



**Ahmed v Nairobi City Water & Sewerage Company (Complaint  
4 of 2023) [2024] WAT 1199 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] WAT 1199 (KLR)

**REPUBLIC OF KENYA  
IN THE WATER APPEALS TRIBUNAL  
COMPLAINT 4 OF 2023  
B OCHOI, CHAIR  
JULY 5, 2024**

**BETWEEN**

**ABDALLA SAID AHMED ..... APPELLANT**

**AND**

**NAIROBI CITY WATER & SEWERAGE COMPANY ..... RESPONDENT**

**RULING**

1. By an undated Form of Appeal filed on July 20, 2023, the appellant Abdalla Said Ahmed seeks the following orders against the respondent Nairobi City Water and Sewerage company Limited
  - i. That a permanent restraining order do issue stopping and or preventing the respondent from disconnecting water into the respondent's premises known as L.R 209/136/221
  - ii. A refund of Ksh,200,000/= already paid to the respondent by the appellant under duress.
  - iii. A declaration that that the Appellant does not owe the respondent the demanded amount of Ksh.70,491.14 on account of water supplied to and consumed by Laxman Patel Mulji, account number 1115325(new one 5250007) .
2. The Appellant avers that the appeal is against the decision of the respondent to demand from theAppellant the payment of a water bill amounting to Ksh.70,491.14 on account of water supplied to and consumed by one Laxman Patel Mulji, over his account number 1115325 and the threatened disconnection of supply of water to the Appellants building on L.R 209/136/221 on account of the nonpayment of the said bill.
3. The Appellant contends that he has no water bill arrears for the respondent but he was forced to pay Ksh.20,000 to the respondent to avoid disconnection of water to the entire building after being threatened by the respondent and seeks a refund of the said amount.



4. The Appellant contends that he will suffer great loss if the water supply to the building were to be disconnected.
5. The respondent filed an answer to the Appeal and grounds of objection dated 13th February 2024. The Appellant stated that the appeal as drafted is purely an abuse of the court process, is mala fides and intended to deprive the Respondent of its rightful property hence should not be entertained by this Honourable Court.
6. The respondent avers that the Appellant applied for water connection and supply to his premises being LR 209/136/221 and informed the Respondent that his property was to be leased to different tenants each of whom would consume different volumes of water on a monthly basis and thus requested that for good order, each unit/tenant gets their own meter to ensure that one pays only for what they will have consumed during the month. It contends that it then installed different water meters for each of the units on the Appellant's premises to be used by the Appellant's respective tenants and that at all material times, the Appellant (Landlord) entered into various tenancy agreements with different tenants which tenancy agreements the Respondent was not a party to.
7. The respondent claims that the only understanding between the Appellant and the Respondent was that upon the Appellant entering into an agreement with a new tenant, the Appellant would immediately inform the Respondent of the tenant's name and address for purposes of setting up an account for the tenants such that the monthly bill payments be made directly to the Respondent hence eliminating the need for the Landlord to act as the Respondent's agent.
8. The respondent claims that it was an understanding between the Appellant and the Respondent that before termination of any tenancy agreement that the Appellant had with his tenants, the Appellant had a duty to ensure that all his tenants cleared all their pending water bills before being cleared and their rent deposits, if any, returned to them to facilitate smooth transition to the next tenant that would occupy the premises.
9. The Respondent contends that the Appellant (Landlord) then entered into a tenancy agreement with one Laxman Patel Mulji (Tenant) and as had been agreed between the Appellant and the Respondent, the Respondent set up an account for the tenant who later vacated the premises without settling his bill and without the Appellant (Landlord) notifying the Respondent of these developments. The account belonging to the tenant was thus abandoned with an outstanding bill of about Kenya Shillings Seventy-One Thousand, Forty-Three Shillings and fourteen cents only (Ksh. 71,043.14/=).
10. The respondent contends that as per the agreement between the Appellant and the Respondent, the Appellant had a responsibility to ensure that any pending water bills were settled which he failed to do, and considering the warranties and agreements between the Appellant and the Respondent and the fact that the agreement for the connection/supply of water to LR No. 209/136/221 belonging to the Respondent was exclusively between the Appellant and the Respondent, the Appellant had an obligation to settle the outstanding water bills in the sum of Kshs. 71,043.14/=.
11. The respondent contends that the Appellant was given ample time to settle the bill and he approached the Respondent and proposed, on his own volition, to settle the outstanding bill by making an initial payment of Kshs. 20,000.00/= which he did on the 27th of June 2023 and undertook to settle the remainder of about Kshs. 51,043.14/= in three (3) equal monthly installments of Kshs. 17,000/= each payable on 27th July 2023, 27th August 2023 and 27th September 2023 and that after making the initial payment of Kshs. 20,000.00/=: the Appellant declined and/or neglected to make any further payments despite being given enough time and consideration and therefore shocking that he has now filed this instant Appeal reneging his undertaking to settle the outstanding bill of Kshs. 49,471.39/=.



12. The respondent avers that the Appeal lacks merit and the same should be dismissed in the circumstances.
13. Both parties called one witness each the Appellant adopted the witness statement he had filed in court dated 19th February 2024 while the respondent adopted the averments in the replying affidavit sworn by Joseph Njoroge on 6/11/23 as its evidence.
14. The appellant stated that the bill of Ksh.70,490 was not his and was in Patel's name. On cross examination the appellant stated that he did not know the person by the name Laxmi Patel who had consumed the water and indicated that by the time he bought the building the said person had vacated the building. He stated that though the meter remained in the building there was no one who was using the said meter. On further cross examination he acknowledged having paid Ksh.20,000/= and agreed to pay the balance in instalments but stated that the said agreement was not voluntary but was forced to do so when threatened with disconnection. The appellant stated that at no time had he ever had a memorandum of understanding or any sort of understanding with the respondent in regard to the water connections for his tenants or any for that matter.
15. Mr. Joseph Njoroge stated that he was a zonal Coordinator in charge of CBD, Upper Hill and Njiru and was in charge of billing and collection of dues. On cross examination, he stated that water supply is provided upon receipt of an application form duly filled by the client with documents of ownership. He stated that if the applicant was a tenant there was a place in the form filled by the Landlord confirming that in case of anything the landlord will take responsibility like when a tenant vacated without paying. On further cross examination, he stated that he was aware that the Appellant had purchased the property and the previous owner had signed the document or agreement with the respondent, he however stated that he did not have the agreement and did not know the name of the said owner. The defence witness stated that when the Appellant took over the property he would also take over the liabilities in the building including water bills. On further cross examination he stated that they knew the place Laxman Patel could be found and they used to serve him with the bills in the same place.

### **Submissions**

16. Both parties filed written submissions and the Appellant identified two issues for determination
  - i. Can the Appellants water connection be disconnected on account of water bills owed by a third party, in this case Laxman Patel Mulji?
  - ii. Can the respondent disconnect water supply for a party who is not in arrears in order to enforce another contract in arrears?
17. The Respondent on the other hand identified the following issues for determination
  - i. Whether the Appellant and the Respondent had a contract.
  - ii. Whether the Appellant should pay the outstanding water bill in the sum of Kshs. 70,491.14.

### **Analysis And Determination**

18. I have carefully considered the pleadings herein, the evidence by both sides and the written submissions filed by the parties, it is not disputed that the impugned bill was incurred by a tenant one Laxman Patel Mulji who has since vacated the building L.R 209 /136/221 belonging to the Appellant. Whereas the Appellant argues that the respondent should follow up the unpaid bill with the tenant, the respondent argues that the said bill should be paid by the Appellant. The issue for determination therefore is



whether the landlord is liable to pay a water bill left by a tenant who has vacated a premise or the respondent should pursue the tenant.

19. According to the appellant the contract for supply of water was entered between the respondent and the tenant Laxman Patel and therefore the attempts by the respondent to force the appellant to pay the water bills are an illegality. He submits that there is no privity of contract between the Appellant and the respondent and that a contract can only confer rights and obligations to the parties in the contract and therefore a contract cannot be enforced against a third party the Appellant in this case.
20. The respondent on the other hand states that it was the appellant who applied for water into his premises LR 209/136/221, it states that the Appellant followed the application process set by the Respondent which includes submission of an application together with copies of a Title deed, ID/Passport, a Pin Certificate, and a passport photo. Upon receipt of the application, the Respondent then connected and started supplying water to the Appellant's premises he however informed the Respondent that his property was to be leased to different tenants each of whom would consume different volumes of water on a monthly basis and thus requested that for good order, each unit/tenant gets their own meter to ensure that one pays only for what they will have consumed during the month. The respondent claims that the Appellant entered into various tenancy agreements with different tenants which tenancy agreements the Respondent was not a party to. The only understanding between the Appellant and the Respondent was that upon the Appellant entering into an agreement with a new tenant, the Appellant would immediately inform the Respondent of the Tenant's name and address for purposes of setting up an account for the tenants such that the monthly bill payments be made directly to the Respondent eliminating the need for the landlord to act as the Respondent's agent.
21. It is not disputed that the respondent is wholly-owned subsidiary of Nairobi City County with the main responsibility of providing and managing water and sewerage services in Nairobi it is also not disputed that to facilitate maintenance and continuous supply and sustainability the consumers must pay for the water used. It is on this basis that I believe that there must be an agreement between the water service provider (the respondent in this case) and a water consumer. The respondent who is the water service provider does not go looking for people to supply water to but instead any one in need approaches the respondent and applies for water connection. The respondent stated the procedure for applying for water which is highlighted in paragraph 20 above that is submission of an application together with copies of a Title deed, ID/Passport, a Pin Certificate, and a passport and upon receipt of the application, the Respondent then connected and started supplying water to the Appellant's premises.
22. In this particular case the Appellant is the owner of parcel number L.R 209/136/221, which he acknowledges is leased to different tenants. It is common knowledge that tenants are not the ones who apply for connection of water to premises they have leased, it would be absurd for a Landlord to build a rental premises and wait for tenants to apply for utilities to be connected to the building, I agree with the respondent that the contract for supply of water to the suit premises was between the landlord and the respondent and not between the respondent and tenants. A tenant's obligation is to pay for water used as measured by the individual meter in his name and it was the duty of the landlord to ensure that measures are put in place during the tenancy of any tenant to ensure that all bills are paid. Some landlords ask for payment of deposits in order to cut against tenants who may be tempted to leave without payment of rent and bills. It is common knowledge that tenants in any premises enter into agreements with the landlords when they assume tenancy, it is not possible for the water service providers to know all tenants and when they move in and out and the respondent does not enter into individual agreements with the tenants, it is the duty of the landlord to ensure that the



water supplied to his houses is paid for as agreed with the water provider at the time the water was connected to the premises.

23. In this case the respondent stated that it received an application for connection of water to the suit premises by the landlord and the Appellant confirms that water was being consumed by different tenants in the premises meaning a contract of supply of water was entered between the landlord and the water provider. It is my finding therefore that the respondent was justified in seeking payment from the Appellant for payment of the water utilized through water account number 11155325. It is noted that upon seeking the said payment the Appellant actually paid Ksh.20,000/= and agreed to pay the balance of KSh.51,043.14 in three equal instalments. The Appellant states that this agreement was not voluntary but he was coerced into paying for the same but the court is not convinced that the Appellant was coerced, if he was he should have come to court before making the payment, I believe that the agreement was entered into voluntarily the change of heart was an afterthought which should not be entertained.
18. The Appellant argued at some stage that he had bought the house from someone else and that he did not find the tenant called Laxmi, he however was not clear in his pleadings on when he took over the premises and the time the said tenant left the premises and seemed to contradict himself as in his statement he stated that they took over all tenants in the premises with their water and electricity accounts upon purchase of the house and therefore must have also taken over the impugned account. It was also observed that the meter was disconnected in June 2023 with meter readings showing it had been active.

### **Disposition**

18. I therefore find that the Appellants Appeal fails and therefore the Appellant is not entitled to a refund of the Ksh.20,000 as prayed for. The appellant will pay the balance of Ksh.51,043 in three monthly instalments as agreed with the respondent effective from the date of this Judgement.
19. The Appellant will pay costs of this suit.

**SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JULY 2024.**

**HON B.M OCHOI**

**CHAIRMAN (WT)**

In the presence of:

Mr. Muyundo for the respondent

N/A for the appellant though duly notified.

**SIGNED BY: HON. BERNARD OCHOI**

