REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL SUIT NO. 9 OF 2016

Mathira Water & Sanitation Company Limited .....……..…….....Plaintiff

Versus

Steve N. Murimi (Sued in his capacity as the

Chairman of Upper Magutu Water Project..... .....….....…1st Defendant

Francis Wamae (Sued in his capacity as the

Secretary of Upper Magutu Water Project.....….....…2nd Defendant

Lilian Githinji (Sued in her capacity as the

Chairman of Upper Magutu Water Project.....….....…3rd Defendant

RULING

At the outset, I wish to point out that the arguments presented by both parties and the pleadings before me raise three fundamental issues for determination, namely:-

i.Determination of the preliminary objection raised by the Respondents in the notice of preliminary objection filed on 23rd June 2016.

ii. Whether there are grounds to warrant this court to review or set aside its orders made on 3rd October 2016.

iii. Whether the applicant has established grounds for granting of the orders of injunction prayed in the application dated 9th June 2016.

Regarding the first issue, the Respondents counsel filed a notice of a preliminary objection on 23rd June 2016 arguing that this court lacks jurisdiction to hear and determine this mater by dint of the provisions of section 26, 85 (1) & (2) of the Water Act[1] (herein after referred to as the act). Counsel cited Gazette notice number **133** of **11th** January 2002 which stated that "all disputes under Water Act[2] shall be filed in and determined by the Water Appeals Board" hence this court lacks jurisdiction.

On the preliminary objection counsel for the applicant relied on his written submissions filed on 3rd October 2016 in which he submitted that this dispute does not fall under the disputes envisaged under the Water Appeals Board and cited section 85 of the Act which provides:-

Jurisdiction of the Board

(1) An appeal shall lie to the Water Appeal Board at the suit of any person having a right or proprietary interest which is directly affected by a decision or order of the Authority, the Minister or the Regulatory Board concerning a permit or licence under this Act, and the Board shall hear and determine any such appeal.

(2)In addition, the Board shall have such jurisdiction to hear and determine disputes, and shall have such other powers and functions, as may be conferred or imposed on it by or under this or any other Act.

Counsel submitted that the above section only applies to the situations referred to in subsection one above. The present suit touches on vandalism, trespass, interference, hence the reliefs sought in the plaint. Thus, the jurisdiction of the appeals board as contemplated under the above section is limited to hearing of appeals emanating from the decisions of the Water Appeals Board.

Jurisdiction is the very basis on which any Tribunal or court tries a case; it is the lifeline of all trials. A trial without jurisdiction is a nullity. The importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to Court of Appeal or to this Court; *afortiori* the Court *can suo motu* raise it. It is desirable that Preliminary Objection be raised early on the issue of jurisdiction; but once it is apparent to any party that the Court may not have jurisdiction, it can be raised even *viva voce*. It is always in the interest of justice to raise issue of jurisdiction so as to save time and costs and to avoid a trial in nullity.[3]

The *locus classicus* decision in Kenya on jurisdiction is the celebrated case of *Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd*[4] where the late **Justice Nyarangi** of the Court of Appeal held as follows:-

"I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

John Beecroft in a treatise headed *"Words and Phrases Legally Defined"*[5] states the following about jurisdiction:-

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and maters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the fact exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given"

Discussing what constitutes a preliminary objection, Law JA in *Mukisa Biscuit Manufacturers Ltd vs Westend Distributors Ltd*[6] said:-

"...so far as I am aware, a preliminary objection consists of a pure point of law which has been

pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration."

In the words of Sir Charles Newbold P at page 701, B:-

"...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."

Turning to this cases, the plain reading of section **85 (1)** of the act cited above is that an appeal shall lie with the Appeal Board and therefore the jurisdiction given to the Water Appeals Board in the Water Act is appellate in nature. The matters to be dealt with are specifically spelt out as *"a right or proprietary interest which is directly affected by a decision or order of the Authority, the Minister or the Regulatory Board concerning a permit or license".**[7]*

The above position is not the subject of the suit or the application before this court. The matter relates to a dispute between the parties herein whereby the applicants have complained that the Respondents have interfered with the applicants water intake at the disputed dam including destroying the applicants pipes and disrupting or interfering with the existing water supply and or hindering smooth flow of the water and whether or not the applicant is the appointed agent of Tana Water Service Board, hence the only legitimate entity authorized to supply water within the jurisdiction of Mathira Sub-counties. The other issue is whether or not the Respondents have a license to supply water and whether the alleged actions by the Respondents are illegal.

Under section 87 of the Act the nature of appeals as listed are those that lie with the Water appeals Board, that is the ones that touch on section (10) the establishment of the regional officers, section (11) formulation of the water resources management and section (13) determination of a reserve. There is no mention of conflict arising between a licensee and a consumer. A careful reading of section 25 and 26 of the act shows that these sections relate to the water right and works and not to the disputes now before this court.

Article 165(3) (a) of the constitution confers on the High Court unlimited original jurisdiction in civil and criminal cases. In my views the Water Appeals Board is an appeals board for matters stipulated under section 85 of the act. I therefore find there is no merit in the preliminary objection, this Court has the jurisdiction to hear this matter and I dismiss the preliminary objection.

Regarding the second issue *Whether there are grounds to warrant this court to review or set aside its orders made on 3rd October 2016,* it is important to recall that when this matter came for *ex-parte* for hearing of the applicants application on 10th June 2016, Justice Ngaah granted an order that *"pending the hearing of the application inter partes or further orders of the court, the defendants be compelled with immediate effect to remove their pipes and other gadgets from the plaintiffs water intake at Ragati dam and reinstate the plaintiffs instruments removed there from within 8 hours and failure the plaintiff to reinstall the equipment and disconnect the water supply line to the defendants."*

There is a affidavit of service filed on 16th June 2016 showing that the said order and suit papers were served upon the first and second defendants on 13th June 2016 and on 15th June 2016 the Defendants advocates filed a notice of appointment. Apparently, the said order was not complied with and this prompted the applicants herein to file the application dated 27th June 2016 seeking *inter alia* police protection to remove the said pipes and also orders committing the Respondents to prison for a term of not less than six months for disobeying the said order. However, the said application was not argued *inter partes* hence this ruling does not relate to it.

When the parties appeared before me on 3rd October 2016 for *inter partes* hearing of the application dated 9th June 2016, counsel for the applicant had not filed their submissions because they were served with an amended defence and sought for time and extension of the interim orders but counsel for the Respondent opposed the extension of the interim orders. Both counsels could not agree on the *status quo* as at the said date and this both counsels adopted different positions as to what was the prevailing *status quo*. Counsel for the Respondent insisted that the Respondents be granted access to the Ragati Dam which he maintained they had hitherto been using for domestic and irrigation purposes and maintained that the applicants had access to what was described as water tower number two serving Karatina Urban area. Thus, counsel for the Respondent maintained that each party should get water supply from their tower. Counsel for the applicant insisted on the *status quo* as at prior to filing this case which was that all the parties were getting water supply from the applicant herein.

Faced with an application for an adjournment which was not opposed, and diametrically opposed positions on the prevailing *status quo* as at the said date, and the need to maintain tranquillity and grant an order that was fair or less injurious to either side and guided by the need to do justice to both sides, the court ordered that both parties be supplied with water pending the hearing and determination of the application dated 9th June 2016. I also ordered both parties to maintain peace and not to interfere with the water supply and further ordered that both the preliminary objection and the above application be determined together.

On 7th October 2016, the applicants filed an application seeking to set aside, review or vary the above orders on grounds stated on the said application. When the application came up before me *ex-parte*, I stayed the said orders upon being satisfied that there were sufficient reasons for so ordering among them the allegation that the orders had been mis-construed.

At the hearing of the present application, parties also agreed that I determine the above application together with the present application. Counsel for the applicant insisted that the order was mis-used with repercussions because the Respondents dug out pipes and connected theirs as evidenced by photographs annexed to the affidavit. Counsel however, was clear that the applicants had no problem supplying water to the applicants for domestic use only provided they paid the necessary tariffs.

Counsel for the Respondent was of the view that the contested orders ought to remain and insisted that the Respondents never used to pay for water consumption and submitted that the bills exhibited by the applicants refer to the urban areas only.

After carefully listening to the parties and taking into account the facts of this case, I ordered that pending this ruling, the applicant supplies water to the Respondents for domestic purposes only subject to payment of the requisite tariffs, a position which I now order should remain until the hearing and determination of this suit.

On the third issue, namely, *Whether the applicant has established grounds for granting of the orders of injunction prayed in the application before me*, I find it appropriate to briefly recall the facts of this case so as to put everything in proper perspective.

By a plaint dated 9th June 2016, the applicant instituted these proceedings against the Respondents seeking orders that a permanent injunction do issue restraining them and or their servants/agents from interfering with the applicants water intake at Ragati Dam, connecting any pipes to the intake, destroying the applicants pipes or existing water supply lines and instruments or in any other way interfering or obstructing the applicant from discharging its mandate of supplying water services or in any other way hindering the smooth flow of the water from Ragati Dam to the arranged destination. The applicant also seeks a declaration that as the appointed agent of the Tana Water Service Board it is the only legitimate entity authorized to supply water within the jurisdiction of Mathira Sub-counties and a further declaration that the Respondents have no license to supply water and the act of connecting a pipe to the intake and diverting water from the Rangati Dam is illegal and contrary to the provisions of the act.

The crux of the applicants application is that sometimes in the year 1970's community members around Magutu area within Mathira Division, Nyeri County mooted the idea of a water project referred to as Upper Magutu Water Project meant to supply water for irrigation purposes. The community toyed with the idea of creating dam which could hold water for at least 90 days but the community realized that it lacked both the expertise and finances to implement the project, hence the community through their committee members approached the Ministry of Water for financial assistance. The Government agreed to finance the project for domestic and minor irrigation and the funds were released to Tana Water Services but the funds were not sufficient to implement the 90 day storage facility.

The applicant further avers that a memorandum of understanding was reached between the applicant and the Respondents as committee members of Upper Magutu & Giakagina Water Project on 18th April 2007 whereby it was agreed *inter alia* that the proposed site be surrendered to the applicant herein for development of the Dam by the applicant who were financially able to undertake the construction. A copy of the duly executed MOU is annexed to the applicants affidavit.

The applicant further avers that during the year 2008/2009 the Government of Japan through JICA provided funding for the project, that the funding was channelled through Tana Water Services Board and the work was completed in 2009/2010, and further Tana Water Services Board is the legitimate owner of the Ragati Dam. A certificate of handover is annexed to the applicants affidavit.

The applicant further avers that in conformity with the provisions of the act through an agency with Tana Water Services Board it uses the assets/Dams to provide services within Mathira East and West Sub-Counties, hence the applicant is duly appointed as such to provide services within the said areas and has in its possession the requisite permit a copy of which is exhibited to the said application.

The applicant further states that after the dam was completed the committee members of the two water projects mentioned above demanded that the dam be surrendered to the community to operate, supply the water and for maintenance together with the line that was being implemented by the District Water Officer after completion. The relevant correspondence in support thereof is annexed to the supporting affidavit.

It is the applicants case that over the time, the water level could not sustain irrigation, hence it became inevitable to ration the water and supply water only for domestic purposes. The applicant further states that notwithstanding the aforesaid MOU, a dispute has arisen regarding the ownership of the dam, the distribution lines, who should supply the water and who should not pay. The applicant further states that the members of the project committee have insisted on being supplied with water for irrigation and domestic consumption and insist that the applicant ought not to regulate the water supply, that they should not pay for the water. The applicant further states that the said members resisted installation of water metres hence they could not be connected with the water supply line.

The applicant further complained that on 2nd October 2015 some members of the Respondents projects led by the Respondents herein illegally entered and vandalized and destroyed the applicants water intake chambers and connected their water line to draw water for irrigation purposes without the applicants consent. Various meetings were held to resolve the issue but failed. The applicants also alleged that on 2nd June 2016 the Respondents and their members illegally removed the applicants pipes and connected their own and diverted the water from the dam to their own supply, thereby cutting supply to some areas previously served with water. The applicant avers that the acts complained of herein contravene the provisions of Section 56 (1) of the act and that the Respondents are not licensed to supply water, hence their actions are illegal and further their actions will occasion irreparable loss to the applicant. Further, the capacity of the dam cannot sustain supply of water for both irrigation and domestic purposes hence the need for injunctive orders.

On 29th June 2016, the Respondents filed their defence and Replying affidavit sworn by the first Respondent. The Respondents also filed an amended defence on 21st September 2016. Essentially the Respondents case is that they were authorized by the Ministry of Land Reclamation, Regional and Water

Development and were issued with authorization to construct water works along Ragati river and were issued with a permit and authority to Upper Magutu Water Irrigation to construct water works. A letter dated 15th November 1996 and an authorization to construct works for the diversion, abstraction, storage or use of water are attached to the affidavit in support of this averment. The said project was to benefit Giakagina Water Project, Upper Magutu Water Project and Ragati Water Project and that Upper Magutu was to oversee the supply of water. Subsequently the members decided to improve their water intake so as to preserve more water and sought advice from the ministry of water, Nyeri and preliminary work/survey was done setting the stage to seek funding and by year 2003 a lot of work had been done and subsequently the bill of quantities was forwarded to JICA and that the applicants came on board because Upper Magutu Water Project had initially supplied water to the Municipal Council of Karatina. He denied that the members of Upper Magutu Water Project ever sought funding from the applicant as stated in the MOU and that the applicant was only allowed to supply water to targeted areas as long as the Respondents water demands were met. Further, it was contented that the MOU was hastily drawn to conform with a ministerial visit scheduled for 27TH April 2007.

At the hearing, Counsel for the applicant Mr. Mahinda adopted his written submission and added that the issues of contention is the Ragati Dam which belongs to Tana Water Services Board as provided under section 113 of the act and who are mandated to take control of water within areas of its jurisdiction. He submitted that the applicant is an agent appointed under the provisions of the act.

Counsel further submitted that the applicant was appointed an agent of the said board exclusively to provide water services within Mathira District and pursuant thereto the applicant was issued with a certificate of operation marked **DGK1** in the applicants affidavit. Counsel also submitted that the Respondents actions enumerated in the supporting affidavit are a violation of the act. Counsel submitted that after the act came into operation, the management and operation of water services were transferred to Water Services Board established under section **113 (1)** of the act. Counsel also cited provisions of the Water (Services Regulatory Authority) Rules, 2012 and submitted that the MOU was an effort to comply with the provisions of the act, thus the Respondent relinquished their right over the dam site, the board constructed the dam, hence the Respondents have no claim over the dam.

Counsel also submitted that that the applicant holds a permit and on the contrary, the Respondents did not produce a permit, hence they lacked authority to provide water services and that the applicant is an agent of the board and is mandated to operate and maintain the assets of the board. Counsel also submitted that the Respondents were customers of the applicants as evidenced by the bills annexed to the affidavit. It was applicants counsels position that the applicants have satisfied the tests for granting an injunction.

The application was strongly opposed. The Respondents counsel cited the constitutional right to clean and safe water in adequate quantities[8] and insisted that the application does not satisfy the tests for granting injunctions laid down in *Giella vs Cassman Brown & Co Ltd*[9] and cited several other decisions to fortify his position. Counsel cited the case of *Mrao Ltd vs First American Bank of Kenya Ltd and another*[10]in which the court defined what constitutes a *prima facie* case.

At this juncture, it is necessary for this court to briefly examine the legal principles governing applications of this nature. In an application for an interlocutory injunction the onus is on the applicant to satisfy the court that it should grant an injunction. An injunction, being a discretionary remedy is granted on the basis of evidence and sound legal principles.

In the celebrated case of *Giella Vs Cassman Brown and Co .Ltd**[11]*** which has been cited by all the parties in their submissions the Court set out the principles for interlocutory Injunctions. These principles are:-

*i. The Plaintiff must establish that he has a **prima facie** case with high chances of success.*

ii. That the Plaintiff would suffer irreparable loss that cannot be compensated by an award of damages.

iii. *If the court is in doubt, it will decide on a balance of convenience.*

The above principles were authoritatively captured in the famous Canadian case of *R. J. R. Macdonald vs. Canada (Attorney General)* ***[12]*** where the three part test of granting an injunction were established as follows:-

i. *Is there a serious issue to be tried?;*
ii. *Will the applicant suffer irreparable harm if the injunction is not granted?;*
iii. *Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (often called "balance of convenience").*

Also of useful guidance in the application before me is the criteria considered in granting an injunction laid down in the decision in *American Cynamid Co. vs Ethicom Limited*[13] which established the test in the English courts in deciding if an injunction should be granted. This test was followed in Ireland in the case of *Camus Oil vs The Minister of Energy*[14]. The test has three elements:-

i. *there must be a serious/fair issue to be tried,*
ii. *damages are not an adequate remedy,*
iii. *the balance of convenience lies in favour of granting or refusing the application.*

The said principles have been reiterated in numerous cases in Kenya. In *Mbuthia vs Jimba Credit Corporation Ltd*[15] **Platt JA** echoed the position adopted in the *American Cyanamid* case cited above and stated that in an application for interlocutory injunction, the court is not required to make final findings of contested facts and law but only *needs to weigh the relative strength of the parties cases.*

In *Moses C. Muhia Njoroge & 2 others vs Jane W Lesaloi and 5 others* ***[16]*** the court while making a determination on the issue of a *prima facie* case with a probability of success cited the Court of Appeal decision in the case of *Mrao Ltd Vs First American Bank of Kenya and 2 others* ***[17]*** where the Court of Appeal held that:-

> *"A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later".*

Steven Mason & McCathy Tetraut in their well researched article entitled *"Interlocutory Injunctions: Practical Considerations"*[18] have authoritatively stated as follows:-

> *"With some exceptions, the first branch of the injunction test is a low threshold. As stated by the Supreme Court in R. J. R. Macdonald Vs. Canada (Attorney General)* ***[19]*** *"Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at the trial. Justice Henegham of the Federal Court explained the review as being "on the basis of common sense and a limited review of the case on the merits."* ***[20]*** *It is usually a brief examination of the facts and law.*
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> *In certain circumstances, the court will impose a more restrictive standard and require the moving party to demonstrate that it has a more strong prima facie case. If the injunction will likely end the dispute between the parties, then the court may hold the plaintiff to this higher standard. Similarly, where the nature of the relief sought is mandatory, or when the question is a question of mere law alone, then this higher standard will apply..."*

In *Kenleb Cons Ltd vs New Gatitu Service Station Ltd & another* ***[21]*** *Bosire J* held that *"to succeed in an application for injunction, an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right legal or equitable, which requires protection by injunction."*

I have reviewed the facts and the law and considered the submissions by all counsels in this case and I am satisfied that the applicant has satisfied the first test. The facts as pleaded, do in my view disclose a *prima facie* case as defined above, namely:-

> *"It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later".*

It is alleged that the Respondents entered into the disputed dam and uprooted the plaintiffs pipes, replaced with theirs and diverted water distribution among other complaints. The applicant maintains that it is duly licensed to supply water, that it is a duly appointed agent under the law and has the management and control of the assets in question among them the Dam. A license was exhibited in support of this averment. The pleadings do disclose a real dispute touching on the ownership, use, management and control of the Dam. In my view, the applicant has demonstrated a *prima facie* case, hence has satisfied the first test of the injunction.

The second test for determination is whether the applicant will suffer irreparable loss. The following paragraph in *Halsbury's Laws of England*[**[22]**] is instructive. It reads:-

> *"It is the very first principle of injunction law that prima facie the court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. Where the court interferes by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds first, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question"*

In order to show irreparable harm, the moving party must demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured.[23] But what exactly is *"irreparable harm"?*. **Robert Sharpe**, in *"Injunctions and Specific Performance,"* ***[24]*** states that *"irreparable harm has not been given a definition of universal application: its meaning takes shape in the context of each particular case."*

In my view, it has not been shown that the loss likely to be incurred by the applicant if the orders sought are declined can be quantified or adequately compensated by way of damages. I find that the applicant has satisfied the second test.

On the third test, where any doubt exists as to the applicants' right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.[25] The burden of proof that the inconvenience which the applicant will suffer if the injunction is refused is greater than that which the respondent will suffer if it is granted lies on the applicant.[26]

Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction.[27]The court will seek to maintain the *status quo* in determining where the balance on convenience lies. Considering the facts of this case in totality, I find that the balance of convenience is in favour of the applicant. The disputed MOU shows that the dam was surrendered to the applicant. Even though the Respondent insists the MOU was signed to give effect

to a ministerial visit, the Respondents did not demonstrate that the applicant never took possession of the dam. The MOU also provides that the applicant shall handle the administration of water distribution and charge the members the stipulated and approved tariff rates. The Respondent did not offer any evidence to confirm that the foregoing has not been the case. I am persuaded that maintaining the above position which has been obtaining is in favour of the balance of convenience.

An injunction is an equitable remedy, meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration. After carefully analysing the facts and documents filed herein and upon due consideration of the rival arguments advanced by the counsels for the parties herein, I am persuaded that applicant has satisfied the tests for granting injunction as enumerated above.

Consequently, I find that the application dated 9th June 2016 has merits and I hereby allow the same and orders as follows:-

a. **That** an order of injunction be and is hereby issued retraining the Respondents herein or their servants or agents or any members of their group or persons acting on their behalf from interfering with the applicants water intake at Ragati Dam or connecting any pipes to the intake or destroying the applicants pipes or existing water supply lines or instruments or diverting water or in any way interfering or obstructing the applicant from discharging its mandate of supplying water services in Mathira Sub-counties or in any other way hindering the smooth flow of the water from Ragati to arranged destination pending the hearing and determination of this suit.

b. **That** pending the hearing and determination of this suit, the applicants be and are hereby ordered to supply water to the Respondents for Domestic purposes subject to payment of the requisite tariffs.

c. **That** the Respondents do pay to the Applicant the costs of this application.

Right of appeal 30 days.

Signed, Delivered and Dated at Nyeri this **7th** day of **November** 2016.

John M. Mativo

Judge