



IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 300 OF 2003

JOHN F. MAKANGA.....PLAINTIFF

V E R S U S

THE KENYA POWER & LIGHTING COMPANY LTD.DEFENDANT

R U L I N G

In this Chamber Summons dated 28.3.2003, the Applicant is asking for mandatory injunction to compel the Defendant to reinstate the disconnected electricity Account No. 007-1467-01 on Mirema Drive.

The Plaintiff has got several electricity accounts in several various plots and houses in Nairobi and Nyeri.

1. Mirema account 0071467-01
 2. Kileleshwa account 0042695-01
- 696-01
- 697-01
- 698-01
- 716-01
- 727-01

That Defendant is restrained from interfering or disconnecting the Kileleshwa accounts in HCCC No. 459 of 2001 in a case between Plaintiff and Defendant.

That Mirema account has erroneous and disputed bill and on 25.3.2003 the Defendant disconnected Mirema Drive account 0071467- 01 and took away the meter yet the bill is disputed and the matter is in Court. The Plaintiff says that Defendant has renewed this meter in retaliation to the ones in Kileleshwa where there is an order stopping him. The Defendant feels wrongly disconnected.

In his grounds of objection, Defendant and replying affidavit by Christine Ilongo sworn on 3.4.2003 states that Defendant's meter reader and deponent, a supervisor discovered that on 24.3.2003 and 25.3.2003 that meter No. 470018 for the account No. 0071467-01 was interfered with by having one of the body seals cut off and the other fixed so power was disconnected and meter seal and served the Plaintiff with installation notice No. 10821. He is required to install a new meter.

The matters deponed to by the Respondent were not controverted and they show that the Plaintiff failed to disclose these facts in the affidavit. The matter in controversy here is the defective meter and not the disputed account. There does not seem to be logical to assume that because there is disagreement on the account and there are some cases on the other account there cannot independently of those matters a defect in a meter. The provision of Section 97 of the Electric Power Act of 1997 gives power to Defendant to discontinue the supply until a meter is remedied.

Mandatory injunction is a discretionary remedy. It is also an equitable remedy and therefore, the person coming to equity must have clean hands. The Applicant in failing to disclose the real dispute between the Defendant sought to reap an advantage. It is granted that mandatory injunction is a rare remedy and should be granted only on clear cases. The principles of application are settled, some of these are cited by Gicheru J.A. (as he then was), in the appeal E.A. FINE SPINNERS LTD. (In Receivership) and 2 OTHERS vs. REDI INVESTMENTS LTD. C.A. CIVIL APPLICATION NO. NAI 72 OF 1994 that: -

i) that although it is drastic the Court will still grant mandatory injunction as the justice of the case requires but the case must be unusually strong and clear

ii) that there is no bar for the Court granting mandatory injunction on grounds that in effect it constitutes the sole relief claimed,

the Court has to consider in the circumstances if a mandatory order and if so what mandatory order will produce fair result quoting, Megarry J., in SHEPHERD HOMES LTD. vs. SANDHAN (1970) WLR 365

“In this connection, the Court must.. take into consideration amongst other relevant circumstances the benefit which the order will confer on the Plaintiff and the detriment which it will cause the Defendant.”

To grant the order is to deny the Defendant the right to exercise statutory power and reinstate use of defective meter. This is not a case fit for award of mandatory injunction.

Application dismissed with costs.

DATED at Nairobi this 16th day of May 2003.

A.I. HAYANGA

JUDGE

Read to Miss Bor and Mr. Musili on 16th May 2003.

A. I. HAYANGA

JUDGE