



**Logiserve Limited v Microsa Security Services Limited (Commercial Appeal E029 of 2024)  
[2025] KEHC 3383 (KLR) (Commercial and Tax) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3383 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E029 OF 2024  
BK NJOROGE, J  
MARCH 13, 2025**

**BETWEEN**

**LOGISERVE LIMITED ..... APPELLANT**

**AND**

**MICROSA SECURITY SERVICES LIMITED ..... RESPONDENT**

*(Being an appeal arising from the decision judgment/decree of the small claims Court at Nairobi (Hon. T.K. Ng'etich delivered on 12th January 2024)*

**JUDGMENT**

1. This is a Judgment in respect of an appeal from the Small Claims Court. It is in respect of a judgment delivered by Hon. T.K. Ng'etich on 12<sup>th</sup> January, 2024. This is in SCCCOMM E6159 of 2023.
2. The Appellant was the Original Respondent before the Small Claims Court. The Respondent herein was the Original Claimant.
3. The Small Claims Court entered a judgement in favour of the Claimant as against the Respondent for a sum of Kshs.561,160/- plus costs and interest from the date of Judgment until payment in full.

**Background facts**

4. The Respondent offered security guard services to the Appellant. This was in respect of a Building at Eldama Ravine, known as Rosa Plaza. The contract for the provision of the Security Guard Services ran from 2017 to 1<sup>st</sup> February 2020, when it was terminated.
5. The Respondent claimed unpaid dues on account of the monthly charges for the Security Guard Services. When the Appellant failed to pay, the Respondent filed the suit before the Small Claims Court. It claimed a sum of Kshs.601,480/- as unpaid form the contract.



6. The Respondent's response to the claim was that it denied owing the sum of kshs.601,480/-. It admitted to owing Kshs.16,440/-.
7. The Appellant blamed the Respondent for failure to issue invoice on time or in a timely manner. It also blamed the Respondent for being heavy handed and attempting to extort the Appellant's monies. It claimed that the Respondent was demanding monies far above what was negotiated and agreed upon at the commencement of the contract.
8. The learned Adjudicator heard the testimonies of the Respondent and the Appellant. It found that there was an agreement between the parties for provision of Security Guard Services. That the contract had been terminated with some monies due to the Respondent. The evidence of the contract could be discerned from the conduct of the parties. This is notwithstanding that it was not written.
9. The learned Adjudicator found that after reconciling the Bank Statement, the Appellant had proved a part-payment of Kshs.40,320/- from the amount due. The learned Adjudicator reduced the amount claimed of Kshs.601,480/- by kshs.40,320/-. Thus, leaving a sum of Kshs.561,160/-. It is this amount that was awarded to the Respondent together with interest and the costs of the suit.
10. It is this award that has triggered this appeal.
11. This Appeal was admitted and directions given that it be disposed of by way of written submissions.
12. The Court has seen and read the Appellant's written submissions dated 1<sup>st</sup> October, 2024 together with the list of authorities of even date. The Court has also seen and read the Respondent's written submissions dated 1/10/2024.
13. The Appellant has filed a Memorandum of Appeal. It raises a whopping fourteen (14) grounds. This has raised the Court's eye brows, as this is an Appeal that arises from the Small Claims Court. The reason for this will become more apparent in the rest of the decision.

### **Issues for determination**

14. The Court frames two issues for determination as follows;
  - a. Is the Appeal meritorious?
  - b. What orders/reliefs lie from this Appeal?

### **Analysis**

15. An Appeal from the Small Claims Court is pursuant to Section 38 of the Small Claim Court Act Cap 10A of the Laws of Kenya. It states as follows;

Appeal:

  1. 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.
  2. An appeal from any decision or order referred to in subsection (1) shall be final
16. An Appeal to this Court can only lie on matters of law. Put in another way, the questions to be posed to this Court by the Appellant should be questions on matters of Law. What should vex this Court's mind on an Appeal should be matters or issues or questions revolving around the issues of law. On matters of fact, the learned Adjudicator sitting at the Small Claim Court has the final say.



17. The Court relies on the decision of Wachira v Mwai [2024] KEHC 3173 (KLR) where the Court said the falling regarding its appellate jurisdiction.

“I have not seen a single issue of law being raised by the Appellant. It is not enough to cite very complicated Latin terms. They must be a fair and correct issue of law. The court cannot be faulted that it reached a decision on no evidence. The Small Claims Court is the queen when it comes to evidence. I have evaluated the same and noted that the court exercised its discretion correctly. In Mbogo v Shah 1968 EA 93 the court held thus: -

“The duty of this court in an appeal against the exercise of that discretion is not to interfere unless the Judge has exercised his or her discretion wrongly in principle or perversely on the facts of the case.”

18. This Court is therefore being called upon by the Appellant to re-look, re-analyze and re-consider the evidence before the Small Claims Court. However, any attempt to call upon this Court to embark on such a journey, will be denied.

19. What then constitute points of law or matters of law? Put in other words how do we distinguish between points of law or matters of law and matters of fact? The Court refers to the case of Kenya Breweries Limited v Godfrey Odogo [2010] eKLR where it was stated as follows;

“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.”

20. The spirit behind the Small Claims Court was that matters would be heard expeditiously. The procedure for hearing is not heavily regulated. the rules of procedure are relaxed. Even the law of evidence is exempted.

32. Exclusion of strict Rules of evidence

- (1) The Court shall not be bound wholly by the Rules of evidence.
- (2) Without prejudice to the generality of subsection (1), the Court may admit as evidence in any proceedings before it, any oral or written testimony, record or other material that the Court considers credible or trustworthy even though the testimony, record or other material is not admissible as evidence in any other Court under the law of evidence.
- (3) Evidence tendered to the Court by or on behalf of a party to any proceedings may not be given on oath but that Court may, at any stage of the proceedings, require that such evidence or any part thereof be given on oath whether orally or in writing.
- (4) The Court may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it may require.
- (5) All evidence and information received and ascertained by the Court under subsection (3) shall be disclosed to every party.
- (6) For the purposes of subsection (2), an Adjudicator is empowered to administer an oath.



- (7) An Adjudicator may require any written evidence given in the proceedings before the Court to be verified by statutory declaration.
21. The learned Adjudicator regulates the procedure and hearing the parties includes proceeding with a trial by documents only. This is provided for by Section 30 of the Small Claim Court Act Cap 10A of the Laws of Kenya which states as follows;
30. Proceeding by documents only Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court.
22. The decision of the learned Adjudicator pursuant to a hearing through a document only trial is still a valid decision. This is notwithstanding that no witnesses were heard or cross-examined. The learned Adjudicator is empowered to sift through the facts and evidence in the documentation and arrive at a just decision. Such a decision cannot be challenged on appeal on the basis of appreciation of facts by the learned Adjudicator.
23. It therefore now becomes very clear why the Court's attention was caught by the many grounds raised in this Appeal.
24. To this Court by way of illustration, an Appeal can lie on issues of law based on the learned Adjudicator's appraisal of the facts before him. As an example, a Respondent can plead that the claim is based on a contract and is statute barred.
25. The Respondent can plead that the contract was entered into in the year 2017 which is 8 years as the suit was filed in 2025. The learned Adjudicator in calculating time may miss the cue and uphold the contract as valid. An Appeal would lie to this Court on a matter of law. The matter being whether limitation of actions applied to a contract entered into over 8 years ago.
26. Having said so, the Court now turns to the Grounds of Appeal filed in this matter. They challenge the learned Adjudicator appreciation of the facts and evidence presented before him.
27. The Appellant is aggrieved that though it had admitted a sum of Kshs.16,440/-, the Court did not enter judgment for the said amount. The Court notes that the procedure under Section 26 of the *Small Claims Court Act*, is detailed on admissions. The learned Adjudicator ought to have taken note of this admission and entered Judgment in favour of the Respondent (as the Claimant) for the admitted amount. The rest of the claim thereafter ought to have proceeded for hearing.
28. The Court however notes that the matter did proceed for a full trial and the claim was allowed for a sum of Kshs.561,160/-. This would include the admitted sum of Kshs.16,440/-. To this Court the complaint should have come from the Respondent herein, who stood to benefit from the Judgment on admission, but not the Appellant. It is as if the Appellant is of the view that having admitted part of the claim, it should not have been subjected to a trial for the balance of the claim. This is not so.
29. Having read the submissions filed by the Counsel for the parties, the Court agrees with the Respondent that the Appellant seeks this Court to answer the following summarized questions.
- a. What was the duration of contract?
  - b. What was the applicable rate of payment? and
  - c. What is the amount due and owing from the Appellant to the Respondent? Basically, the settlement of accounts.



30. To this Court, there are no matters of law raised in this Appeal. Matters of law have to be crystal clear. They should pop out clearly in the Grounds of Appeal as well as the written submissions. Failure to do so leaves the Court reluctant to conduct a retrial of the claim before the Small Claims Court. The statute never intended this Court to be bogged down by matters of fact which are the preserve of the learned Adjudicators.

**b) What orders/reliefs lie from the Appeal?**

31. The Court finds that the Appeal is not merited. It is therefore dismissed. As to costs, the Respondent is entitled to costs as the successful party.

Determination

32. The Appeal is dismissed in its entirety.

33. The Respondent is awarded the costs of the Appeal.

34. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH, 2025**

**NJOROGE BENJAMIN. K**

**JUDGE**

In the presence of: -

Mr. Wanjohi for the Appellant

Mr. Osumba for the Respondent

Court Assistant: Mr. Luyai

