



**Securex Agencies (K) Limited v Resort Kenya Limited & another (Commercial Appeal E015 of 2023) [2023] KEHC 21751 (KLR) (Commercial and Tax) (29 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21751 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E015 OF 2023**

**DAS MAJANJA, J**

**AUGUST 29, 2023**

**BETWEEN**

**SECUREX AGENCIES (K) LIMITED ..... APPELLANT**

**AND**

**RESORT KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MAYFAIR GROUP LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgement and Decree of Hon. C. Ndumia Adjudicator/SRM dated 25th January 2023 at the Small Claims Court at Nairobi SCCCOMM No. E6112 of 2022)*

**JUDGMENT**

**Introduction and Background**

1. By a Statement of Claim dated October 7, 2022, the Appellant filed suit at the Small Claims Court claiming that on various dates between May 31, 2016 and November 29, 2016 and upon the Respondents' own request, it deployed to the Respondents' premises day and night security officers and security apparatus. It consequently raised invoices of Kshs. 215,760.00 (inclusive of VAT) for services rendered which the Respondent refused to settle. It therefore claimed this amount together with interest and costs of the suit.
2. In their response to the claim, the Respondents stated that while they received services from the Appellant which included Cash in Transit security services, the mode of payment was for the Appellant to raise an invoice based on the Cash in Transit delivery notes and the Respondents would then settle after receiving and acknowledging them. The Respondents contended that they did not recognize the invoices attached to the Appellant's bundle of documents since they did not resemble the invoices that the Appellant used to raise during the business relationship and that there were no Cash in Transit



Delivery Notes supporting the same. They maintained that they had no obligation to pay based on invoices that were strange to them and urged the court to dismiss the claim.

3. Before the trial court, each party called one witness. After considering written submissions, the court rendered its judgment on January 25, 2023 dismissing the suit. It found that the Appellant had not produced any statement of account, that it had not highlighted the original amount owed in its documents and had only pointed to the fact that the Respondents had admitted to a debt but not the amount. That the Appellant's documents did not mention what the original amount was hence the trial court was unable to determine the balance due. That although the Appellant was requested to submit the disputed invoices, the evidence on record did not assist the trial court deduce if the said invoices were included in the last payment or not. In the circumstances, the trial court held that the debt was not proved and that the Appellant only produced invoices in proof of the amount claimed but did not produce any delivery notes or receipt of the goods and therefore taking all the above into account, the trial court concluded that the Appellant had failed to prove its case on a balance of probabilities.
4. It is this decision that has precipitated this appeal which is grounded on the Memorandum of Appeal dated February 2, 2023. The appeal was disposed by way of written submissions. I will make relevant references to the submissions in my analysis and determination below.

### **Analysis and Determination**

5. This court's jurisdiction is limited to matters of law as provided for under section 38(1) of the *Small Claims Court Act*, 2016. A court limited to matters of law is not permitted to substitute the Subordinate Court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).
6. What the Small Claims Court was called upon to determine was whether the Appellant proved its claim of Kshs. 215,760.00 against the Respondents and this court's duty is to determine whether it arrived at a conclusion that a reasonable tribunal hearing the same evidence would arrive at.
7. The trial court found that the invoices initially filed by the Appellant corresponded with the invoices filed later as the Respondents had stated that the initial invoices were strange to them in form. A perusal of these invoices demonstrate that the trial court did not err in its conclusion that the two sets of invoices corresponded in substance. The Respondents had also pleaded that the invoices had no corresponding delivery notes in support. The trial court found that indeed, the Appellant had not produced any delivery notes or receipt of the goods and a perusal of the record indicates that the trial court was right as the Appellant did not produce any delivery notes in support of its claim. Despite this, the Appellant claimed the Respondents had admitted the debt in their email correspondences with the Appellant. However, the trial court stated that in all those correspondences, the court was not able to determine if there was a balance because though the Appellant was requested to submit the disputed invoices, the evidence on record did not help the trial court deduce if the said invoices were included in the last payment or not.
8. I have gone through the said email correspondences. In an email of November 15, 2021, the Respondents inform the Appellant to arrange to collect a cheque for the sum of Kshs. 427,364 while they "reconcile the missing invoices". The Respondents then go further to state "Please also e-mail/send copies of receipts(the one given by the guards upon pickup/drop the CIT box). For the CIT Invoices/sales order (Kshs 41,760=,Kshs 69,600= & kshs 83,520=)". On 16.11.2021, the Appellant informs the 2<sup>nd</sup> Respondent to recheck its computation of withholding tax (WHT) on various sums and under the subject "CREDIT NOTE". In response, the 2<sup>nd</sup> Respondent in an email of 17.11.2021



states that “This is well noted. The credit notes were not clearly indicated against which invoices they were issued to hence the misunderstanding. However, we shall consider the discrepancy in our subsequent payments”. In an email of December 21, 2021, the Respondents informed the Appellant to collect a cheque of Kshs. 442,517.00.

9. Having reviewed the correspondence, I cannot fault the trial court’s conclusion that it was difficult to discern the original debt owed to the Appellant and whether the Respondents’ last payment of Kshs. 442,517.00 was a final payment. I further agree with the Respondents’ submission that the correspondence could not be deemed as unequivocal admissions of the debt claimed by the Appellant as set out in the case of *Choitram v Nazari* [1984] KLR 327 where Madan JA., stated that ‘Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning’. The Respondents neither make reference to the subject invoices in this matter nor admit to owing the Appellant Kshs. 215,760.00.
10. Since the Respondents did not admit the debt and the Appellant did not produce the delivery notes in support of the invoices, the trial court was correct to conclude that the Appellant did not prove its claim. I also cannot fault the trial court for stating that production of invoices alone was not enough to prove the amount claimed and that the delivery notes were important to prove the Appellant’s claim as the same were expressly sought by the Respondents. The Appellant’s claim thus remained unsupported.

#### **Disposition**

11. The appeal is dismissed. The Appellant shall pay the Respondents costs of this appeal assessed at Kshs. 30,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF AUGUST 2023.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango.

Mr Kaula instructed by OK Law Advocates Law LLP for the Appellant

Mr Otieno instructed by A.K. Muchiri and Company Advocates for the Respondent.

