

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 622 OF 2017

KABIRIA COUNTRY CLUB LIMITED-----PLAINTIFF

VERSUS

NATIONAL WATER & SEWERAGE CORPORATION-----DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff sued the defendant for breach of contract, private nuisance and a declaration that the plaintiff is not indebted to the defendant and general damages.

Sometime in 2010 the defendant installed water meters on commercial premises of the plaintiff's premises with different meters serving different sections of the same premises. Meter SOCAM/96-723763 was specifically being used Kampala International School which was occupying that part of the suit premises and the plaintiff used to settle bills for that meter. Sometime in 2013 the school ceased its operations and the defendant was accordingly informed of the closure and the water meter was no longer in use. No bills were ever sent on that meter until 2017.

The plaintiff in a renovation exercise demolished the buildings and facilities used by the school and the same were left excavated, vacant and physically disconnected from the system of the defendant. In 2017 the water pipe and valve of the defendant were damaged resulting in a heavy leakage of water. The plaintiff informed the defendant of the leakage which

had resulted from the construction of road works in the area by Kampala Capital City Authority. The defendant delayed to rectify the problem and the plaintiff's plumbers made several attempts of addressing the problem which always failed. The defendant's staff repaired the water leakage later and took the meter in 2017 upon which they issued a bill of 147,260,805/= as an outstanding bill of the said meter and started issuing invoices upon refusal to settle the contested bill the defendant disconnected the plaintiff.

The defendant contended that on the 9th day of November 2017, they received a report of water leakage at the plaintiff's premises to which they responded and during the repair works they discovered the existence of meter No. SOCAM/9696-723763. They contended that the said meter was being used for water consumption by the plaintiff but no invoice had been issued in respect of the said meter since 2013.

The defendant took away the meter for testing to confirm its functionality and it was established that it was in a perfect working condition. They allegedly discovered that there was a consumption of water between 2013-2017 for which they raised an invoice of 147,260,805/=.

The defendant counter-claimed for the said amount as due and owing since it was allegedly for water consumed by the plaintiff.

The parties filed a joint scheduling memorandum and the following issues were proposed for determination.

- 1. Whether the Defendant's removal of the suit meter from the Plaintiff's premises in 2017 was lawful.***
- 2. Whether the Defendant's issue of a demand notice on 13th December 2017 was lawful.***
- 3. Whether the Defendant acted negligently.***
- 4. Whether the Plaintiff has been consuming water from the Defendant since 2013.***
- 5. Whether the Plaintiff is indebted to the Defendant in the sum of UGX 147, 260,805/=***

6. *What are the available remedies to the parties?*

The plaintiff was represented by *Ssebowa Francis Kabali* while the defendant was represented by *Kansiime Timothy*

At the trial the plaintiff led evidence of one witness- Amit Sachdeva and the Defendant had three witnesses Caroline Kyomugisha DW1, Okadan Pius Misaki DW2 and DW3 (Agaaba Brian) and other evidence was by way of documentary evidence that were exhibited at trial.

The major issue for court's consideration is whether the plaintiff had been consuming water between 2013-2017 and whether they are liable to pay the bill of 147,260,805/=.

Whether the Plaintiff has been consuming water from the Defendant since 2013.

The plaintiff led evidence to show that the said meter was being used by Kampala International School which was using the premises until 2013 when they left the premises. The witness further testified that once the school was relocated, the site was demolished and there is no activity going on in the area that would consume the water or require the sewerage services.

The defence witness testified that while they were in the process of repairing the leakage they noticed that the reading on the meter SOCAM/96-723723 was high with a reading of 37,623 units which concern he brought to the attention of his supervisors for action. It was after their investigations that they confirmed that the plaintiff had been consuming water under the suit meter but under mysterious circumstances, no readings were conducted and that is why the plaintiff was not invoiced.

Analysis

The plaintiff led evidence to show that the bill that was collected from the premises was indeed used by Kampala International School and they left the

premises in 2013. They indeed notified the defendant about the departure from the location and thus no need to bill the plaintiff over the said bill.

It appears that as a result of the said notification, the defendant never issued any bills over the same meter for the period in issue until when they came to carry out repairs on the water leakages at the same location. The defendant's staffs are obliged to carry out meter readings in order to generate invoices. According to PE1 the same was last read on 12th November 2014 and indeed there was no consumption on the said meter since the consumption is actually zero.

The plaintiff's witness led evidence in paragraph 9 of his witness statement; *"In 2013, the water meter gate valve was closed off in the presence of the defendant's officers so as to block the flow of water from the defendant to those areas serviced by the suit meter"*. The defendant appears not to have attacked this evidence which went to the root of the problem and even during cross examination the same was not attacked. This leaves this court with an inference that it was admitted as the correct position. This is buttressed with the exhibit PE 1 which showed that the meter reading in November 2014 was zero. The law is settled on failure to challenge evidence on a material or essential point, then such evidence is deemed admitted as inherently credible and probably true. See ***Uganda Revenue Authority vs Stephen Mabosi No. SCCA No. 26 of 1995***

In addition, the plaintiff witness testified that in 2017, the tractors of KCCA while conducting public construction works knocked and damaged the water meter and the water meter gate valve and water pipes of the defendant became defective and burst resulting into uncontrollable leakage of a heavy flow of water. This evidence was never attacked in cross examination and no evidence was led to put it in contention. In absence of the evidence to the contrary the same was unassailed.

It is clear that the evidence of the parties regarding the sequence of events or occurrence is conflicting. So how should court determine which version is truthful?

Sakar's Law of Evidence, 14th ed offers very good guidance at page 924 to 925 thus:

*“... There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, to consider what facts are beyond dispute, and to **examine which of the two cases best accords with these facts, according to the ordinary course of human affairs and the usual habits of life.** The probability or improbability of the transaction forms a most important consideration in ascertaining the truth of any transaction relied upon.”*

It is my finding that the version of the plaintiff is more in consonance with “*the ordinary course of human affairs and the usual habits of life*”. And this is demonstrated herein above. The fact that the defendant never issued any bills on this meter prior to 2017 indicates that there was no water consumed on this water meter.

The plaintiff has satisfied the court on the balance of probability standard that the water was blocked and the same was wasted away through leakage of the water pipes and valves after construction of public works by Kampala Capital City Authority. According to Lord Nicholls of Birkenhead in ***RE H (Minors) (1996) AC 563 at 586***, balance of probability standard means that

*“a court is satisfied that an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not when assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before the court concludes that the allegation is proved on the balance of probabilities” (see ***In RE B (Children) 2008 UKHL 35***)*

The circumstances of this case as presented in evidence show that the defendant’s claim is premised on assumptions and conjecture after they went on plaintiff’s premises to carry out repairs and discovered a meter which was running. The evidence on record prior to the discovery of the meter is contrary to the existing state of affairs and the same is not supported by evidence. The defence counsel asked a rhetoric question in his submission; ***the question then***

posed is as to who consumed the said water? The said question was derived from an assumption that the water was consumed and ignoring glaring evidence of leakage after public works by KCCA.

The plaintiff never consumed any water on this meter and any demands or bill based on this current meter reading when it was removed for repairs after leakages is very erroneous and baseless.

This issue is resolved in the negative.

Whether the Plaintiff is indebted to the Defendant in the sum of UGX 147,260,805/=

The resolution of the above issue automatically disposes off this issue that id derived from the defendant's counter-claim. There cannot be any indebtedness when no water was consumed by the plaintiff.

The plaintiff is not indebted to the defendant. The counter-claim therefore fails and is dismissed with costs.

What are the available remedies to the parties?

A declaratory Order issues to confirm that the plaintiff is not indebted to the defendant and the invoice dated 09/12/2017 was issued in error.

The plaintiff is awarded costs of the suit.

I so Order

SSEKAANA MUSA

JUDGE

15th/07/2021