



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. E029 OF 2020

HENRY OSURA ISURA.....1ST PLAINTIFF
KUI KAMURU.....2ND PLAINTIFF
TIMOTHY MULI.....3RD PLAINTIFF
CAROLYNE NGENY.....4TH PLAINTIFF
EDWIN KENGARA.....5TH PLAINTIFF
LEON OVYA.....6TH PLAINTIFF
MAURICE N OROGE.....7TH PLAINTIFF
JOAN LESBITT.....8TH PLAINTIFF
SALLY KARIUKI.....9TH PLAINTIFF
CIRU WAITITI.....10TH PLAINTIFF
ANNE WAMITI.....11TH PLAINTIFF
STEPHANIE WANJIRU.....12TH PLAINTIFF
JUNE KUNG'U.....13TH PLAINTIFF

-VERSUS-

CHINA YUANDA REAL ESTATE GROUP LTD.....1ST DEFENDANT
WU DONGLI.....2ND DEFENDANT
JUSTIN NYACHIRO.....3RD DEFENDANT
JONATHAN ZHANG.....4TH DEFENDANT

RULING

1) The plaintiffs/applicants took out the motion dated 23rd July 2020 in which they sought for the following orders:

a) THAT this application be certified urgent and service thereof be dispensed with.

b) THAT this honourable court be pleased to issue interim orders compelling the 1st defendant, its employees, agents and/or servants to forthwith reconnect water supply to the plaintiffs' apartments pending the inter partes hearing of this application.

c) THAT this honourable court be pleased to issue a temporary injunction against the respondents herein either themselves or by their authorized agents and/or employees from disconnecting the water supply to the applicant's houses pending the hearing and determination of this application.

d) THAT this honourable court be pleased to issue a permanent injunction against the respondents herein either themselves or through their authorized agents and/or employees from disconnecting the water supply to the applicant's houses.

e) THAT this honourable court direct the 2nd, 3rd and 4th respondents (the 1st respondent's authorized representatives) to provide the applicants herein with a breakdown of costs (basis of KES 120 per cubic metre) comprising their respective water bills indicating the water consumption of each housing unit reconciling with the main meter from the Nairobi Water.

f) THAT the costs of the application be provided for.

2) The motion is supported by two affidavits sworn by Henry Osuru Isura. The defendants filed the replying affidavit sworn by Justine Nyachiro to oppose the plaintiffs' motion.

3) When the motion came up for interpartes hearing, parties resolved to file and exchange written submissions. I have considered the grounds stated on the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the rival written submissions and the authorities cited by the parties.

4) The plaintiffs are seeking for both mandatory and prohibitory orders of injunction. The principles to be considered in determining such applications were stated in the case of **Giella vs= Cassman Brown (1973) E.A 358** where it was held *inter alia* as follows:

“The conditions for the grant of an interlocutory injunction are now, well settled in East Africa. **First**, an applicant must show a prima facie case with a probability of success.

Secondly, an interlocutory injunction will not normally be granted unless the applicant might suffer irreparable injury which would not adequately be compensated by an award of damages.

Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”

5) Before determining the motion, it is important to first set out the brief background of this dispute. A cursory perusal of the pleadings reveals that the plaintiffs are owners of various apartments in La Lucia Court erected on L.R no.209/22089 (original no. 209/7324) save for Leon Ouya, the 6th plaintiff. It is also not in dispute that all the plaintiffs have paid their respective purchase prices and executed their respective leases. It is also not in dispute that when the plaintiffs moved into their respective houses there was a constant supply of water.

6) The defendants denied that they disconnected the water supply to the plaintiffs' apartments. The defendants further averred that if they disconnected the water supply, then the plaintiffs must have failed to pay their water bills. The defendants' action prompted the plaintiffs to institute this suit and the current application.

7) Having given a brief background of this dispute, I now turn my attention to the plaintiffs' motion. It is the submission of the plaintiffs that they have a prima facie case with a probability of success. The plaintiffs averred that the 1st defendant acting through its manager, the 3rd defendant served them with a demand for payment of water bills indicated to be due failure to which the water would be disconnected. It is argued that without the plaintiffs being heard the water supply was disconnected on 29th June 2020.

8) The plaintiffs submitted that the defendants' action was in breach of the contract and that their right to clean and safe water was infringed thus making them suffer untold hardship, loss and damage. The plaintiffs pointed out that the water bill served upon them had no tabulation of the monthly water consumption yet the 3rd defendant constantly recorded the meter readings.

9) The plaintiffs also argued that the water bill at the rate of ksh.120 per cubic metre was excessive and unreasonable in comparison to the rates charged by the Nairobi City Water and Sewerage Company of kshs.53 per cubic metre for residential units.

10) The defendants on their part opposed the plaintiffs application stating that the same does not meet the requirements for granting an order of injunction. The defendants pointed out that the plaintiffs are under an obligation to pay for all charges for water supplied and consumed including meter rent and other charges.

11) It is further argued that the plaintiffs are under obligation in clause 1(5) (b) of the respective leases to pay for water charges consumed from the borehole sunk on the said Lalucia Court at the rate charged by the City County of Nairobi Water Company or other water supplying authority. The defendants pointed out that under the lease they have a right to disconnect the water supply should any apartment owner fail to pay for the water consumed.

12) The plaintiffs claim is that the defendants disconnected their water supply without hearing them and in breach of their constitutional right to clean and safe water. They claimed that they were not given a reasonable opportunity to settle the said water bill. Further, the plaintiffs aver that they were not given a chance to interrogate the figures for accountability purposes. The defendants aver that they are under the lease entitled to disconnect the water supply where the water bills have not been settled. After a careful consideration of the material placed before me, I am convinced that the plaintiffs have shown they have a prima facie case.

13) The defendants have expressly stated that they did not disconnect the water supply to the plaintiffs' apartments. Clause 1(v) (a) of the

respective leases mandates the defendants to disconnect water supply to the plaintiffs' apartments where the plaintiffs failed to pay.

14) Though the defendants denied having disconnected the water supply, I am persuaded by the plaintiffs, affidavit evidence that the defendants did so. The question as to whether they gave the plaintiffs sufficient notice of demand to settle the water bills is a matter that should be determined at the trial. The other issue which belongs to the trial court is the calculation of the rate of charges. The third and final issue which belongs to the trial court is whether or not the plaintiffs were given a right of hearing.

15) The second principle is whether the plaintiffs have shown the irreparable loss they may suffer should the order of injunction be denied. With respect, I am persuaded by the plaintiffs' submission that the effects of disconnection of water supply to the plaintiffs' apartments cannot be adequately compensated in damages. At the moment, the country is facing COVID 19 pandemic. One of the guidelines the Ministry of Health has given is that people must wash their hands. Water is a critical component in the fight against the Covid 19 pandemic. The lack of water will expose the plaintiffs to the disease. That in itself cannot be compensated in monetary terms. I am satisfied that the plaintiffs have shown the irreparable loss they would suffer if the order for injunction is denied.

16) Since I am not in doubt I do not want to belabor considering the third principle on a balance of convenience.

17) In the end, I find the motion dated 23rd July 2020 to be meritorious. Consequently, it is allowed thus giving rise to a grant of the following orders:

- i. An order of mandatory injunction is granted compelling the 1st defendant, its employees, agents and or servants to forthwith reconnect water supply to the plaintiffs' apartments listed herein pending the hearing and determination of this suit.**
- ii. The 1st defendant and its authorized representatives i.e the 2nd, 3rd and 4th defendants to provide the plaintiffs with a breakdown of costs charged per cubic metre of water and thereafter proceed to undertake reconciliation of accounts on the outstanding water bills to enable the applicants settle the outstanding bills.**
- iii. The parties to file the reconciled bills in court within 30 days.**
- iv. The matter to be mentioned in court on 15/12/2020 for further orders and directions.**
- v. Each party to bear its own costs of the motion.**

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 6th day of November, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant