

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 311 OF 2016

HON. KENNEDY ODHIAMBO NYAGUDI.....PLAINTIFF

- V E R S U S -

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT

RULING

1) On 20.12.2016, this court delivered its ruling in which it directed the parties to jointly or separately approach either, the Kenya Bureau of Standards (KBS) or the Energy Regulatory Commission (ERC) to appoint an independent electrical engineer to visit the plaintiff's farm to ascertain whether or not electricity has been connected and the actual measurement of the supply. The report was to be filed in court within 14 days from the date of appointment.

2) When the matter came up for mention before this court on 9/2/2017, Mr. Aduda, learned advocate for the plaintiff, informed this court that the defendant had not complied with the court order. The learned advocate pointed out that the defendant had filed two conflicting reports. Mr. Ouma, learned advocate for the defendant, informed this court that defendant had fully complied with this court's order issued on 28.11.2016 compelling the defendant to reconnect electricity to the plaintiff's farm. This court adjourned the matter to 16.2.2017 to enable it consider the averments in affidavits filed by the parties and to thereafter determine the question as to whether or not electricity had been connected to the plaintiff's arm.

3) I have considered the oral submissions of learned counsels appearing in this matter. I have also taken into account the averments and reports annexed to the rival affidavits. The defendant filed an expert report prepared by Engineer Jonathan Rono and assisted by Michael Sigei from the Energy Regulatory Commission dated 6.1.2017. The summary of the report shows that electricity has been connected to the plaintiff's farm and that the measured voltages are within the acceptable limits and that the connection is a three phase supply.

4) In a lengthy replying affidavit sworn by the plaintiff, this was urged to reject the expert report prepared by Eng. Jonathan Rono for various reasons. The plaintiff pointed out that the defendant failed to avail him with the necessary documents to enable him to engage Kenya Bureau of Standards to prepare a report. It is said that the report was filed outside the 14 days given by court. It is also said that the report failed to address the basic and fundamental issues like the number of transformers in the farm. It is also stated that the Engineer failed to determine whether or not the transformers on site were faulty. The plaintiff further argued that the report contradicted that of Thomas Kiptoo Sambu as to the voltage supplied. The report of Eng. Rono states that the plaintiff was supplied with 415+6% volts whereas Sambu states that 242 volts had been supplied. The plaintiff averred that fake and doctored documents were used to compile the report. It is further submitted by the plaintiff that he was not notified of the date when the Engineers from Energy Regulatory Commission would visit his farm thus casting doubt to their intentions. The plaintiff was of the view that defendant conspired with the engineers from the Energy Regulatory Commission to prepare the report using false and doctored documents.

5) Having considered the rival submissions and the rival averments, I have come to the conclusion that though the engineer's report prepared by Engineer Jonathan Rono is disputed and discredited by the plaintiff, there is no other expert report to controvert the aforesaid report. I have taken into account the concerns raised by the plaintiff. I am of the view that the report cannot be rubbished nor taken as the gospel truth. However the fact remains that there is an expert report showing that the defendant has connected electricity supply to the plaintiff's farm. The question as to whether or not the supply is

sufficient is a matter to be determined at the hearing. I am therefore unable to make a conclusive findings that the defendant is in breach of the court order. Consequently I decline to cite the defendant for contempt. The motion dated 25.11.2016 should be fixed for interpartes hearing. This court is also of the view that the substantive suit should be fast tracked so that the same can be heard and determined expeditiously.

Dated, Signed and Delivered in open court this 16th day of February, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant