



**Kogo Flats Company Limited v Eldoret Water and Sanitation Company Limited
(Tribunal Case 11 of 2014) [2024] WAT 1193 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] WAT 1193 (KLR)

**REPUBLIC OF KENYA
IN THE WATER APPEALS TRIBUNAL
TRIBUNAL CASE 11 OF 2014
B OCHOI, CHAIR
JULY 26, 2024**

BETWEEN

KOGO FLATS COMPANY LIMITED APPELLANT

AND

ELDORET WATER AND SANITATION COMPANY LIMITED .. RESPONDENT

JUDGMENT

1. By an amended statement of Appeal dated 13th October 2023, the Appellant Kogo Flats Company Ltd seek the following prayers ;
 - a. That the respondent be compelled to forthwith restore and /or reconnect the water supply to 21tenants located at the demised premises known as Eldoret Municipality /Block 6/59 and Eldoret Municipality /Block 6/60
 - b. That the respondent be ordered to stop harassing the appellant or its tenants at the demisedpremises known as Eldoret Municipality /Block 6/59 and Eldoret Municipality / Block 6/60 .
 - c. In the alternative if a legal basis exists for the installation of of water supply meters in a horizontal manner as opposed to a vertical manner the appellant be accorded reasonable opportunity to comply after being served with proper notices and orders.
 - d. A finding be made that the appellant has no obligation to settle the water bills that accrued prior to the 24th September, 2009 as a valid rates clearance certificate was issued by the erstwhile municipal council of Eldoret as a confirmation of settlement of all rates and water supply charges to the respondent.
 - e. Costs of the Appeal.



2. According to the Appeal, the appellant is the registered proprietor of the leasehold interest comprised in the the land parcel where the water has been disconnected and that that the Appellant has a total of 23 tenants who pay rent to the Appellant and whose lease contracts may become frustrated by the act of disconnection of water supply which renders the demised premises to be uninhabitable.
3. The appellant contends that the decision to compel the appellant to connect water supply meters in an horizontal as opposed to to a vertical manner is oppressive and without any legal basis as the appellant had maintained the water meters in a vertical installation manner for over 20 years without any issues from the respondent.
4. The Appellant further contends that the decision to compel the Appellant to install the meters in a horizontal manner cannot be implemented at once without occasioning unnecessary inconveniences to the tenants since detailed plumbing works would require to be carried out. It further contends that no proper written Notice has been duly served upon the Appellant to effect a change of installation mode from vertical to horizontal and as such it is a breach of administrative and procedural fairness requirements under the law.
5. According to the Appellant , the respondent has engaged in acts of collective punishment by disconnecting full water supply from the entire premises in order to exert pressure on the Appellant to settle alleged water supply bills that do not belong to the appellant or any of its current tenants.
6. The appellant contends that the respondent has no right to claim payment of water bills or to disconnect water supply on account of bills prior to 24th September 2009 as a rate clearance certificate had been issued to confirm that no indebtedness existed on the demised premises for water supply
7. The respondent Eldoret water and Sanitation company Limited filed a response to the Appeal ,dated 10th January 2024. It contends that the Appellant had been negligent in paying for water which was already consumed and therefore a breach of contract exists on their part. The respondent contends that the appellant was in arrears of water bills amounting to a sum of Ksh. 1,017,167.09/=.
8. The respondent contends that they normally deliver water bills to the Appellant of monthly basis and mass disconnections done at the end of the month upon authorization and that sufficient notice was issued to the appellant in this case.
9. The respondent averred that the sole purpose of the disconnection is to enforce payment rather than punish the Appellant, that it was an injustice for the appellant to continue enjoying supply of water without paying for the same.

Pre-trial Conference

10. During the conference, the parties agreed to adopt the statements , affidavits and documents filed as their evidence and upon perusal of the file I noted that the parties had not filed any witness statements but found an affidavit in support of the application dated 2nd July 2014 sworn by Vincent Wanyonyi on behalf of the Appellant with annexures attached thereto which I adopted as evidence and exhibits for the appellant, the respondent had also filed a supporting affidavit and further affidavit to its application dated 15/7/2014 sworn by Bernard Achote which I adopted as statement together with the annexures therein as exhibits for the respondent.
11. When the matter was ready for hearing the parties agreed that the same be disposed of by way of written submissions and both parties filed their respective submissions.



Analysis and Determination

12. It is not disputed that Kogo Flats Limited is the registered proprietor of Eldoret Municipality Block 6/60 and it is not disputed either that there are about 21 tenants who have leased different apartments in the block. It is also not disputed that the respondent Eldoret Water and Sanitation company is a registered Water service provider within Eldoret and entitled to be paid for water supplied to its clients.
13. The Appellant did not identify issues for determination in its submissions but the respondent identified six issues for determination namely;
 - a. Whether the tenants are tenants in the Appellants premises
 - b. Whether the tenants were consumers of the respondents water supply services
 - c. Whether the tenants paid for the water consumed
 - d. Whether the disconnection by the Appellant was lawful
 - e. Whether the appellant is entitled to the orders sought
 - f. Who is entitled to costs/
14. I summarize the issue for determination as whether the Appellant is entitled to the prayers sought. The first prayer by the appellant is that the appellant be compelled to forthwith restore and or reconnect water supply to the 21 tenants located at the demised premises. It is noted that the Appellant did not specify who the 21 tenants were and whether they had paid for the water consumed or not and yet the appellant claims that the bills being enforced are for tenants who were no longer living in his premises. On the other hand the respondent attached to the affidavit above mentioned the names of all the tenants with whom it had entered water supply agreements with and the balances by each of them. In its submissions the appellant submitted that that the respondent was engaged in acts of collective punishment by disconnecting full water supply from the entire premises in order to exert pressure on the appellant to settle bills which do not belong to the appellant or its current tenants, as stated above, the appellant did not disclose the names of his current tenants and the ones he says consumed the water but are not his current water tenants.
15. The Appellant states that there is no privity of contract between his current tenants and the respondent and states that the names in the bills are different from those of his current tenants but as said above he did not provide the list of his tenants. Secondly according to the documents filed by the respondent they entered into contracts with individual tenants through an application for water connection form which was filled by an individual before water is supplied through a specified meter number, a sample of the form in the name of Japhet Kiptum was attached in the respondents exhibits it shows that where the property in question was an apartment with many tenants, the particulars of the tenant and landlord were filled in in the application form and once the application was approved a meter number was given to each individual. The respondent provided the names of the persons they entered an agreement with and the amounts outstanding per meter, I believe that they were entitled to disconnect water being consumed from the meters in the names of those individuals.
16. The appellant argues that there is no privity of contract between his current tenants and the respondent since the names in the bills are for people who are no longer tenants in the premises and may not have consumed the water charged, I agree with the appellant that there may be no privity of contract if the initial tenants who signed the agreements vacated as argued but at the same time find that the respondent has no obligation to continue supplying water to the new tenants who have not entered an agreement with the respondent for supply of water. According to the Appellant the new tenants



appear to be using meters or accounts given to previous tenants who had entered the agreements with the respondent, the said tenants moved without clearing the bills as shown by the respondent and since the contract was between the respondent and tenants no longer in the appellants premises as argued then the respondent has the right to disconnect the water into those meters until the bills incurred are paid for and if there are new tenants in the appellants premises, they are supposed to apply for water and enter a contract with the respondent for supply, alternatively they could continue using the account issued to the previous tenants on conditions set by the respondent which may include but not limited to payment of outstanding bills. The new tenants cannot ride on supply of water on the basis of an agreement entered between the previous tenants and the water service provider and then refuse to pay bills on account of having not entered an agreement with the water service provider.

17. In my ruling to the P.O raised by the respondent before we proceeded with this matter(ruling delivered on 13th October 2023), the court observed that in cases where contracts for supply of water are entered between the tenant and the water provider like in this case then if the landlord was filing a suit for disconnection of water then it must be a representative suit on behalf of the tenants and not the landlord filing for the tenant without authority. The court gave time to the Appellant herein to amend the claim so that it reflects that position but they did not do so . As stated above , the respondent adduced sufficient evidence to show that the contracts were entered with individual tenants living in the appellants premises with different water accounts and therefore the orders sought were supposed to be applied for by each of the individual affected tenants or by the appellant in a representative capacity, since the appellant did not comply with the directions the court finds that the appellant is the one who failed to demonstrate that there was privity of contract between itself and the respondent and therefore the appeal fails. Again as stated earlier the specific tenants whose accounts were disconnected did not state their names and prove that they had entered an agreement with the respondent for supply of water. The Appellant is therefore not entitled to the prayers (a) and (b) in the appeal which prayers are dismissed.
18. The appellant submitted that the other ground that water was disconnected was that they had failed to install water meters horizontally. There was no evidence however that the respondent had directed the appellant to install the meters horizontally as claimed not even from the pleadings and submissions have the respondents indicated that it was one of the reasons for disconnection, the only reason given and which I consider to be the reason for disconnection of water is non payment of water bills the decision of which I have mentioned above. Prayer (c) is therefore dismissed.
19. Prayer (d) of the Appeal also fails for the same reasons given for prayer (a) and (b) above .

Conclusion

20. The appellant has failed to prove its case on a balance of probability and the same is dismissed in its entirety.

Costs

21. The general rule under section 27 of the Civil procedure Code is that costs follow the events and therefore the Appellant will pay costs to the respondent

HON B.M OCHOI

CHAIRMAN WATER TRIBUNAL

SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF JULY 2024.

IN THE PRESENCE OF:



C/A:

Appellant:

Respondent:

Signed by: Hon.bernard Ochoi

Date: 2024-07-26 14:10:

