



Okwaro (Suing as the Registered Proprietor and Manager of Boston High School and Boston Primary School) v Nairobi City Water & Sewerage Company Limited (Environment & Land Case E092 of 2025) [2025] KEELC 4314 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4314 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E092 OF 2025
CA OCHIENG, J
JUNE 10, 2025**

BETWEEN

STEPHEN ETOYI OKWARO (SUING AS THE REGISTERED PROPRIETOR AND MANAGER OF BOSTON HIGH SCHOOL AND BOSTON PRIMARY SCHOOL) PLAINTIFF

AND

NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 24th February, 2025 where he seeks the following Orders:
 1. Spent.
 2. Spent.
 3. Spent.
 4. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an injunction restraining the Respondent, its agents, servants, employees, or any person acting under its authority from disconnecting, interfering with, vandalizing, or otherwise tampering with the boreholes situated on the Applicant's properties, namely LR No. 13XX6/045, LR No. 13XX6/1X9 and Block A 4X3, or imposing unlawful metering requirements on the same.
 5. That this Honourable Court be pleased to declare that the Respondent's actions, including disconnection order issued on 17th February, 2025 and the vandalism of the Applicant's



borehole installations, are unconstitutional, ultra vires, and in violation of the Applicant's rights under Articles 40, 47 and 64 of *the Constitution* of Kenya 2010.

6. That the costs of this application be borne by the Respondent.
2. The application is premised on the grounds on the face of it and the supporting affidavit of STEPHEN ETOYI OKWARO where he confirms to be the Manager of Boston High School and Boston Primary School, located on LR No. 13XX6/045, LR No. 13XX6/1X9 and Block A 4X3 respectively, hereinafter referred to as the 'suit lands'. He claims to be the lawful proprietor of the suit lands, which properties serve as the operational bases for the aforementioned educational institutions, that he developed and managed to provide basic education to the community. He explains that he sought authorization to drill boreholes on the suit lands and the Defendant issued him with a 'no objection letter', explicitly consenting to the drilling of boreholes on the said properties and acknowledging that such installations would not interfere with its water and sewerage mandate. Further, that after fulfilling all conditions and statutory requirements, he obtained formal authorization from the Water Resources Authority (WRA) permitting him to drill and operate the boreholes. He states that the boreholes were issued with installation meters to monitor water usage and have since been the sole source of water for the schools, ensuring compliance with sanitation and operational standards mandated for educational institutions.
3. He avers that on 30th January, 2025, officers from the Respondent, led by one Mr. Wachira conducted a routine inspection of the suit premises and confirmed that he is not a consumer of the Respondent's sewer services. Further, he was advised to terminate Meter Account No. 5239959, previously installed by the Respondent. He explains that on 17th February, 2025, officers of the Respondent forcibly entered his premises without prior notice, issued a disconnection order and proceeded to vandalize the WRA authorized borehole installations. Further, the Respondent's officers removed critical equipment, including the meters installed on the boreholes rendering them inoperable and leaving them in a state of disrepair.
4. The Respondent opposed the instant application by filing a replying affidavit sworn by BONIFACE KIMOROP, its Zonal Coordinator where he contends that the Applicant has failed to enjoin WASREB and WRA to these proceedings, despite the fact that the two agencies work in tandem with the Respondent herein on water issues within Nairobi County. He confirms that the Applicant sought authorization to drill boreholes on the suit lands, but this was subject to various terms and conditions. Further, that the Applicant was granted formal authorization by the Water Resources Authority (WRA) which was also conditional. He explains that the crux of the matter relates to termination of the account number 5239959 and the reason for termination is that the Applicant had installed a biodigester. Further, that this was so that the Applicant would stop paying sewer disposal levy, which is prescribed in the 2023 gazette. He reiterates that vide a letter dated the 18th December, 2018 and copied to the Managing Director of the Respondent herein, the Water Services Regulatory Board indicated that the Applicant had been supplying water to some customers from the disputed borehole, of which he had not informed the Respondent that his customers are discharging to the sewer line. Further, that the Applicant does not have a license to supply water issued by WASREB hence his actions are illegal. He avers that even though the Applicant had permits issued by Water Resources Authority, they were for domestic use and not for commercial purposes, hence he was in violation of the law. Further, that in the approved tariff of the Respondent, all customers discharging waste water to the sewer line are required to pay 75% of the volume of water consumed. He contends that the Respondent issued the Applicant with certain conditionalities to wit: cooperating with it; providing data on the customers he was supplying water; obtaining a letter of no objection from it, to allow him supply water to the neighbourhood; secure a license from WASREB to legally supply water;



and meeting the service and quality standards of WASREB. He reiterates that the Applicant has been supplying water to the neighbourhood without a license.

5. The Applicant filed a further affidavit reiterating his averment. He contends that he owns a total of five (5) boreholes across his properties. Further, that for the purposes of the instant application, he is concerned with boreholes located on the suit lands as they serve Boston High School and Boston Primary School exclusively. He insists that these boreholes are integral to the provision of water for the daily operations of the schools. He argues that the other boreholes which serve his commercial interests are entirely irrelevant to this matter and are not part of his application. Further, that the Respondent's replying affidavit introduces irrelevant references to other boreholes specifically account no. 5318337 relating to flats on LR No. 439 and alleged activities, which are not subject to this suit. He avers that the Respondent's allegations that he is supplying untreated water are baseless. He insists that the Respondent removed critical equipment such as metres, which rendered the boreholes non-functional and disrupted water supply essential for sanitation and general use at the schools.
6. The application was canvassed by way of written submissions.

Analysis and Determination.

7. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivaling submissions, at this juncture the only issue for determination is whether an interlocutory injunction should issue pending the outcome of the suit, restraining the Respondent including its agents from disconnecting, interfering with, vandalizing, or otherwise tampering with the boreholes situated within the suit lands.
8. In relying on the principles as established in the case of *Giella vs Cassman Brown* (1973) EA 358 as well as the description of a prima facie case as espoused in the case of *Mrao Ltd v First American Bank Limited* (2003) eKLR, I will proceed to decipher if the Plaintiff has indeed established a prima facie case to warrant the orders of interlocutory injunction as sought.
9. The Applicant seeks an injunction to restrain the Respondent from interfering with the boreholes on the suit lands. The Applicant contends that he obtained authorization from WRA to drill boreholes on the suit lands and the Respondent issued him with a 'no objection letter', explicitly consenting to the drilling of boreholes on the said properties. Further, that the Respondent acknowledged that such installations would not interfere with its water and sewerage mandate.
10. He confirms that after drilling, the boreholes were issued with installation meters to monitor water usage and have since been the sole source of water for the aforementioned schools. He avers that on 30th January, 2025, officers from the Respondent, led by one Mr. Wachira conducted a routine inspection of the suit lands and confirmed that he is not a consumer of the Respondent's sewer services. Further, he was advised to terminate Meter Account No. 5239959, previously installed by the Respondent.
11. He explains that on 17th February, 2025, officers of the Respondent forcibly entered his premises without prior notice, issued a disconnection order and proceeded to vandalize the WRA authorized borehole installations. Further, the Respondent's officers removed critical equipment, including the meters installed on the boreholes rendering them inoperable and leaving them in a state of disrepair.
12. The Respondent opposed the instant application and contends that the Applicant has failed to enjoin WASREB and WRA to these proceedings despite the fact that the two agencies work in tandem with the Respondent herein on water issues within Nairobi County. The Respondent does not dispute that the Applicant obtained authorization to drill boreholes on the suit lands but insists that this was subject



to various terms and conditions. It claims the crux of the matter relates to termination of the account number 5239959 and the reason for termination is that the Applicant had installed a biodigester.

13. It insists that vide a letter dated the 18th December, 2018 and copied to the Managing Director of the Respondent herein, the Water Services Regulatory Board indicated that the Applicant had been supplying water to some customers from the disputed borehole of which, he had not informed the Respondent that his customers are discharging to the sewer line. Further, that the Applicant does not have a license to supply water issued by WASREB hence his actions are illegal. It avers that the Applicant has not secured a license from WASREB to legally supply water and meeting the service and quality standards of WASREB. Further, that the Applicant has been supplying water to the neighbourhood without a license.
14. I note the Applicant was indeed granted authorization by WRA to drill the boreholes, in accordance with the Water Act. Further, that WRA installed their meters on the said boreholes. The Respondent has interfered with the boreholes and removed equipment thus hampering water supply to the schools situated on the suit lands. The Respondent contends that the Applicant should have joined WRA and WASREB in this suit, but I note there is no indication that these two agencies had raised complaints with the Applicant in respect to the boreholes. Further, it is the one that interfered with the boreholes on the suit lands, which forms the fulcrum of this dispute.
15. In the case of *Azalea Holdings Limited v Nairobi City Water & Sewerage Company Limited* [2023] KEELC 16691 (KLR), it was held that:

“In the event that the water source is disconnected, the repercussions will be more than monetary losses. I am persuaded that by the very nature of water being equated to life, damages would not be adequate.”
16. While in *Salford Investment Limited v Nairobi City Water & Sewerage Co. Ltd* [2021] KEELC 815 (KLR), it was held inter alia:

“... The cumulative effect and significance of lack of water in human life cannot be quantified to warrant compensation of its loss, this is synonymous with the saying that, ‘water is life’. The normative content of the right to water is set out in UN General Comment 15; that the substantive contents of the right to water include availability, accessibility and quality. The Comment stipulates that; “the right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” Lack of water may lead to applicant’s tenants to suffer any health concerns, the same may not be compensated by costs. As such the Court finds that the Applicant stands to suffer irreparable loss.”
17. Based on the facts as presented while associating myself with the decisions cited, I find that since the Applicant was legally licensed to drill boreholes by WRA that issued him with metres, and which boreholes were supplying water to the schools situated on the suit lands, he has indeed established a prima facie case. Further, in my view since both the Applicant and Respondent are licensed suppliers of water and if the issue in dispute was metering, the Respondent should have adhered to the proper legal processes by issuing a proper notice, instead of arbitrarily interfering with the boreholes, which were supplying the two schools with water. I further find that the Applicant has indeed suffered irreparable loss due to the interference of the boreholes and damages cannot be adequate remedy, since the water from the borehole is what is utilized in the two schools.
18. In the foregoing, I find the instant Notice of Motion application partially merited and will allow prayer No. 4 in the following terms:



1. That pending the hearing and determination of this suit, a temporary injunction do issue for one year, restraining the Respondent, its agents, servants, employees, or any person acting under its authority from disconnecting, interfering with, vandalizing, or otherwise tampering with the boreholes situated on the Applicant's properties, namely LR No. 13XX6/045, LR No. 13XX6/1X9 and Block A 4X3 or imposing metering requirements on the same.
2. Costs of this application will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF JUNE 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Isinta for Respondent

Nyaberi for Plaintiff

Court Assistant: Joan

