



**Mukofu v Secretary, Board of Governors, Khwisero Secondary School & another  
(Civil Appeal 2 of 2021) [2022] KEHC 16908 (KLR) (23 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16908 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL 2 OF 2021  
WM MUSYOKA, J  
DECEMBER 23, 2022**

**BETWEEN**

**ANNE MUKOFU ..... APPELLANT**

**AND**

**SECRETARY, BOARD OF GOVERNORS, KHWISERO SECONDARY  
SCHOOL ..... 1<sup>ST</sup> RESPONDENT**

**CHAIRMAN, BOARD OF GOVERNORS, KHWISERO SECONDARY  
SCHOOL ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal arising from the judgment of Hon. G. Ollimo, Resident  
Magistrate, delivered on 7th January 2021, in Butere PMCCC No. 4 of 2017)*

**JUDGMENT**

1. The suit before the primary court was by the appellant, seeking a sum of Kshs 2,937,825.00 from the respondents, with respect to goods supplied to Khwisero Secondary School, the school, in which they are the officials. The respondents denied liability, saying that if anything was owed it did not amount to what was claimed.
2. A trial was conducted. PW1 was the appellant. She testified about how she supplied assorted foodstuffs to the School, on divers dates, whose total value was Kshs 2,937,825.00. The foodstuffs included maize, beans, rice, among others. She averred that she had won tenders with the School. She was only paid for part of the goods supplied. She stated that she initially delivered foodstuffs worth Kshs 8,387,285.00, and was paid a total of Kshs 5,591,000.00, leaving a balance of Kshs 2,796, 285.00.
3. The respondents testified through the 1<sup>st</sup> respondent, the principal of the school and the secretary to the board of management of the school. She confirmed that the appellant was a supplier of goods to the school. She conceded that the school owed her Kshs 2,000,000.00, but cited anomalies, alleging that the price of maize was exaggerated. She produced correspondence between the School and the



appellant, minutes of the board of the school, and a report by auditors. She stated that the school had not failed to pay, saying that it was the appellant who had failed to meet the board. She averred that when she took over as principal, the amount owed was Kshs 1, 850, 000.00, and that the school had made some payments.

4. The trial court found that the appellant had not demonstrated that she had not been paid at all for the period pleaded, the invoices placed on record were similar, the delivery notes allegedly not paid were not matched to the invoices, lack of certainty with respect to the delivery notes paid, lack of proof that the amount claimed was outstanding, and the fact that there were outstanding audit queries.
5. The appellant was aggrieved, hence the instant appeal. Her memorandum of appeal is dated January 18, 2021. Her grounds of appeal are that the findings of the court are contradictory, the rights of the appellant to the amount owed were violated, the respondents had not denied owing the money claimed, framing issues that were inappropriate, failure to consider the effect of the appellant's omission to attend before the board and her continuing to supply goods in 2018 to the school, and the judgment occasioned miscarriage of justice.
6. Directions were given on January 26, 2022, for disposal of the appeal by way of written submissions. I have seen written submissions by both sides, and noted the arguments made by both.
7. The evidential burden of proof lies with the person who desires the court to believe the existence of a fact, according to sections 107, 109 and 112 of the *Evidence Act*, cap 80, laws of Kenya. See *Isca Adbiambo Okayo v Kenya Women Finance Trust* [2016] eKLR (Maraga, Musinga & Gatembu, JJA), *Jennifer Nyambura Kamau v Humphrey Mbaka* [2013] eKLR (Visram, Koome & Otieno-Odek, JJA), and *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR (Majanja, J).
8. The appellant was claiming a sum of Kshs 2,937,825.00 in her plaint, while in her witness statement, dated February 8, 2017, she claimed she was owed Kshs 2,752,715.00, and there were clear discrepancies on what the appellant claimed and what the respondents claimed was owed. Furthermore, there were outstanding audit queries over the amounts claimed, and the appellant failed to attend a meeting called by the respondents to resolve the issue. The burden lay with the appellant to prove what was owed to her, and the evidence placed on record was unclear on the exact amount.
9. Overall, I do not find merit in the appeal. I disallow it. The findings and holdings of the trial court are upheld. As the respondents concede being indebted to the appellant, and her case at the trial court would have succeeded were it not for the pending audit, they do not deserve costs of this appeal, nor at the court below. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 23<sup>RD</sup> DAY OF DECEMBER, 2022.**

**WM MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant.

Mr Wekesa, instructed by Wekesa & Wekesa, advocates for the appellant.

Ms Were, instructed by the Attorney-General, advocates for the respondents.

