



**Erideka Safaris Kenya v Thiongo & another (Civil Appeal E031 of 2024)  
[2025] KEHC 1805 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1805 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E031 OF 2024  
RC RUTTO, J  
FEBRUARY 14, 2025**

**BETWEEN**

**ERIDEKA SAFARIS KENYA ..... APPELLANT**

**AND**

**SAMMY KIMANI THIONGO ..... 1<sup>ST</sup> RESPONDENT**

**EQUITY BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal from the judgment and decree of the Small Claims Court at Nairobi (M. W. Kamau, RM/Adjudicator) delivered on 8th February 2024 in SCCC No. E389 of 2023)*

**JUDGMENT**

1. This is an appeal against the judgment and decree of the trial magistrate/adjudicator delivered on 8<sup>th</sup> February 2024. By consent of the parties dated 4<sup>th</sup> December 2024, the appeal against the 2<sup>nd</sup> respondent was marked as withdrawn with no orders as to costs. The appeal is thus for determination against the 1<sup>st</sup> respondent only.
2. In his statement of claim amended on 9<sup>th</sup> May 2023 and filed on 18<sup>th</sup> May 2023, the respondent contended that on 15<sup>th</sup> March 2023, he contacted the appellant to secure its services in organizing a family trip to Mombasa. Following conclusive negotiations, the 1<sup>st</sup> respondent deposited a sum of Kshs. 250,000.00 to the appellant's Equity bank account number 0610XXXXXX953 intended to cover accommodation expenses and flight tickets from 17<sup>th</sup> March 2023 to 19<sup>th</sup> March 2023 for three adults and two minors.
3. Following that transaction, it was expected that the appellant's director, Erick Kaburu, would issue the flight tickets. However, the director failed to do so and instead informed the 1<sup>st</sup> respondent that he was unable to secure the flight reservations. As a result, the 1<sup>st</sup> respondent requested the appellant to cancel the trip and refund the remitted amounts. In response, the appellant explained that it was



unable to initiate and complete the refund process due to banking issues. When the 1<sup>st</sup> respondent visited a branch of the bank, the appellant proposed releasing only 70% of the amount as refund. The 1<sup>st</sup> respondent rejected these terms.

4. This led the 1<sup>st</sup> respondent to file suit against the appellant for breach of contract by failing to book the flight tickets on time as agreed and for misrepresentation. Consequently, the 1<sup>st</sup> respondent sought compensation in the sum of Kshs. 250,000.00, damages for breach, an order that the 2<sup>nd</sup> respondent do release from the appellant's account the sum of Kshs. 250,000.00 as well as costs of the suit.
5. By judgment dated 8<sup>th</sup> February 2024 the adjudicator found in favor of the 1<sup>st</sup> respondent. Further, the 2<sup>nd</sup> respondent was directed to release Kshs. 250,000.00 held in the appellant's bank account to the 1<sup>st</sup> respondent's account. The appellant was also directed to meet the respondents' costs of the suit.
6. The appellant being aggrieved by those findings filed its memorandum of appeal dated 9<sup>th</sup> February 2024. It urged this court to consider the following issues: the trial court erred in finding that the appellant failed to file its pleadings having filed them through the last known email of the court; the appellant did not breach the contract; the trial court relied on extraneous suppositions in arriving at an unjust conclusion; and the judgment was wholly irregular and contrary to the law. For these reasons, the appellant prayed that the appeal be allowed, the judgment be set aside and it be awarded costs of the appeal.
7. The appeal was canvassed by way of written submissions. In its written submissions dated 27<sup>th</sup> November 2024, the appellant reiterated the contents of its memorandum appeal reemphasizing that it filed its pleadings and that a matter would not be certified ready for hearing if its pleadings were not on record. Citing several decisions, the appellant submitted that the contract had been frustrated by dint of the fact that airline policy could not have permitted it to secure flight tickets for the minors. Be that as it may, the appellant stated that it implored mitigating measures by securing accommodation, offered alternative transport arrangements and extension of hotel bookings to accommodate a rescheduled travel date.
8. The 1<sup>st</sup> respondent filed his written submissions dated 2<sup>nd</sup> December 2014. He submitted that the findings of the trial court were commendable, well-reasoned, fair and just since the appellant had breached the contractual terms of engagement. He urged this court not to interfere with the findings of the adjudicator. He prayed that the appeal be dismissed with costs.
9. To begin with, the duty of this court as an appellate court is well prescribed under Section 38 of the [Small Claims Court Act](#) which limits the jurisdiction of this Court to matters of law only. It provides that:

“ 38.

- (1) A person aggrieved by the decision or an order Appeals of the Court may appeal against that decision or order to the High Court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final.”



10. This position was buttressed in the case of Wachira vs. Mwai [2024] KEHC 3173 (KLR), where the court while discussing the appellate jurisdiction of the small claims courts held as follows:

“ 4. The jurisdiction of the Small Claims Court is set out in the *Small Claims Court Act*. Ipso facto, there is only one chance of Appeal to this court. It is an Appeal on points of law. In view of the provisions of section 38 of the *Small Claims Court Act*,

11. What constitutes points of law was discussed in the case of Kenya Breweries Limited vs. Godfrey Oduyo [2010] eKLR where the court held:

“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.”

12. Based on the above provision of law and the authorities referred to, this court has considered the grounds of appeal as they appear in the Memorandum of Appeal dated 9<sup>th</sup> February, 2024, the proceedings at the lower court and the appellant’s submissions. This court observes that the appellant does not dispute that it indeed breached the contractual terms agreed upon with the 1<sup>st</sup> respondent. It however, raises the doctrine of frustration as a defence for the breach and calls upon the court to reevaluate this evidence. While the appellant raises this defence, this court notes that it did not file any pleadings before the trial court. As a result, there is no basis to urge this court to reconsider the defence or to claim that the adjudicator considered matters it ought not to have considered.

13. The appellant urged that it filed its pleadings through the last known email of the court. It is instructive to note that while the appellant asserted that it advanced its pleadings through the court’s last known email address, no evidence of such activity or the email address was furnished for the benefit of this court’s assessment. I therefore find those allegations as mere conjectures and a red herring and thus the need to set the record straight. The adjudicator in this regard held as follows:

“ 3. The 1<sup>st</sup> Respondent’s pleadings were note in the Court record and neither were they on the online efileing portal. The Court sent an email to the parties requesting for the documents to be uploaded, in case the same were missing, but as the time of writing this judgement, the 1<sup>st</sup> Respondent did not upload any of their documents ...”

14. The sequence of the events is as follows: on 24<sup>th</sup> March 2023, the appellant’s counsel indicated that it would need time to file the appellant’s response to the amended statement of claim. That did not take place. Later, on 12<sup>th</sup> April 2023, leave was granted to file its response. From the record, that did not happen. When the dispute was heard on 24<sup>th</sup> May 2023, the 1<sup>st</sup> respondent’s counsel elected not to call a witness and instead relied on the documents on record.

15. Besides, looking at the memorandum of appeal in totality, and the written submissions of the parties, this court finds no issues of law raised by the appellant. The fact that the reasons were itemized as issues of fact and law did not in any way imply that the issues raised by the appellant were purely issues of law. Be that as it may, the defence raised, in justification of its actions, was raised late in the day by the appellant who has come to this court with unclean hands by trying to craftily gain advantage of the



appeal by introducing several new issues. Accordingly, I do find that the appeal herein lacks merit. It is hereby dismissed with costs to the 1<sup>st</sup> respondent.

It is so ordered.

**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025.**

For Appellant:

For Respondent:

Court Assistant:

