

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 257 OF 2016

HON. MR. JUSTICE ANUP SINGH CHOUDRY.....PLAINTIFF

V

NATIONAL WATER AND SEWERAGE CORPORATION.....DEFENDANT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The plaintiff sued the defendant for negligence, procedural error, unlawful disconnection of water supply , anxiety and distress, and breach of statutory duty and sought damages for the torts .

The defendant denied the torts and averred that it had no duty to fix or maintain the plaintiff's plumbing system installed after the meter and the leakages complained of were sole responsibility of the plaintiff. The defendant counter claimed for 710,569/ for water consumed by the plaintiff.

After hearing both sides, both the plaintiff and counsel for the defendant made written submissions that I have carefully considered.

Section 101 (1) of the Evidence Act provides that

‘ whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts must prove those facts.’

The plaintiff had a duty to prove his case on a balance of probabilities.

Three issues were framed for trial

1. Whether the defendant acted lawfully when it disconnected the plaintiff's water supply?
2. Whether the defendant breached any statutory obligation to the plaintiff?

3. Whether the plaintiff is indebted to the defendant in the sum of 710,569/ and whether the plaintiff is entitled to recover the same.

Issue No. 1: Whether the defendant acted lawfully when it disconnected the plaintiff's water supply?

It was the plaintiff's case that he is the owner of plot 1 Nambi road Entebbe and that the defendant has supplied him water since 2009.

According to the plaintiff, he paid bills regularly except that the bills rose gradually until 2013 when he complained of excessive consumption of water not compatible with domestic use.

It was the plaintiff's evidence that consumption of 55 units was excessive and normal consumption was 25 units which was the case after the meter was fixed and relocated into his premises.

It was the plaintiff's case that he complained of excessive water consumption to Mr. Jackson in December 2013 and then travelled to U.K and that while there, water was disconnected on 19.12.2013 . He tendered a disconnection order dated 19.12.2013 with a balance on demand was 530,610/.

It was the defendant's case presented through Anthony Ojok Principal engineer that the plaintiff's water supply was disconnected for an outstanding bill of 710,000/ and that the water was re-connected in spite of non-payment. According to Mr. Ojok, he has been in the Entebbe water office since 2012 and had never received complaints from the previous owner of the property.

Under section 95 (2) (a) (b) of the Water Act cap. 152 the defendant may restrict or disconnect supply of water to the land in question if the amount has been outstanding for a period of 30 days or more from the date on which it become due.

The plaintiff did not bring evidence to show that the sum payable had been owing for less than 30 days in accordance with section 95(2) (a) of the Water Act. Nor did he show that he had paid the amount owed to the defendant.

As the plaintiff has failed to prove that the 530,610/ had been owing for less than 30 days ,the disconnection of water supply to the plaintiff was not unlawful.

Issue No. 2 : Whether the defendant breached any statutory obligation to the plaintiff?

It was the plaintiff's case that the defendant had a statutory duty to investigate and fix the problem of excessive consumption of water at his premises . According to the plaintiff , he complained of water leakage and the defendant carried out investigations on 20.12.2013. That he later brought an expert who established there was a leakage after the water tanks. The plaintiff undertook to bring photographs of the leak but he later swore an affidavit that that the photographs could not be traced.

It was the defendant's case that they investigated the leak. In a letter to the plaintiff dated 19.3.2014, the defendant confirmed that they investigated functionality of the meter which they found was in good condition . The defendant advised the plaintiff to get a plumber to investigate the piping after the tanks and have the leakage repaired.

The issue is whether the defendant had a statutory obligation to fix the problem.

Counsel for the defendant submitted that the responsibility of the defendant was for equipment installed up to the meter and thereafter, it is the responsibility of the consumer.

Under section 73 (1) of the Water Act, the owner of land has a responsibility to repair and maintain works connecting the land to the works of the authority.

Under section 73(2) if land is connected to the works of the authority by a combined connection, a notice to repair may be served on any or all the land owners.

The plaintiff asserts that the meter was off his property and therefore the defendant had a responsibility to fix plumbing problems after the meter .

This argument is flawed because section 73 of the Water Act places responsibility to repair works on the land owner, more so plumbing problems after the meter .This is because water after the meter is charged on the property owner regardless that it was wasted or that it leaked.

I find that the defendant acted reasonably when its engineers investigated the complaint of excessive water consumption and recommended the plaintiff gets a plumber to fix the problem.

Therefore, the defendant was not in breach of its statutory duty.

Issue No. 3 : Whether the plaintiff is indebted to the defendant in the sum of 710,569/ and whether the defendant /counterclaimant is entitled to recover the same.

The defendant tendered Dexh. 1 to show that the plaintiff is indebted in the sum for 710,569/ for water consumed and invoiced on 30.9.2014.

The plaintiff contends that the water loss was as a result of the negligence of the defendant.

I have found in issue No.2 that the defendant did not have a statutory duty to fix the plaintiff's plumbing problems. In the absence of contrary evidence that the plaintiff cleared the sum in the invoice, judgment is entered for the defendant on the counterclaim for the sum of 710,569/ .

In the result , I make the following orders.

- 1.The plaintiff's suit is dismissed
2. The plaintiff shall pay the defendant outstanding bill of 710,569/
3. The plaintiff shall pay the costs of the suit and the counterclaim.

DATED AT KAMPALA THIS 5TH DAY OF JULY 2017.

HON. LADY JUSTICE H. WOLAYO

