



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
MISC. APPLICATION NO.6 OF 2003

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY TO THE HIGH COURT FOR AN ORDER OF CERTIORARI TO QUASH THE DECISION OF THE NAKURU WATER AND SEWAGE SERVICES (MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES) DATED 31ST OCTOBER 2002 TO DISCONNECT AND/OR BLOCK THE APPLICANT FROM THE NAKURU MUNICIPAL COUNCIL MAIN SEWER LINES, AND AN ORDER OF PROHIBITION RESTRAINING THE SAID NAKURU WATER & SEWERAGE SERVICES FROM ACTING ON THE DECISION AFORESAID AND FOR A DECLARATION THAT THE RESPONDENT’S ACT TO LEVY THE SAID CHARGES IS WITHOUT ANY BASIS NULL AND VOID

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

NAKURU WATER & SEWERAGE SERVICES(MINISTRY OF ENVIRONMENT & NATURAL RESOURCES1ST RESPONDENT
MUNICIPAL COUNCIL OF NAKURU.....2ND RESPONDENT
LONDRA LIMITED.....SUBJECT

R U L I N G

The Application has been brought through Notice of Motion under Order L III Rule 3 of the Civil Procedure Rules. The application seeks the following orders:-

- (1) That this Honourable Court be pleased to grant the Applicant herein an Order of Certiorari to remove to Court and to quash the decisions of the Nakuru Water and Sewerage Services, the Respondent herein, dated 31st October, 2002 and 10th December, 2002, respectively threatening to disconnect and/or block the Applicant from using the Nakuru Municipality Main Sewer Lines for its waste water disposal.
- (2) That this Honourable Court be pleased to grant the Applicant an Order of Prohibition restraining the Respondent Authority from acting on the decision aforesaid.
- (3) That this Honourable Court be pleased to issue a declaration that the levying of the water

disposal charges by the Respondent is without any basis, null and void. The above application is supported by the annexed statutory statement, the verifying and supplementary affidavits of Mahendra S. Shah.

(4) That the costs of this application be paid by the Respondent.

During the hearing of the application, Mr. Olola, Counsel for the Applicant submitted that they were only seeking prayer No.1 and 4. According to Mr. Olola, the Applicant was issued a license to abstract water by the 2nd Respondent viz, Municipal Council of Nakuru. The Applicant used the license up to December, 2002, when the 1st Respondent proceeded to its premises and threatened to disconnect or block the Applicant from using the 2nd Respondent's sewer lines on the claim that the Applicant owed them Kshs.2,045,400/-. Besides the above, Mr. Olola submitted that there is nobody known as Nakuru Water & Sewerage Services. Even assuming that the same existed then it has no legal mandate to serve as Water undertaker in Nakuru Municipality.

Secondly, Mr. Olola submitted that the Applicant was not given a fair hearing since they were given 24 hours to pay or face disconnection. Mr. Olola argued that his client should have been given a reasonable time – say a month or two.

Thirdly, Mr. Olola complained that the charges had been backdated to January, 2001.

Despite the above, his client was only informed in December, 2002. He argued that the decision was made in bad faith and that the same was unreasonable. It is on that basis that he has urged this court to quash the decision.

Mr. Olola has referred the Court to the affidavit of Eliakim Gichuhi and noted the repealed Water Act does not provide for any water undertaker apart from the concerned Municipal Council. He also referred the Court to the affidavit of Otawos – paragraph (3) which states that the 1st Respondent had no authority to claim for the water charges.

On the other hand, Mr. Nyamwange submitted that since all the actions were illegal, then the 2nd Respondent should not be ordered to pay costs. Apart from the above, Mr. Nyamwange referred the Court to Section 168 to 176 of the Cap. 265. According to him it is only the Municipal Council which can provide sewerage services. He concluded that the matters complained of were not occasioned by the 2nd Respondent.

This Court has carefully perused the submissions by both counsels. At the outset the Court hereby concurs with Mr. Olola that the notice given to his client to pay Kshs.2,045,400/- was unreasonable and unjustified. The amount being demanded is large and hence consumers should be given reasonable time to settle their bills. The period suggested by Mr. Olola of between one month and two months seem to be fair and realistic. Besides the above, this Court wishes to state categorically that public bodies do not have unfettered powers and discretion. "They should always act lawfully, fairly, reasonably and with due regard to public interest. That duty is even more pronounced where a public body has been granted a monopoly to provide serves to the public."

In view of the above, I hereby quash the decision of the Nakuru Water & Sewerage Services dated 31st October, 2002 and 10th December, 2002 respectively threatening to disconnect and/or block the Applicant from using the Nakuru Municipality Main Sewer Lines for its waster water disposal.

Costs to the Applicant in any event.

MUGA APONDI

JUDGE

Ruling read signed and delivered in open Court in the presence of

Mr. Kisila for Applicant and Mr. Kahiga for Respondent.

MUGA APONDI

JUDGE

20th April, 2005