



**Sonya Services Security Limited v Impulse Promotions Limited (Civil Appeal E139 of 2023)
[2024] KEHC 16294 (KLR) (Commercial and Tax) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E139 OF 2023
H NAMISI, J
DECEMBER 18, 2024**

BETWEEN

SONYA SERVICES SECURITY LIMITED APPELLANT

AND

IMPULSE PROMOTIONS LIMITED RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. D. S., Aswani,
Adjudicator delivered on 24 May 2022 in SCCC No. E285 of 2023)*

JUDGMENT

1. This appeal arises from a claim filed in the Small Claims Court by the Respondent against the Appellant seeking the following orders:
 - i. Payment of pending payments totalling Kenya Shillings Four Hundred Thousand (Kshs 400,000/-) for security services rendered;
 - ii. General Damages for breach of contract, plus interest on the same at court rates;
 - iii. Costs of the suit
2. The claim arises from a contract for provision of security services by the Respondent to the Appellant at a monthly cost of Kshs 72,000/=. By 4 October 2022, the Appellant owed the Respondent a sum of Kshs 340,000/-. On 21 November 2022, the Appellant wrote to the Respondent terminating the contract. By letter dated 23 November 2022, the Respondent demanded an outstanding sum of Kshs 540,000/- owed by the Appellant.
3. The Appellant entered appearance but did not file any response. From the proceedings, it would seem that there were negotiations between parties with a view to settling the matter, but the same bore



no fruit. On 24 May 2023, in its determination, the trial court noted that the claim was filed on 18 January 2023 and by 24 May 2023, not settlement had been reached. The Appellant had been accorded sufficient opportunity to file a response but had failed to do so. In the premise, the trial court entered default judgement in favour of the Respondent for the sum of Kshs 100,000/= plus costs.

4. Aggrieved by the judgement, the Appellant lodged an appeal on the following grounds:
 - i. That the learned Magistrate erred in law and in fact by entering judgement in default of filing of response to the claim in the sum of Kshs 100,000/= which was not claimed for by the Respondent;
 - ii. That the learned Magistrate erred in law and fact in reaching a conclusion that the Appellant had consented to pay the Respondent a further Kshs 100,000/=;
 - iii. That the learned Magistrate erred in law and fact by ignoring the fact that out of the sum claimed of Kshs 400,000/= was partly paid by the Appellant in the sum of Kshs 300,000/=;
 - iv. That the learned Magistrate erred in law and in fact by entering judgement for the sum of Kshs 100,000/- which was not consented by the Appellant and Respondent
 - v. That the learned Magistrate erred in law and in fact in otherwise failing to exercise their discretion in the proper manner resulting in injustice to the Appellant
5. Parties canvassed the Appeal by way of written submissions.

Analysis and Determination

6. Section 38 of the *Small Claims Court Act* provides as follows:
 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
 2. An appeal from any decision or order referred to in sub section (1) shall be final.
7. In the case of *Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd* [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).”
8. Similarly in the case of *Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017)* [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

-“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR in which it was held that: “In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal,



confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

9. The duty of this Court in this instance is similar to that stated herein above, which is essentially limited to points of law. In the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.”

10. Turning to the grounds of appeal, I have read and considered the Record of Appeal and respective submissions by the parties. Despite the numerous grounds of appeal, some of which contradict others, the Appellant has focussed their submissions on one ground; whether the court can enter default judgement on issues not pleaded. The Appellant argued that the default judgement by the court was based on wrong principles since the sum awarded (Kshs 100,000/=) was not pleaded by the Respondent. With due respect, I fail to understand how this argument advances the Appellant’s case. Looking at the pleadings, the Respondent pleaded the sum of Kshs 400,000/-, but instead was awarded Kshs 100,000/=. If the Appellant’s argument was to be upheld, then the trial court ought to have entered judgement in the sum of Kshs 400,000/- as pleaded.
11. On the issue of the regularity or otherwise of a default judgement, this Court has considered the provisions of the *Small Claims Court Act*. Specifically, section 25 (2) provides as follows:

The respondent shall lodge with the Court a written response to the claim, including any counter-claim or set-off, in the prescribed form, within fifteen days.

12. Section 27 (1) provides thus:

If the respondent fails to respond to the claim within the prescribed period, the Court may, either on its own motion or on the claimants application enter judgment for the claimant and order the relief sought in the statement of claim.

13. Without stating the obvious, the Appellant did not file a response within the prescribed time. Consequently, the trial court entered default judgment in favor of the Respondent. I need not say more.
14. The upshot of the foregoing is that the Appeal fails. The same is dismissed with costs to the Respondent assessed at Kshs 40,000/=.

DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF DECEMBER 2024.

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:



..... for the Appellant

..... for the Respondent

