

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO.118 OF 2002

BIRCH INVESTMENTS (EPZ) LTD PLAINTIFF

VERSUS

NATIONAL WATER CONSERVATION &

PIPEPLINE CORPORATION DEFENDANT

R U L I N G

Application dated 27/3/2002 is before the Court for interlocutory injunctions pending hearing of this suit. The grounds relied upon are stated on the application and there is supporting affidavit. It is submitted that there is a contract between the parties for the supply of water to the applicant so long as the Applicant shall continue paying for water supplied and consumed. The payment is by way of monthly billings after reading of metres provided for the purpose. It is further submitted that all bills submitted to the applicant are paid regularly on presentation. However the applicant fears that the Respondent will disconnect the supply of water as he has threatened to do and the applicant stands to suffer great loss of business in its garment manufacturing trade and some 800 workers may be laid off. The applicant operates at an Export Processing Zone (EPZ) The affidavit in support shows that the employees of the Defendant visited the premises and demanded Shs.4 million for what they said is unmetered water supply. They also verbally alleged that water supply is not properly installed.

The applicant refuses to pay the demand saying the payment is not due as applicant has not consumed any unmetered water.

For the Respondent grounds of opposition are filed where it is alleged no prima facie case is shown, the application is premature, is blatant abuse of court process and no reasonable cause of action is disclosed as it deals with mere apprehension and fear and not cogent facts. Finally the Respondent says the court has no discretion to interfere with the respondent's justified contractual expectations.

Upon hearing submissions of both counsel I am satisfied that the Applicant is justified in coming to court to restrain the threatened breach of the contractual obligations by the Respondent. It is said that the threat was verbal and this does not comply with the requirements of the regulations under which the Respondent operates but I say the threat does not have to be made in accordance with regulations so long as it is perceived to be a threatened breach. If the supply of water to the Applicant's business was to be disconnected it is obvious that the garment manufacturing would be disrupted and there might be massive loss of business. This is against public policy. Furthermore the amount of money involved is substantial and the applicant is entitled to detailed particulars of what he is spending such large sum for. I find that the Applicant has a prima facie case with a chance of success. The amount of damages that would otherwise be suffered if order was refused would be such that no amount of damages would be adequate compensation. The business of the Respondent is that of water undertaker under the provisions of Water Act. It is mandated to provide water in the country and it is under great burden to prove that any water consumer does not deserve to be supplied with water.

For these reasons I exercise my discretion and grant the orders sought pending the hearing of this suit. Application is allowed with costs to the applicant.

Dated at Mombasa this 10th Day of May, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in presence of Saende for Ndegwa for Plaintiff.

J. KHAMINWA

COMMISSIONER OF ASSIZE