



**Ndambuki v Nairobi City Water & Sewerage Company (Tribunal
Appeal 4 of 2015) [2024] WAT 1197 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] WAT 1197 (KLR)

**REPUBLIC OF KENYA
IN THE WATER APPEALS TRIBUNAL
TRIBUNAL APPEAL 4 OF 2015
B OCHOI, CHAIR
APRIL 5, 2024**

BETWEEN

BEATRICE NDAMBUKI APPELLANT

AND

NAIROBI CITY WATER & SEWERAGE COMPANY RESPONDENT

JUDGMENT

Background

1. By a statement of Appeal dated 18th May 2015, the appellant Beatrice Ndambuki filed this appeal before the Water Appeals Board seeking the following orders against the respondent Nairobi City Water and Sewerage company Limited.
 - a. That the respondent be compelled to forthwith restore water supply to the appellant premises known as L.R NO A2-613 located at Kayole together with the water supply meter carted away from the appellant premises by the respondent be restored and reconnected
 - b. That the respondent be prohibited and be restrained from unlawfully interfering with the appellant's water supply connection to the premises pending the hearing and determination of this application.
 - c. That the applicant has no legal obligation to settle the erroneous bill 127300: for the month of May 2007
2. The applicant contends that she is the proprietor of premises known as LR. A2-613 located at Kayole Estate in Nairobi county and that she has developed the plot and rented out to small household tenants who are in occupation and sorely depend on the respondent's water supply connection as there is no other alternative.



3. The Appellant contends that without any Notice and justification the respondent disconnected water supply to the premises and contends that she was not accorded fair administrative action procedure before the action was taken.
4. The Appellant avers that she had been paying her bills diligently prior to this and states that she had reported an erroneous bill of 127300:30 for the month of May 2007 which amount was later adjusted
5. The appellant further avers that the intention of the respondent is to have her premises uninhabited and that by disconnecting water it was trying to exert pressure on her to settle an alleged water supply bill that does not belong to her.

Respondents Case

6. Though this case was filed in the year 2015 it was not until December 2023 that the respondent with leave of the court filed their response to the Appeal .
7. The respondent contends that the reason for disconnection of the water supply to A/C Number 1237036 on plot number L.R. A2-613 was properly communicated to the appellant being that the account was in arrears of Ksh.170,100.10/= and the said amount came about after the account was adjusted and the appellant refused and or declined to pay for the same.
8. The respondent avers that the applicant lodged a complaint with the respondent citing an overcharge in the water bill for the period running from May 2007 to December 2011 and in the water bills for March and May 2013. That the respondent promptly reacted to the complainants by adjusting the billing for May 2007 to December 2011 to Ksh.69,857/=.07 and the billing for March and May, 2013 to Ksh. 8,717.42 respectively.
9. The respondent contends that the appellant so far has an outstanding debt of Ksh.170,000/=:, she has never fully settled the debts owed even after the bills were adjusted.
10. The respondent had two key prayers;
 - a. that the injunction orders issued on 21/5/2015 compelling the respondent to reconnect water supply to account number 1237036 be set aside.
 - b. The Tribunal directs the Appellant to pay the outstanding balance of Ksh.170,000/= owed to the respondent as a precondition to the respondent reconnecting water supply.
11. When the matter was set down for hearing the defendant did not attend court for the hearing and the court decided to proceed with the matter noting that the defendant's counsel was in court when the case was fixed for hearing. During the hearing the appellant who appeared in court adopted her affidavit dated 18/5/15 as her statement and the annexures to the affidavit as her list of documents.
12. The Appellant appeared in court for examination in chief and stated that her water account was for domestic use and used to pay around Ksh.500/= per month in 2007, she states that she was served with an exaggerated bill of 127,330/= in May 2007 of which she protested leading to disconnection of her water connection. She asked the court to dismiss the exaggerated amount and water be reconnected. She states that she started paying KSh.2,000 per month since that time in agreement with the respondent.
13. I have considered the evidence before the court and the issue for determination is whether or not on the evidence that has been placed before me, the Appellant has proved her case against the respondent on a balance of probability. According to the pleadings herein the dispute between the Appellant and respondent stems from what the claimant calls exaggerated bills presented to her by the respondent



in May 2007 and specifically mentioned the bill amounting to Ksh.127,300/=. She states that she complained about it and referred to annexure “MM2” is the complaint to the respondent. In the statement of defence or response to the Appeal the respondent states that they received the complaint from the appellant and duly acted on it and made the relevant adjustments and relied on the statement of account and billing adjustment vouchers attached to the response to the Appeal as prove of the said adjustment.

14. At paragraph six of the statement by the Appellant she admits that after she made the complaint the amount was adjusted by the respondent. In the billing adjustment voucher dated 22/8/14 (Annexure “BN2”) attached to the response to the claim the billing adjustment voucher gives the customer details which are of the Appellant, it gives the particulars of adjustment and reasons of the adjustment as overcharge between May 2007 and December 2011. The formula used to get the proposed credit after adjustment was shown and the amount arrived at was Ksh.69,857/=. Both the statements produced by the appellant and the one attached by the respondent show that this amount was adjusted on the bill on 9th October 2014 before this suit was filed. There was also another adjustment for the March and May 2013 bill. Also reflected in the statement of account on 9th October 2014. The question then is having acknowledged that there was an adjustment on the bill complained about what was the complaint by the appellant? It cannot certainly be on the overcharge since the issue was addressed by the respondent upon lodging of the complaint by the Appellant.
15. Section 107 of the Evidence Act, Cap 80 Laws of Kenya casts the burden of proof on the appellant in the following terms:
 - 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.”
16. It was the duty of the Appellant to prove that she was overcharged and nothing was done upon complaining. She appears not to have discharged this burden but instead appears to confirm that some adjustments were done upon complaining. I find therefore that the appellant has not proved her case on a balance of probability as required by the Law.
17. The Appellant complained that the Appeal Board then had issued orders for reconnection of the water which have never been complied with to date but one wonders why she never took the appropriate steps to enforce the same since 2015. Having found that the Appellant has not proved her case there will be no need to address that order which has now been overtaken by events.

Conclusion

18. In conclusion having found that the Appellant failed to prove her case on a balance of probability I dismiss the case with costs to the respondent.

SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF APRIL 2024

HON B.M OCHOI CHAIRMAN

SIGNED BY: HON. BERNARD OCHOI

THE JUDICIARY OF KENYA.

WATER TRIBUNAL

DATE: 2024-04-05 13:42:46+03

