



REPUBLIC OF KENYA



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Digithu Hotel Limited v Mwangi t/a Jaycmi Enterprises (Civil Appeal E170 of 2021) [2025] KEHC 11433 (KLR) (11 April 2025) (Judgment)

Neutral citation: [2025] KEHC 11433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E170 OF 2021
DO CHEPKWONY, J
APRIL 11, 2025**

BETWEEN

DIGITHU HOTEL LIMITED APPELLANT

AND

GEOFFREY MAINA MWANGI T/A JAYCMI ENTERPRISES RESPONDENT

(Being an Appeal from the entire Judgment by Honourable Priscah Wamucii Nyotah, Principal Magistrate's Court in Ruiru delivered on 9th September, 2021 in Civil Suit No.E2 of 2020)

JUDGMENT

1. The Appellant lodged this appeal vide a Memorandum of Appeal dated 17th September, 2021 which raised the following grounds:-
 - a. That the Learned Magistrate erred both in fact and law in entering Judgment against the Defendant.
 - b. That the Learned Magistrate failed to appreciate that the burden of proof lay on the Plaintiff which burden was not discharged as the Plaintiff did not prove his case.
 - c. That the Learned Magistrate erred in law and in fact in entering Judgment against the Defendant whereas the Plaintiff failed to produce very crucial documents with regards to the suit.
 - d. That the Learned Magistrate erred in fact and in law in relying on unauthenticated documents.
 - e. That the Learned Magistrate erred in law and in fact in relying on an accounts document that did not have any supporting documents to show where it extracted it information.
2. The Appeal seeks the following orders:-



- i. That the Appeal be admitted.
 - ii. Upon the hearing of this Appeal, the Judgment of the court in Civil Suit No. E2 of 2020 be set aside.
 - iii. This Honourable court be pleased to direct this matter afresh by another Magistrate.
 - iv. Costs to abide the outcome of this appeal.
 - v. This Honourable court be pleased to make such further or other orders as it may deem just in the circumstances of the case.
3. This being a first appeal it is this duty of the court to reassess and reanalyse the evidence that was tendered before the trial court and draw its own conclusion while bearing in mind that it did not have the advantage to observe the demeanour of the witnesses as the trial court.
 4. This duty was well spelt out in the decision in the case of *Selle & Another – v- Associated Motor Boat Co. Ltd. & Others* [1968] EA 123 in the following terms:-

“I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (*Abdul Hammed Saif – v- Ali Mohamed Sholan* (1955), 22 E.A.C.A. 270).”

5. Nonetheless, brief facts leading to the present case are that the Respondent sued the Appellant vide a Plaint dated 18th November, 2016 claiming that through his registered firm, Jaycmi Enterprises, it entered into an agreement with the Appellant to supply fruits and vegetables on credit on a weekly basis. Thereafter, the Appellant would pay and the relationship lasted for a period of three years. According to the Respondent, out of the fruits he supplied, the Appellant only paid Kshs. 302,959/= leaving a balance of Kshs. 778,457/=. When the Appellant failed to pay the balance when demanded, the Respondent filed the suit before the trial court to recover the debt. The Respondent also sought costs and interests for the suit.
6. In response, the Appellant filed a statement of defence dated 29th November, 2020 wherein it denied the contents of the Plaint. The trial court delivered Judgment dated 9th September, 2021 in favour of the Respondent for the sum of Kshs. 778,457/=:, costs and interest to be paid until payment in full.
7. It is the said Judgment which informed the present appeal and as per the court’s directions, the Appeal was disposed of by way of written submissions with the Appellant filing its submissions dated 19th October, 2023 while those of the Respondent are dated 4th November, 2024. The court has read and considered the said submissions which in summary are as follows.
8. The Appellant submits that the trial court failed to acknowledge that the Respondent did not discharge his burden of proof in the case, particularly the fact that the trial court failed to appreciate that the standard procedure for receiving goods by the Appellant which included embossing the Defendant’s



stamp which the Respondent failed to prove. According to the Appellant, the claim by the Respondent had to be proven on the same threshold for special damages. Therefore, offering unstamped invoices never met the required standard of proof and it was not enough to conclusively indicate that the Respondent had indeed supplied the alleged goods.

9. According to the Appellant, the unstamped invoices were internally generated and they were insufficient to link any purchases made by the Appellant or its agents. In essence, the Appellant faulted the trial court for failing to make adequate comparison between the invoices made by the Appellant and those internally procured by the Respondent as they were not legitimate or authentic to substantiate the claim made. As such, based on those discrepancies, the Appellant urged the court to allow his appeal.
10. The Respondent's case on the other hand is that he adduced evidence before the trial court to show that he had indeed made the deliveries hence the appeal is not merited. Part of his evidence as contained in his list of documents, are invoices for the goods delivered, delivery notes and cheques for the invoices that were paid. He testified that those delivery notes showed he had supplied goods worth Kshs. 1,081,416/= but only Kshs. 302,959/= was paid leaving a balance of Kshs. 778,457/= which formed the basis of this suit.
11. The Respondent further submitted that although the Appellant issued requisitions for the supplies, he never shared copies of the same which was the reason why they were not part of his documents. The Respondent further submitted that although the invoices which he had been produced before court had not been stamped by the Defendant, the Defendant's employees had affixed their signatures to acknowledge receipt of the goods. Therefore, the evidentiary burden of proof shifted to the Appellant to rebut the Respondent's assertion that the goods had been delivered.
12. The Respondent further submitted that the Appellant in its testimony before the trial court did not dispute the fact that the goods were supplied and delivered but merely alleged that the goods had been paid for. That indeed the Appellant produced some invoices signed by his employee known as Lydia although he could not account on whether she was currently an employee. The invoices produced by the Appellant were numbers 3260 and 3289 although he could not recall who among his employees had signed the invoices.
13. It was the Respondent's submissions that it was the Appellant's practice and procedure to stamp invoices when payments were being made and that explains why the unpaid invoices were not stamped. Indeed the invoices paid and which the Respondent produced had been stamped and the corresponding cheque numbers for the cheque issued was indicated or encoded in those invoices. That it would therefore be absurd if not impossible to expect the Respondent to produce stamped invoices when those invoices had not been paid. Based on the mode of practice adopted by the parties, the Respondent urged the court to find that he had discharged his burden of proof.
14. According to the Respondent, it would not be true to state that the trial court relied on unauthenticated documents in arriving at its Judgment since the Appellant did not clarify what kind of authentication needed to be done on the documents submitted. Even the Statement of Account produced by the Appellant showed invoices which were not endorsed with the Appellant's stamp but had a name of the employee who received the goods and a date of receipt. This was according to the Respondent, the procedure indicated in No. 5 in the invoices and reads as follows:- "The store attendant stamp the invoices and remit the same with payment to the supplier."
15. In view of the foregoing, the Appellant cannot allege that the unstamped invoices are not authentic yet they had been signed by its employees receiving the goods. In addition, the Appellant did not object to the production of these invoices as evidence before the trial court. That since the Appellant did not



produce any evidence to rebut those claims, the instant appeal is merely an afterthought and should be dismissed with costs. .

Analysis and Determination

16. Having considered the Memorandum of Appeal, the Record of Appeal, the Appellant's submissions as well as the submissions filed by parties in support of their respective cases, the main issue for determination is whether the trial court's Judgment was faulty in law and fact to warrant interference thereof by this court.
17. The claim upon which the appeal lies is the dispute for non-payment of goods which were allegedly delivered by the Respondent. It is crucial to note that the Plaintiff, (the Respondent herein) having filed the suit, had a duty under Section 107-109 of the Evidence Act to prove on a balance of probabilities that he had supplied goods as alleged and payment had not been made. The Appellant argues that the Respondent did not discharge this burden while the Respondent on the other hand claims to having submitted the unpaid invoices and delivery notes signed by the Appellant's employee who received the goods then the burden shifted to the Appellant to prove payment or otherwise rebut the Plaintiff's claim.
18. The Supreme Court in the case of Presidential Election Petition No. 1 of 2017 between Raila Amolo Odinga & Another – v-V IEBC & 2 Others, (2017) eKLR in distinguishing the legal and evidentiary burden of proof held as follows:-

“Though the legal and evidential burden of establishing the facts and contentions which will support a party's case is static and remains constant through a trial with the plaintiff, however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced. It follows therefore that once the Court is satisfied that the petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidentiary burden shifts to the respondent, in most cases the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election. In other words, while the petitioner bears an evidentiary burden to adduce 'factual' evidence to prove his/her allegations of breach, then the burden shifts and it behoves the respondent to adduce evidence to prove compliance with the law.”
19. The court in the case of Abmed Mobammed Noor – v- Abdi Aziz Osman, [2019] eKLR, similarly held as follows:-

“For clarity, the legal burden of proof in a case is always static and rests on the Claimant throughout the trial. It is only the evidential burden of proof which may shift to the Defendant depending on the nature and effect of evidence adduced by the Claimant.”
20. From the record and proceedings before the court, it is clear that the Respondent produced the delivery notes and invoices which were signed by the Appellant upon receipt of the goods. The Appellant did not challenge that that was its mode of practise and in this court's view, the Respondent charged his burden of having delivered the goods. The evidentiary burden of proof at this point shifted to the Appellant having not challenged that the invoices and delivery notes were signed by its employees to prove that indeed all payments were made as alleged. The court further finds that the Respondents explanation that unpaid invoices were unstamped because they could only be stamped upon payment more convincing than the Appellants mere denial on those invoices alleging that they were not



authenticated. The Appellant did not challenge the Respondent's explanation hence this court cannot fault the trial court's decision on relying on the invoices unstamped.

21. In the upshot, this court finds no error in the trial court's Judgment to warrant it being set aside. Consequently, the court finds that the Appeal herein lacks merit and proceeds to dismiss the same with costs to the Respondent.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 11TH DAY OF APRIL , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance by either party

Court Assistant - Martin

