



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 146 OF 2016

SAMURA ENGINEERING LIMITED.....PLAINTIFF

- V E R S U S -

NAIROBI CITY WATER AND SEWERAGE CO. LIMITED.....DEFENDANT

RULING

1) The subject matter of this ruling is the amended motion dated 2.6.2016 taken out by the plaintiff/applicant whereof it sought for *inter alia*:

1. This honourable court be pleased to issue a temporary injunction restraining the defendant from disconnecting the sewer for meters number 1112079 and 1112080 pending hearing of this suit.

2. This court do issue a mandatory injunction against the defendant compelling them to reconnect water meter account meters number 1112079 ad 1112080 pending hearing of the suit.

3. Costs be provided for in the cause.

2) The motion is supported by the affidavit of Ng'ang'a Ngaruiya. When served, the defendant filed the replying affidavit of Esther Githui. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

3) I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. I have also considered the rival written submissions. I have already set out the sort of prayers the plaintiff/applicant is seeking from this court. The plaintiff avers that it is a tenant in L.R no. 209/9264/1 and L.R no. 209/9264/2. The aforesaid plots are said to be registered in the joint names of Mungai Ngaruiya and Elizabeth Ngaruiya. It is said that meter no. 1112079 is on L.R no. 209/9264/1 while meter no. 1112080 is on L.R. No. 209/9264/2. It is the complaint of plaintiff that the defendant/respondent disconnected water from the two plots using the bill for meter on L.R no. 209/9264/2. The plaintiff submitted that it runs a plastic manufacturing division with over 50 workers and has been servicing the two metres for over 10 years and as the sole occupant of the said premises. The plaintiff's complaint is that the defendant's suggestion that the parcel of land known as L.R no. 209/9264/2 was purchased by Samura Engineering Ltd and hence all debts accruing on the aforesaid parcel should be paid by them. The plaintiff pointed out that the aforesaid property is registered under a different name as stated herein. The plaintiff further argued that it was not possible for the water accounts to run for 5 years without payments. The plaintiff denied knowledge to any other meters and stated that the defendant is guilty of laches and mischievous having disconnected the meters that have been paid in order to force them to pay for meters that do not belong to them but belong to Lakhani Millers and Kuldy Badhan Sigh. The plaintiff also denied that meter no. 1126114 was in use from 15.07.2000 and was

reactivated to run from 4th February 2009 and similarly meter no. 1274552 was not in use from 15.07.2000 and reactivated on 07.01.2009. A careful perusal of paragraph 4 of the replying affidavit of Esther Githu shows that the defendant admits that the two meters that are in arrears were opened before the plaintiff's meters existed. This creates doubt whether the two meters were owned by the plaintiff. This is complicated by the fact that the defendant did not attach any documents showing the account opening instructions or application. The plaintiff argued that it should not be forced to settle bills for water it did not consume.

4) The defendant is of the view that the plaintiff has not demonstrated that it has a prima facie case to warrant a grant of injunctive relief. It is pointed out by the defendant that the plaintiff is and was the only occupant and tenant of the property where the subject meters were situated for the period of unpaid bills in question. It is further submitted that the plaintiff failed to make payments on two meters on the said premises rendering the account in arrears and therefore subject to lawful disconnection, as per the terms and conditions of the supply by the tenant.

5) The defendant further argued that the subject matter herein is the water connection and supply to the plaintiff's business premises whose value can easily be determined hence no irreparable loss can arise.

6) The defendant further argued that the balance of convenience tilts in favour of the defendant on account of public interest since the substantial amount of money and debts like in the present one threatens to run the defendant to the ground.

7) Having considered the rival arguments, the issue which must be resolved is whether the plaintiff's amended motion meets the requirements for the grant of both prohibitive and mandatory injunctions. The plaintiff has stated that the defendant has disconnected water to its premises yet there are no outstanding bills in respect of meters nos. 1112079 and 1112080. It is argued that the defendant used outstanding bills in respect of meters no. 1274552 and 1126114 to disconnect those of its meters.

8) Despite having denied being the ownership of the aforesaid meters, the defendant failed to controvert the assertion. It failed to put forward documents showing that the meters with outstanding payments of water bills belonged to the plaintiff. That is a vial piece of evidence which can actually establish who is indebted to the defendant. I am convinced that the plaintiff has shown that it has a prima facie case with high prospects of success. If the defendant continued to deny the plaintiff supply of water, the plaintiff which runs a manufacturing plant will suffer huge losses cannot easily be established in monetary terms and even if is so established then the losses will be so enormous that no party can be able to compensate the plaintiff. In the circumstances of this case I think it is justified to grant an order of mandatory injunction to obviate a situation where the plaintiff is forced to close its business and render employees jobless.

9) In the end, I find the amended motion dated 2/6/2016 to be meritorious. It is allowed in terms of prayer 4 and 5 with costs to the plaintiff.

Dated, Signed and Delivered in open court this 2nd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant