



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 415 OF 2001

VIRGINIA WANJIRU MWANIKI PLAINTIFF

VERSUS

THE KENYA POWER & LIGHTING COMPANY DEFENDANT

J U D G E M E N T

The plaintiff filed a suit in this court on 15th March, 2001 and sought various orders amongst them:

(a) The bill dated 23 rd February, 2001 for Kshs.98,875/= and the demand notice for Kshs.100,000/18 be declared unwarranted, exaggerated, illegal, inhuman and without factual basis hence null and void.

(b) An injunction to restrain the defendant from disconnecting electricity supply to the plaintiff's house No. H. 161 Umoja Estate because of non payment of money indicated on the demand notice and electricity bill shwon (stated) in paragraph (a) ab ove and that the plaintiff be allowed to pay Kshs.2,174/80 to the defendant being electricity bill for January/February, 2001 – pending the determination of the suit. (c) That the defendant be ordered to supply a metre for the plaintiff's use to the extension of the main house No. H.161 Umoja estate.

(d) Any other order that the court deems fit to grant

(e) Costs and interest

Though it is indicated in the interlocutory judgement entered herein on 3rd October, 2001 that no appearance was filed by the defendant in this matter. I see there was one recorded on 14th August, 2001 but that no defence was ever entered. The interlocutory judgement must therefore have been entered in default of entry of the defence.

The case was fixed for hearing by way of formal proof on 29th November, 2001 when the plaintiff testified and she called one witness.

Though defence counsel was present for the purpose of cross examination of the plaintiff and her witness, there was no evidence called for such defence as the case was heard by way of formal proof.

The plaintiff and her witness testified that they own a house in Umoja estate otherwise known as No.H.161.

That they had constructed an extension to this house to which they wanted installation of electricity.

They approached the defendant to inspect the premises and to supply power thereto. That though a representative of the defendant went and inspected the premises, no power was supplied thereto as requested and/or paid for. But out of the blue, the defendant sent to the plaintiff a demand notice of Kshs.100,000.18 (see exh.2) and an electricity bill for Kshs.98,875/=.

There must have been a threat by the defendant to disconnect the power in the plaintiff's premises or that the threat was effected, hence this suit in court.

According to the defendants letter of demand for Kshs.100,000.18, dated 21st February, 2001 the defendant alleged that it had analysed the consumption records and of the account and established that the meter to the plaintiff's premises had been under recording between March 1995 and December 2000 and that based on new meter consumption, it had computed the lost revenues as follows:-

Average		monthly	consumption		305		units.		
Chargeable		units	March		1995		to		
November	2000	(69	months)	-	305	x	69	+	21,045
Chargeable		units	over	the	same		period		2,855
Hence		unchargeable			units				18,190
Cost	of	those	units	based	on	effective	rates		96,700/18
Cost		of			meter				3,300
TOTAL Kshs. 100,000/18									

But because of failure by the defendant to file defence, hence inability to testify in court, there was no demonstration as to how these units were calculated and/or arrived at. Working out figures on a piece of paper is not enough. The monthly bills produced by the plaintiff and/or her witness (see exh. 8 to 12) show an average monthly payments which would not the defendants figure adding to Kshs.100,000/18. There was absolutely no basis for the bill of Kshs.100,000/18 and/or Kshs.98,875/=.

The evidence adduced herein by the plaintiff and her witness has proved on a balance of probabilities that she is entitled to the first and second prayers sought in the plaint and I hereby grant the same.

As regards the third prayer given the prevailing circumstances it is only fair and just that parties continue negotiating taking into account that the plaintiff had already paid some money on account of this particular prayer as shown in exhibit 6.

I order the defendant to pay ½ costs of the suit to the plaintiff, and these shall be the orders of this court.

Delivered and dated this 6th day of February, 2002.

D.K.S
JUDGE

AGANYANYA