



**Muia v Nairobi Water and Sewerage Company (Tribunal Case
E004 of 2023) [2024] WAT 1192 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] WAT 1192 (KLR)

**REPUBLIC OF KENYA
IN THE WATER APPEALS TRIBUNAL
TRIBUNAL CASE E004 OF 2023
B OCHOI, CHAIR
MAY 24, 2024**

BETWEEN

BENJAMIN MUSYIMI MUIA APPLICANT

AND

NAIROBI WATER AND SEWERAGE COMPANY RESPONDENT

JUDGMENT

Background

1. By a statement of claim dated 24th October 2023, the claimant Benjamin Musyimi Muia seeks the following orders against the respondent Nairobi city Water & Sewerage company;
 - a. A permanent injunction restraining the respondent, its agents, or any personnel from interfering with the water vending business of the Appellant
 - b. A permanent injunction restraining the respondent, its agents, or any personnel from removing and or repossessing the water meter belonging to the appellant.
 - c. An injunction against the police officers from Huruma police station against arresting the Appellant in course of his water vending business d) Costs of the suit

The Claimant's Case

2. The claimant contends that he is legally registered account holder of water meter number 2500002623 and account number 5243679 and together with his business partner Raphael Makau Muia have been carrying out water vending business after complying with all the requirements as required by the [Water Act](#).
3. The claimant contends that on 6th September 2023 he received summons from the respondent requiring him to appear in their chambers to answer questions on some investigations that



were going on and was asked to appear with all his documents after which he was released to continue with his business.

4. The claimant contends that he has been occasionally receiving threats and harassment from the area member of county assembly who is in cohort with the agents of the respondent and thus made it difficult for them to operate their business peacefully.
5. The claimant further contends that that he had no pending bills and there was no justification as to why the respondent would threaten the appellant of an impending disconnection.

Respondent's Response.

6. The respondent filed a response to the statement of claim and deposed that it was a stranger to the claim by the appellant while denying his allegations of threats and harassment.
7. The respondent confirmed having issued summons to the claimant and that the claimant complied with the summons and availed all the documents requested for verification and that upon verification, the claimant was cleared to proceed with his business. It deposes that the claimant's issue is not with the respondent but other 3rd parties notably the area Member of County Assembly and the OCS of the area who are not employees or agents of the respondent company.

SUBMISSIONS Claimant's submissions

8. In his final submissions the claimant identified two issues for determination whether the claimant's claim should be allowed and secondly who should meet the costs of the claim.
9. In regard to the first issue the claimant submitted that the respondent had acted irrationally and abused power when they sent police officers from Huruma police station to the claimants to harass him with attempted arrest, he also claims that the respondent's employees kept threatening the claimant that they would repossess his water meter and disconnect his water supply any day despite him having complied with all the requirements stipulated for water vendors.
10. The respondent while relying in the case of Keroche Industries Limited Vs Kenya Revenue Authority & 5 others [2007] 2 KLR 240 a Public Authority must not be allowed to get away with illogical, immoral or an act with conspicuous unfairness as has happened in this matter and therefore urged the court to grant the orders sought.
11. As regards costs the claimant submitted that costs follow the event as the general rule and thus prayed for costs to be awarded to him. Respondent's submissions
12. The respondent identified the following issues for determination.
 - a. Whether there is a dispute between the parties;
 - b. Whether the Appellant should be granted orders of a permanent injunction as per prayer a and b;
 - c. Which party should bear the costs of this suit.
13. On the first issue the respondent submitted that there is no dispute between themselves and the Appellant and neither has it caused its employees/agents/personnel to interfere with the Appellant's business. The Respondent submits that the Respondent's allegations are directed at the OCS and the Area MCA who are neither employees nor agents of the Respondent.
14. The respondent thus submitted that in view of the foregoing, this Tribunal does not have jurisdiction to determine this matter as there is no dispute between the parties to warrant an appeal to this Tribunal.



15. On the second issue identified by the respondent it submitted that the Appellant has not demonstrated by way of proof that he deserves to be granted permanent injunction orders as he has not established any link, relationship or nexus between the persons purportedly harassing him and the Respondent to cause him to legally impute liability upon the Respondent, that additionally, the Appellant has not discharged the burden of proof by way of evidence that there exists an imminent or actual threat of his meter being repossessed by the Respondent.
16. The respondent submitted that the Appellant has not discharged the burden of proof by way of evidence that there exists an imminent or actual threat of his meter being repossessed by the Respondent. It relied on the case of *Alice Wanjiru Ruhiu v Messiac Assembly of Yahweh* [2021] eKLR, the court held as follows in relation to burden of proof; “It is a principle of law that whoever lays a claim before the court against another has the burden to prove it.” As provided in Sections 107 and 108 of the [Evidence Act](#).
17. On costs the respondent submitted that the Appellant has failed to discharge the burden of proof in this case and as such should bear the costs of this suit.

Analysis And Determination

18. Having considered the pleadings, evidence and submissions the issues for determination are
 - 1) Whether the claimant has established a case against the respondent on a balance of probability.
 - 2) What orders should the court give?
 - 3) Who should pay the costs of the suit.
19. The claim by the Appellant is that he has been unable to carry out his water vending business freely as he has been receiving harassing calls by the local MCA using phone number 0721589856 and has been receiving threats from the defendant’s employees threatening to disconnect his water meter. As for the MCA though his number was given the name was not given and there was no evidence presented to show that he was doing so as an agent of the defendant company or was issuing the threats on instructions of the respondent or in conjunction with the respondent. There was absolutely nothing to connect the said actions of the MCA to the respondent company.
20. Regarding threats allegedly made by the employees of the respondent company, it is noted that the particulars of the said employees e.g. names, place of work, ranks, identification numbers, phone numbers etc. were not given. The claimant was not specific as to when the threats were made. There was no evidence that the claimant reported these threats either to the police or to the respondent company for investigations. It is noted that the respondent readily acknowledges that they had previously summoned the claimant at one time and when he appeared and presented documents which were valid he was allowed to continue with his business, this was confirmed by the claimant, why then would the respondent issue threats? Could it have been persons purporting to work for the respondent company?
21. It is a common principle of law that whoever lays a claim before the court against another has the burden to prove it. Sections 107 and 108 of the [Evidence Act](#) provide as follows:

107

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- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
22. The Halsbury’s Laws of England, 4th Edition, Volume 17, at paras 13 and 14: describes the burden of prove thus:
- “The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.”
23. From the above the court finds that the claimant has not proved on a balance of probability or at all that the respondent or his agents or servants interfered with the claimant’s water vending business or threatened to disconnect his water meter. The evidence is that the threats were made by another party an MCA who was not a party in this case. The claimant also sought orders against the police officers from Huruma police station against arresting the claimant in the course of his water vending business, the said police were not parties in this case and there was no evidence that the said police had made any threats or attempted to arrest the claimant. Such application can only be made where reasonable apprehension of arrest has been shown or demonstrated.

Disposition

24. The net effect of the above is that the claimant has failed to prove any cause of action against the respondent his claim is therefore dismissed with costs to the respondent.

HON B.M OCHOI CHAIRMAN

SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MAY 2024.

In the presence of;

Mr. Omao for the claimant

Mr. Mutua for the respondent

SIGNED BY: HON. BERNARD OCHOI

THE JUDICIARY OF KENYA.

WATER TRIBUNAL

TRIBUNAL

DATE: 2024-05-24 15:18:25+03

THE JUDICIARY OF KENYA

