



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 544 OF 2007

NEW KIRU AFRICAN HOTEL BUILDING LTD PLAINTIFF
- VERSUS -
NANCY WAMUYU NDERIDEFENDANT

RULING

1. The defendant's notice of motion dated 7th June 2010 (but filed on 7th June 2011) prays for an order to compel the plaintiff to restore electric power to its premises or to allow employees of Kenya Power and Lighting Company to do so. There is also a prayer to injunct the plaintiff from disconnecting the power supply.
2. The gist of the matter is that the defendant is a tenant of part of the plaintiff's premises known as LR No 209/138/55 New Kiru African Hotel and Building. The plaintiff's claim in this suit is for recovery of the premises and for mesne profits. An application by the plaintiff for summary judgment was rejected or dismissed by the court on 13th April 2011.
3. In a supporting affidavit of the defendant sworn on 7th June 2010, the defendant avers that the plaintiff disconnected electric power to her premises and has prevented employees of Kenya Power and Lighting Company to reconnect the power with the sole purpose of forcing her out of the premises or recovering the premises when the court has already dismissed the application for summary judgment. The applicant thus submits that it is in the interests of justice to grant the orders sought.
4. The application is contested by the respondent. The respondent avers that it is neither the one that disconnected electric power nor can reconnection of the power be its responsibility. The true respondent, it says, should be Kenya Power and Lighting Company who, unfortunately, are not parties to this suit. The respondent thus avers in its replying affidavit sworn by Julius Kabui on 9th June 2010 that since the order should be directed at Kenya Power and Lighting Company, who are not parties, the orders of the court would be in vain. The respondent thus prayed that the Notice of Motion be dismissed with costs.
5. After hearing both parties, I am of the following considered opinion. The main suit herein is for recovery of the defendant's/applicant's premises and mesne profits, among other reliefs. The motion before me is for an order that the plaintiff/respondent do reconnect power to the defendant's premises or do allow the Kenya Power and Lighting Company to do so. In fact, prayer 2 goes a little further to require JAMES KABUE, a manager of the plaintiff, and who is not a party to be compelled to allow a technician

from Kenya Power and Lighting Company to inspect and restore electric power to the premises. As stated earlier, there is also a prayer to injunct the plaintiff from disconnecting power to supply to the defendant, presumably after it is reconnected.

6. I am not persuaded by the averments in the defendant's affidavit of 7th June 2010 that it is the plaintiff who disconnected power. But even if I were, I entertain serious doubt that the defendant would be entitled to an order to compel the plaintiff or its manager James Kabue to restore the electric power, or to allow Kenya Power and Company technicians to do so or even to injunct the plaintiff or the said Kabue from disconnecting it. I say so because, one, Kenya Power and Lighting Company which is the sole end supplier of electric power to consumers is not a party to this suit. And so is the said James Kabue. The plaintiff/respondent, I note is a limited liability company. Secondly, prayer 3 that seeks to injunct the plaintiff from disconnecting the power, presumably after it is reconnected, would be so vague an order as to bind even Kenya Power and Lighting Company who might wish to disconnect the power in the future under the supply contract with the defendant/applicant.

7. I also find that the defendant's statement of defence dated 28th November 2007, which has not been amended, does not contain any form of counterclaim that would be the foundation to support the prayers for injunction sought in the notice of motion.

8. Given all of those circumstances, I am unable to find that the defendant/applicant has made out a prima facie case with a probability of success or met the threshold for grant of interlocutory relief spelt out in *Giella Vs Cassman Brown & Company Limited* [1973] E.A 358.

9. I would thus order, which I hereby do, that the defendant's notice of motion dated 7th June 2010 be dismissed with costs to the plaintiff.
It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 4th day of November 2011.

G.K. KIMONDO

JUDGE

Ruling read in open court in the presence of

No appearance for Plaintiff

Mr. Gakaria for Chokaa for Defendant.