

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 502 OF 2013

ISAIAH NGOTHO WATHEKAPLAINTIFF/APPLICANT

VERSUS

NAIROBI & SEWAGE COMPANY LIMITED.....1ST DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL2ND DEFENDANT/RESPONDENT

RULING

There are two applications by the plaintiff and 1st defendant respectively. They relate to a deposit of Kshs. 500,000/= paid into court by the plaintiff pursuant to a court order made on 11th December, 2013 as a condition for the reconnection of water supply to his premises. His premises had been occupied by the Criminal Investigations Department who in this suit are represented by the 2nd defendant while the first defendant is the company that supplies water to the residents of the city of Nairobi.

The water supply to the premises known as LR No. 209/1584/3 had been disconnected due to an outstanding bill of Kshs. 2,743,861.69. Upon the disconnection of the said water, the plaintiff filed an application to restrain the 1st defendant from disconnecting the said supply. The order was given subject to the payment of the above security.

Subsequently, the entire bill was settled by the 2nd defendant and now there is an application by the plaintiff dated 3rd September, 2015 for the release of the said sum to the plaintiff's advocate. The grounds for seeking the said order are set out on the face of the application in addition to the supporting affidavit sworn by the plaintiff.

On the other hand the 1st defendant filed an application dated 9th September, 2015 seeking the dismissal of the suit for want of prosecution and that the sum of Kshs. 500,000/= deposited by the plaintiff as security be applied towards the settlement of the 1st defendant's costs. The grounds for the orders sought are set out on the face of the application.

Both parties have filed written submissions which I have noted. The sum of Kshs. 500,000/= was not deposited in court as security for costs but as a condition for reconnection of the water supply. As at the time the plaintiff filed the suit against the 1st defendant, he had a reasonable cause of action against the 2nd defendant. It is the 2nd defendant who in fact settled the water bill due and payable by the tenant who was occupying the plaintiff's premises.

If there are any costs due and payable these should be paid by the 2nd defendant. There is every right for the plaintiff to claim his deposit back unconditionally and there is also every right for the 1st defendant to claim costs if any, against the 2nd defendant. The plaintiff cannot be punished for a mistake of a 3rd party, in this case the 2nd defendant. In any case, this suit is still alive and any claim for costs at this stage is premature.

In view of the foregoing the plaintiff's application hereby succeeds while the 1st defendant's application is dismissed. The sum of Kshs. 5,000,000/- shall be released to the plaintiff's advocates as prayed in the application dated 3rd September, 2015. The costs shall be in cause.

Dated, signed and delivered at Nairobi this 7th Day of June, 2016.

A. MBOGHOLI MSAGHA

JUDGE