



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 959 of 2006

WILFRED NDERITU KANYI GACHOKA PLAINTIFF

VERSUS

NAIROBI CITY WATER & SEWERAGE CO. DEFENDANT

RULING

I: BACKGROUND

1. I have before me an application for an injunction to restrain the defendants the Nairobi City Water and Sewerage Company from disconnecting water. That a supply of water to the defendants be made pending the determination of the suit.

2. Ex parte orders were duly granted by the duty judge Kihara J 12.9.06 on condition that the applicants deposits the disputed sum in questions owned to the defendant is in court. This was duly done and the applicant now seek in this inter parties hearing for the orders to be confirmed.

3. In reply the defendants/respondent set the plaintiff are guilty of latches and should not be granted an injunction more so a mandatory injunction. The applicant- plaintiff relied on case law of:-

Showind International Ltd v Guardian Bank Ltd

(2002) EA 284

and the

Kenya Breweries Ltd v Okeyo 2002 I EA 109

that permitted mandatory injunction to be issued.

II: FINDING

4. In this case the real issue between the parties is an over payment charge of Ksh.25,160/-. All the parties require to do is sit down and find out how this “over charge arose”.

5. I hereby grant the application for an injunction until the determination of the main suit namely, the sum of Ksh,25,160/- and how it arose. Is this sum due and owing?

6. The costs of this application will be in the cause.

Dated this 30th day of January 2007 at Nairobi.

M.A. Ang'awa

Judge

30.1.07

B.N. Ngugi for Benson Ngugi & Co. Advocates for the plaintiff

T.M. Macharia for Mbugwa, Atudo & Macharia Advocates for the defendant