



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 94 of 2010**

**FRANCIS IRUNGU MWANGI ..... PLAINTIFF  
VERSUS  
THE KENYA POWER & LIGHTING  
COMPANY LIMITED ..... DEFENDANT**

**R U L I N G**

The application before the Court is brought by a Chamber Summons dated 18<sup>th</sup> February, 2010 and taken out under **Order XXXIX Rules 1 and 2** of the **Civil Procedure Rules** and all enabling provisions of the law. The Applicant seeks from the Court the following two main orders –

1. *That an order do issue against the Defendant/Respondent to re-connect the power supply to the Applicant's premises and be restrained in any other way from interfering with the power supply to the Applicant's premises pending the determination of this application as the Applicant has no arrears to warrant disconnection.*
2. *That an order be issued against the Respondent to re-connect the power supply to the Applicant's premises and be restrained in any other way from interfering with the power supply of the said premises pending the hearing of the suit.*

The Applicant also seeks an order that costs be in the cause.

The application is supported by the Applicant's own affidavit sworn on 18<sup>th</sup> February, 2010 and is based on the grounds that his power supply was disconnected while he had been paying his electricity bills promptly and had no outstanding arrears. On the other hand, the Respondent's case is that the Applicant owes the Respondent a huge unpaid electricity power supply bill amounting to Kshs.1,283,742.90 and that despite several notices being given to the Applicant regarding the arrears, the Applicant neglected and/or refused to acknowledge or otherwise offer a valid reason to the Respondent for his unpaid arrears.

At the hearing of the application, Mr. Kinuthia appeared for the Applicant while Ms. Makila appeared for the Respondent. After considering the pleadings and the submissions of both Counsel, the main issue for determination in this matter is whether the Applicant's power supply was justifiably disconnected. In a nutshell, the Applicant's case is that on 12<sup>th</sup> June, 2009, the Respondent's employees stormed his premises and disconnected the power supply from meter No.20026667 while the due date for disconnection was 10<sup>th</sup> July, 2009. The power supply was reconnected on 15<sup>th</sup> June, 2009 after the Applicant launched a complaint and the original meter was replaced with a new one No. 20541647. On 20<sup>th</sup> June, 2009, the new meter No. 20541647 was disconnected and taken away on the basis that the meter was not in the Respondent's records. On 22<sup>nd</sup> June, 2009, the Applicant visited the Respondent's offices only to be informed that his account was in arrears amounting to Kshs.1,283,742.90. He was thereupon asked to sign liability forms which he declined to do. However, he paid a bill for Kshs.1,480/= demanded on 19<sup>th</sup> June, 2009 arising from the consumption on the original meter.

Although from both the defence filed by the Respondent and also in a replying affidavit, the Defendant's case is that the Applicant's power was disconnected for non payment of bills, there is evidence on record to show that it was also alleged that one of the Applicant's meters was not in the Respondent's records. According to the Applicant's exhibit "FIN 2(a) and (b)" the Respondent's officers visited the Plaintiff's premises on an unclear date in June, 2009, which was probably 12<sup>th</sup> June, 2009, and left behind an installation inspection report which advised: "**Your supply has been disconnected since your meter is not in our records**". The meter in question was quoted as meter No.20541647.

In the Respondent's further replying affidavit sworn by David Muteithia Kagoko on 22<sup>nd</sup> April, 2010, however, the deponent testifies in paragraphs 4 to 10 as follows –

**“4. That meter Nos.20026667 and 20541647 both belong to the Applicant save that meter No.20026667 was replaced with meter No.20541647 when it was found it (sic) to be faulty.**

**5. That it is common practice for the Respondents to send its agents and/or employees to replace faulty meters in the customer's account with or without notice to the customer since the service therein does not in any way interfere with the customer's account balance.**

**6. That sometime on 15<sup>th</sup> June, 2009, I visited the Applicant's premises and found meter No.20026667 which I replaced with meter No. 20541647 upon realizing that meter No. 20026667 was faulty.**

**7. That meter 20541647 had readings of 54,395 units which units the Applicant has to date never paid for.**

**8. That on 22<sup>nd</sup> June, 2009 I edited the readings on the Applicant's account in order to reflect the units in both meter nos. 20026667 and 20541647.**

**9. That the Applicant's bill in meter No.20026667 was carried forward to the new meter No.20541647 hence the balance due and owing to the Respondent.**

**10. That the Applicant's meter No.20541647 was however still missing from our records and hence we only sent the Applicant an estimate bill for the month of May, 2009 and June, 2009 as we sorted out our records on the Applicant's accounts.”**

From the above account, it is as clear as daylight that the Applicant's supply was disconnected because his meter No.20541647 was not in the Respondent's records; and yet that meter was installed in the Applicant's premises by one of the Respondent's technicians. Failure to trace that meter in the Respondent's records was not the Applicant's fault, but the fault of the Respondent. Secondly, the issue of the meter missing from the Respondent's records does not feature either in the defence or in the replying affidavits. The only defence advance in the pleadings is that the Applicant owes the Respondent a substantial amount of money in excess of Kshs.1.2 million. This was not the reason originally given for disconnection of the Applicant's power and smells of an afterthought.

Coming to the alleged arrears of Kshs.1.2 million, the Respondent's case is that several notices were given in respect thereof. This is not borne out from the evidence on the record. The Respondent has not attached any single copy of the said notices but refers only to one copy produced by the Applicant. If the reason given to the Applicant for disconnection of his supply was that the account was in arrears, it is noteworthy that meter No.20026667 was found to be faulty by non other than one of the Respondent's own technicians. It was replaced with meter No. 20541647 which had readings of 54,395 units. It would be shocking, to say the least, that the Applicant would have been expected to pay for readings on a new meter which did not reflect his own consumption. Granted that the Respondent concedes that the original meter was faulty, and the new meter had readings extraneous to the Applicant's consumption, it would be unfair and inequitable to demand that the Applicant pays for readings from a faulty meter and in addition thereto for readings from a new meter which clearly did not reflect his consumption. *Prima facie*, the account is faulty as being based on the readings of a faulty meter to which are added previous readings of yet another meter. I find it inequitable to saddle the Applicant with such an account.

From the above considerations, I find that the Respondent has dealt with the Applicant unfairly. To say the least, its conduct towards him is high-handed. There is an allegation in the Respondent's further replying affidavit to the effect that the Applicant had fraudulently installed a meter from the Nairobi City Council sometime between June and July, 2009. This is a serious allegation and one can only hope that the Applicant is not being victimized on account of such an allegation. Our constitutional dispensation requires every suspect to be presumed innocent until proved guilty in a Court of competent jurisdiction. The Respondent admits that it is its common practice to send its agents and employees to replace faulty meters without notice to the customers. There is no evidence that the Nairobi City Council is in the business of supplying electricity to anyone and consequently one would think that the electricity meters are the monopoly of the Respondent. The allegation that the Applicant had installed a meter belonging to the City Council rings out of tune. It also sounds similar to suggesting that a consumer of water in the City could have installed a water meter belonging to the Kenya Power & Lighting Company. I will say no more on that issue except to add that whereas the Respondent casts suspicion at the Applicant as having allegedly installed that meter, it is equally possible that the Respondent's agents could also have done so.

On account of the foregoing, I find that the Applicant has on a balance of probability established a fairly strong case against the Respondent and that he is entitled to the second order he has sought. I accordingly make the following orders –

**(a) The Respondent do reconnect the power supply to the Applicant's premises forthwith pending the hearing of the suit.**

**(b) In the meantime, it is open to the parties to resort to a resolution of this matter in terms of Rule 4 of Electric**

*Power (Complaints and Disputes resolution) Rules 2006, even without going to Court.*

- (c) *The Applicant will henceforth pay all bills promptly in terms of his present contract with the Respondent while the disputed bill is pending resolution.*
- (d) *The costs of this application will be in the cause.*

It is so ordered.

**Dated and delivered at Nairobi** this 17<sup>th</sup> day of August, 2010.

**L. NJAGI**

**JUDGE**