



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 176 OF 2017

CHRISTOPHER WAINAINA MBURU.....PLAINTIFF

VERSUS

CONSUMATE COURT LIMITED.....1ST DEFENDANT

NAIROBI CITY WATER & SEWERAGE CO.LTD.....2ND DEFENDANT

RULING

Before the court for determination, is the application dated the 8th day of August 2018 brought by the plaintiff/Applicant under Sections 1A, 1B, 3A and 18(1)(a) of the Civil Procedure Act and Orders 40 and 51 of the Civil Procedure Rules and Article 43(1) (d) of the Constitution of Kenya 2010 seeking the following orders;

- a) Spent
- b) That the plaintiff be and is hereby granted liberty to source direct water connection from the 2nd Defendant
- c) That the 2nd Defendant, its agents or servants do hereby dispense with the consent of the 1st Defendant forthwith and directly supply water to the Plaintiff's Apartment pending the hearing and determination of this suit.
- d) That there be an audit/inspection and rectification of the water piping system of the Plaintiff's Apartment by an independent plumbing contractor.
- e) That the 1st Defendant, its agents or servants do hereby grant access to the independent contractor to access the plumbing ducts that run through other apartments.
- f) That the costs of this application be to the Plaintiff.

The application is premised on the grounds set out on the body of the application and its supported by the annexed affidavit of Christopher Wainaina sworn on the 8th day of April 2018.

The plaintiff who is the co-owner, jointly with his wife Charity Lumbasi Wainaina of Apartment No. Unit B1 on a building erected on Land Reference number 330/315 situated in Kilimani area in Nairobi, is a shareholder of the first defendant which is the managing company in charge of the building in which the plaintiff's Apartment is one of the 26 apartments and other facilities developed therein.

The 2nd defendant is a water service provider with a mandate to provide water and sewerage services to the residents of Nairobi.

That under the lease agreement, the first defendant is mandated to manage the property on behalf of the lessors and in that capacity the 2nd defendant supplies water to it through a single common meter and 1st defendant thereafter redistributes the water to the individual units of which the plaintiff's is one of them.

That in supplying the water, the 1st defendant uses sub-meters not calibrated to the 2nd defendant's approved meters to bill each individual apartment using a formula unknown to the plaintiff and even the bills that are presented to the plaintiff have no indication of water connection readings or billing rate on them. The plaintiff avers that the bills are always inflated amounts which are way above average billing of residential units with similar occupancy in the same area.

The plaintiff further contends that the first defendant severally defaulted in water payment towards the 2nd defendant which led to

disconnection of the water on account of nonpayment. That the plumbing works are unprofessionally done and have been tampered with and therefore, water from the plaintiff's tank is being irregularly misdirected to other apartments and to the common areas in the premises.

That due to recurrence of the nonpayment of water and the faulty billing system by the 1st defendant, the plaintiff made an application to the 2nd defendant to have a separate direct water connection to his apartment and by virtue of that application he hired a professional plumber, installed water storage tanks and pipes so as to facilitate the connection but despite meeting all the conditions stipulated by the 2nd defendant, the plaintiff cannot be supplied with water by the 2nd defendant without the consent of the first defendant as provided for in Clause 1.8 of the lease agreement which requires that the 1st defendant has to grant a consent to the 2nd Defendant before it can install direct water supply.

The plaintiff deponed that since the disconnection of the water supply, he has been forced to buy water from the vendors which is then piped into a tank that is set at the top of the building and when the water is being piped up, it may be redirected to other apartments. That, due to the poor piping system in place, irregular or illegal water connections which has led to high water consumption rates, he has been forced to spend a lot of money on water which is too expensive and unsustainable for a residential home with a single occupant.

He further depones that due to the problem of water shortage, the tenant he had in the Apartment vacated. He relies on the rent to service the mortgage as he acquired the Apartment under a mortgage and the vacation of the tenant due to water shortage has put him in a bad financial situation in repaying the mortgage. That considering the current water situation, it will be impossible to get another tenant to rent out the Apartment.

He contended that he has made numerous efforts to engage the 1st and 2nd defendants on resolving all the outstanding disputes relating to the water connection but they have frustrated his efforts. That in the circumstances, he is apprehensive that the defendants will continue to undermine any need for direct access and connection to water and it's only fair that the orders sought in his application are granted.

When the application came up for hearing on the 9th day of October, 2018, counsel for the 2nd defendant informed the court that they were not opposing the plaintiff's application dated the 8th day of August 2018 and the court put that on record.

The first Defendant did not attend court though it had been served via registered post and an affidavit of service filed to that effect on the 8th day of October 2018. It did not file a response to the application either, and therefore, the application proceeded *ex parte*.

The court has considered the application and the material before it, in support of the application. I have also considered the submissions made by the counsel for the plaintiff. The plaintiff has annexed the title documents to the Apartment number Unit B1- Consumate Court L.R. No. 330/15 – Kilimani Nairobi and marked as annexure 1. In his affidavit in support of the application, he has set out in great details the problem he has encountered while trying to have direct water connection to his apartment from the 2nd defendant instead of having to buy water through the first defendant whose bills are inflated.

Despite the efforts that he has made to have the water connected, the 2nd defendant has declined to supply his Apartment with water without the consent of the first defendant as provided for in the lease agreement but which consent, the first defendant has withheld, hence the application before the court.

After carefully perusing the documents availed to this court by the plaintiff and after considering the facts set out in the affidavit in support, I find that the Application has merits and the same is allowed as prayed.

The costs of the application are awarded to the plaintiff to be borne by the first defendant.

Dated, Signed and Delivered at Nairobi this 5th day of November, 2018

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L. NJUGUNA

JUDGE

In the presence of:-

..... **For the Plaintiff/1st Respondent**

..... **For the Defendants/2nd Respondent**