2001*, the Chief Magistrate had ordered that the electricity bills in the name of the 1st Defendant should actually be altered and issued in the name of the 3rd Defendant. This had been done and the 3rd Defendant had made payments which were credited to the account leaving a balance of Shs. 2,484,835/-. That amount had never been paid to date and it was the amount that the Plaintiff was claiming from the

3rd Defendant.

15. The 1st and 3rd Defendants filed their submissions herein on 25th June 2013. They commenced the same by pointing out that the Plaintiff had allocated 3 account numbers as between the 1st and 2nd Defendants being account Nos. 531979-01, 535365 and 531979-02. At paragraph 4A of the Re-Amended Plaintiff, the Plaintiff had averred that the account holder for account No. 531979-01 was the 2nd Defendant who had incurred a debt of Shs. 1,790,412.10 and had failed to pay for the same. However, in the witness statement of PW 1 (paragraph 5), it had been averred that the said amount was incurred by the 1st Defendant. DW 1 had given evidence to the effect that the 1st Defendant had entered into a contract with the Plaintiff for the supply of electricity to its premises and had been allocated account No. 053 1979-02. The Plaintiff had sent a Bill seeking Shs. 1,197,753/- in relation to that account. It was also in relation to that account that the 1st Defendant had agreed to settle the same by way of four equal monthly instalments of Shs. 299,483.25/-per month. The first instalment had been paid but despite the agreement, the Plaintiff had disconnected the electricity supply. DW 1 had also given evidence that at the time, supply had been reconnected, the 1st Defendant's said premises had been occupied by another tenant – the 3rd Defendant. DW 2 had given evidence that he had opened an account with the Plaintiff for the supply of electricity in October 2001 and had been allocated account No. 531979-02. The account had been changed into his name. However, he had written to the Plaintiff on the 6th August 2001 that he would only pay for power supplied to him from his contract date and that the previous outstanding amount of Shs. 1,237,690.15 would be paid by the 1st Defendant herein. That position was confirmed by a letter dated 9th August 2001 from the 1st Defendant to the Plaintiff confirming its willingness to continue paying the outstanding debt of Shs. 1,237,690.15 by way of instalments. The Customer's Statement prepared by the Plaintiff as between 17th January 2003 to 16th January 2009 was of no concern to the 1st Defendant at all. Finally, in dealing with the testimony of the 3rd Defendant (DW 2), the Defendants' submissions went on to say that he had not received any bill from the Plaintiff as alleged in the Re-Amended Plaintiff and as a result, the amount of Shs. 1,247,145.85 as claimed against him, was unfounded and false. Further, in December 2006 the 3rd Defendant had been sued by the Plaintiff in the amount of Shs. 1,070,000/-covering electricity charges for the period 2001 to 2006, which amount he had paid in full through the Court. Thereafter, the 3rd Defendant had testified that with effect from January 2007, he had paid in instalments towards electricity charges of Shs. 50,000/-per month although the Plaintiff did not send him in any electricity consumption Bills.
16. After an 11 year passage of time, it is difficult to relate the issues agreed as between the parties in the joint statement of agreed issues filed 17th October 2011 to the evidence given before this Court by the three witnesses involved. As noted, those issues were agreed upon at the time before the filing of the Re-Amended Plaintiff and the joinder of the 2nd and 3rd Defendants to this suit. It seems fairer that this Court deals with the claims made against the Defendants by the Plaintiff separately in order to determine whether the latter has established any sort of case against all or just one of the Defendants. As the 2nd Defendant has neither entered an Appearance or Defence to the Plaintiff's claim against it, there would seem to be no doubt that, as the account holder for account SRN 531979-01, the 2nd Defendant is liable to the Plaintiff for the cost of electricity supplied on that particular account being Shs. 1,790,412/-. It would appear that this Court may have entered Judgement against this particular Defendant in the amount of Shs. 4,275,248/-if the draft Decree herein is anything to go by. Admittedly the Re-Amended Plaintiff herein seeks judgement for this figure against the Defendants jointly and severally. However, in my opinion, the 2nd Defendant is only liable for the said sum of Shs. 1,790,412/-(supra) together with interest at Court rates from the date of filing the Re-Amended Plaintiff until payment in full.
17. As regards the claim against the 1st Defendant it would appear from the evidence before Court that it was allocated account No. SRN 531979-02 in October 2000. It would appear from document no.1 in the 1st Defendant's Bundle of Documents that the Plaintiff raised an electricity bill as against the 1st Defendant in the amount of Shs. 1,197,753/-on 2nd February 2001. On 12th February 2001 as per document no. 2 in the 1st Defendant's Bundle of Documents, it accepted this amount and requested that it should be paid by way of four equal monthly instalments of Shs. 299,438.25. It was DW 1's evidence that he or another representative of the 1st Defendant went to the offices of the Plaintiff and negotiated such payments by way of the 4 instalments. However, this does not seem to be reflected in the Plaintiff's letter to the 1st Defendant dated 13th March

2001 (page 5 - 1st Defendant's Bundle of Documents) in which it was categorically stated that the request to pay by instalments had not been approved. Nevertheless, it does appear that the 1st Defendant did pay the one instalment of Shs. 299,438.25 as this has been given credit for and acknowledged at paragraph 6 of the Plaintiff's submissions. In this regard, I would accept the Plaintiff's submission that it is entitled to judgement in respect of the difference between Shs. 1,197,753/-and Shs. 299,438/25 which is Shs. 898,314.75. Accordingly, I enter judgement for the Plaintiff against the 1st Defendant in that amount together with interest thereon at Court rates from the date of the filing of the Plaint until payment in full. In this regard, I have noted that there is no provision in the Plaintiff's Electricity Supply Agreement for interest to accrue in relation to late payments. As regards the 1st Defendant's Counterclaim, it presented no evidence before this Court as to the closing down of its business as a result of the Plaintiff cutting off the electricity supply. No evidence of any damage suffered by the 1st Defendant was proffered before Court and, accordingly, its Counterclaim herein is also dismissed with costs.

18. Turning now to the Plaintiff's claim as against the 3rd Defendant, it has detailed figure of Shs. 2,484,835/-which it maintains takes into account all payments made by the 3rd Defendant for the period 1st January 2007 to the 20th June 2012. This is as per its Customer's Statement produced in the Plaintiff's Supplementary Bundle of Documents dated 8th August 2012 and as per paragraph 11 of PW1's Supplementary Witness Statement dated 30th August 2012. However, that statement has an opening balance of Shs. 2,307,780.65 and it is the 3rd Defendant's case that he was not liable when he took over account SRN 531979-02 from the 1st Defendant in October 2001 for the amount of Shs. 1,237,690.15 admitted by the 1st Defendant that it owed. Such is quite clearly set out in the 3rd Defendant's letter to the Plaintiff dated 6th August 2001 and backed up by the 1st Defendant's letter to the Plaintiff dated 9th August 2001. It should be noted that those letters were in response to the Plaintiff's letter of demand dated 3rd August 2001 in which it had claimed the total amount of Shs. 3,028,102.15. Indeed that letter gave a breakdown as between the two accounts SRN No. 531979-01 which had a balance of Shs. 1,790,412/- to pay and SRN No. 531979-02 which had a balance of Shs. 1,237,690.15 to pay. As already detailed above, I find that the balance on account SRN No. 531979-01 was payable by the 2nd Defendant and the balance on account SRN No. 531979-02 was payable by the 1st Defendant. As a result, I accept the 3rd Defendant's submissions that it is only liable for electricity charges incurred since what he termed "my contract date". The question before the Court is just what those arrears of electricity charges amount to bearing in mind the cases in this and the subordinate court, both civil and criminal, which clouded the waters in the years 2001 to 2006. However, it does seem to me that the Customer's Statement of account from 17th January 2003 until the 16th January 2009 forwarded under cover of Messrs. Hamilton, Harrison & Mathews letter addressed to the advocates for the 3rd Defendant at the time, dated 27th January 2009 did take into account payments had been made by the 3rd Defendant during that period. The said Statement of Account opens with a nil balance on 17th January 2003. The balance as at 16th January 2009 is shown as Shs. 2,729,406.23. The Plaintiff followed up that Statement of Account by a further Customer's Statement for the period 1st January 2007 to 20th June 2012 as contained in its said Supplementary Bundle of Document dated 8th August 2012. Thereafter, the balance as shown on 20th June 2012 (the last entry on the Customer's Statement), was Shs. 2,484,835.99 which, of course, is the amount demanded and shown as detailed above and as referred to as owing, in the Plaintiff's submissions herein. It is the 3rd Defendant's position that this balance should be less the amount of Shs. 1,237,690.15 which should have been paid by the 1st Defendant. The Court might have gone along with that submission but for the fact of the nil balance as at 17th January 2003. To cut a long story short therefore, I find for the Plaintiff in that regard as against the 3rd Defendant. However, parties are bound by their pleadings and as the amount as sought against the 3rd Defendant in the Re-Amended Plaint is expressed as Shs. 1,247,145.85, I enter judgement against him in that amount.

19. Thus in summary, judgement is entered for the Plaintiff as against:

- a. The 1st Defendant in the amount of Shs. 898,314/75
- b. The 2nd Defendant in the amount of Shs. 1,790,412/-and
- c. The 3rd Defendant in the amount of Shs. 1,247,145/85

together with costs. Interest on the Judgement sums will be at Court rates from the date of filing the Amended Plaint (28th June 2002) as far as the 1st Defendant is concerned and from the date of filing the Re-Amended Plaint (22nd June 2012) as far as the 2nd and 3rd Defendants are concerned.

DATED and delivered at Nairobi this 20th day of November, 2013.

J. B. HAVELOCK

JUDGE