



**Homeboyz Entertainment Limited v Total Stewards Services Limited (Civil Appeal E095 of 2021)
[2022] KEHC 15969 (KLR) (Commercial and Tax) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E095 OF 2021
DAS MAJANJA, J
NOVEMBER 30, 2022**

BETWEEN

HOMEBOYZ ENTERTAINMENT LIMITED APPELLANT

AND

TOTAL STEWARDS SERVICES LIMITED RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. S. G.
Gitonga, RM/Adjudicator delivered 17th September 2021 at
the Small Claims Court, Milimani in SCC COMM 019 of 2021)*

JUDGMENT

1. This is an appeal from the judgment of the Small Claims Court dated September 17, 2021 where the court allowed the respondent's claim for Kshs 465,160.00 against the appellant.
2. The facts giving rise to the suit before the subordinate court are largely common ground. Sometime in 2017, the parties entered into a verbal contract where the respondent provided stewardship services to the appellant. By a plaint dated September 17, 2018, the respondent claimed that the services were worth Kshs 2,767,296.00 but the appellant had only paid for Kshs 2,302,136.00 leaving a balance of Kshs 465,160.00 which it claimed.
3. In its defence, the appellant disputed the total contract sum of Kshs 2,767,296.00 and stated that the same was for a total sum of Kshs 2,302,136.00 inclusive of tax meaning that the appellant had fully paid for the services. The appellant thus denied owing or refusing to pay the respondent any money.
4. The court heard a witness each from the parties and considered written submissions before rendering its judgment on September 17, 2021. The court concluded that the respondent had proved its case on a balance of probability and proceeded to award it the Kshs 465,160.00 together with interest and



costs of the suit. It is this decision that is the subject of the instant appeal which was disposed by way of oral submissions.

5. The court's jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the *Small Claims Court Act*, 2016 which provides that 'A person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law.' 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 (see *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).
6. Having considered the record and parties' arguments, I am unable to fault the findings of the subordinate court. The respondent produced invoices which it claimed were the final reflection of the negotiated positions by the parties and superseded the quotations provided before. Further, in as much as the appellant's witness testified it did not receive any invoices, correspondence of the parties prior to the demand letters and filing of the suit indicate that invoices were indeed forwarded to the appellant beforehand. In any event, the appellant's witness admitted that what was being negotiated was the services as per the quotations which buttresses the finding that the invoices were a culmination of the parties' negotiations. In the absence of evidence that the invoices issued were not the final position of the parties, one cannot fault the adjudicator for concluding that the same remained due and payable by the appellant and I find nothing perverse in this conclusion.
7. The appeal lacks merit. It is dismissed with costs to the respondent assessed at Kshs 20,000.00.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF NOVEMBER 2022.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.

Mr Kipruto instructed by Kittony Waiyaki Advocates for the Appellant

Mr Jimmy Maina instructed by Chege Kibathi and Company Advocates LLP for the Respondent

