



REPUBLIC OF KENYA



**Hatari Security Guards Limited v Nairobi County Government & another
(Civil Case 8 of 2020) [2025] KEHC 6046 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 8 OF 2020**

AM MUTETI, J

MAY 8, 2025

BETWEEN

HATARI SECURITY GUARDS LIMITED PLAINTIFF

AND

NAIROBI COUNTY GOVERNMENT 1ST DEFENDANT

CHIEF FINANCE OFFICER 2ND DEFENDANT

JUDGMENT

Introduction

1. The plaintiff is a Limited Liability Company duly registered with the registrar of companies and it deals with the provision of Security Services.
2. The facts of the matter are that the 1st defendant advertised through Tender No. NCC/CHS/T/175/2016-2017 for Security Services and the plaintiff responded to the same by submitting a bid for Kenya Shillings Nineteen Million, Four hundred and Eighty Eight Thousand (Kshs. 19,488,000) for provision of services for a period of one year.
3. The 1st defendant accepted the bid and an agreement was signed between them on 13th December 2016.
4. The agreement was for one year and it provided among other things the number of guards the plaintiff was to supply/provide during the period as well as the places the guards would be stationed.
5. The contract was to run for the year 2016-2017.
6. The plaintiff has come to this court claiming that the agreement contract was performed and the defendants have jointly and severally declined not honor their part of the bargain despite their continued enjoyment of the service to date.
7. The plaintiff by way of a plaint pleaded as hereunder:-



- I. That through a contract dated 13th December 2016, the 1st Defendant requested the Plaintiff to provide it with guards to guard various institutions owned by the 1st Defendant within the County as hereunder.

Schedule

Item	Description	Timing Day night	Cost Per Month Total Cost(Ksh)	Total Cost Per Month(Ksh)	Total Cost for (Ksh) 12 Months
1	Provision of Security Guards PMH	Twenty Guards(20)	23,200.00	464,000.00	5,568,000.00
2.	Provision of Security Provision of Security	Twenty Guards(20)	23,200.00	464,000.00	5,568,000.00
3.	Provision of Security Mbagathi	Twenty Guards(20)	23,200.00	464,000.00	5,568,000.00
4.	Provision of Security Security Mutu- ini	Twenty Guards(10)	23,200.00	232,000.00	2,784,000.00
TOTAL				1,624,000.00	19,488,000.00

- II. That based on that, the parties executed a contract and the Plaintiff has diligently and professionally provided the guarding services to the 1st Defendant without any complains of any nature from the 1st Defendant to date.
- III. That further, the 1st Defendant wrote several engagement letters to its personnel as well as to the Plaintiff spelling out how the Plaintiff should conduct its services and that a good atmosphere should be accorded to the Plaintiff to enable it render its services properly to the 1st Defendant professionally.
- IV. That the Plaintiff has been rendering services to the 1st Defendant by transporting its guards to the designated areas and/or institutions diligently but unfortunately the 1st Defendant has refused, declined and or ignored to pay the Plaintiff for services rendered hence the debt due and owing to the Plaintiff has accumulated to Kshs.68,264,923.27.
- V. That non-payment by the 1st Defendant of such colossal amount has rendered the Plaintiff's operations almost impossible to the extent that the Plaintiff has been forced to take loans with a view to pay its guards.



- VI. That despite numerous promises from the 1st Defendant, the 1st Defendant has failed and/or ignored absolutely to honour its pledges hence this suit.
 - VII. That the 1st Defendant has admitted that indeed it owes the Plaintiff.
 - VIII. That despite demand and notice of intention to sue, the 1st Defendant has declined to make good the Plaintiff's claims and instead has resulted into purporting to subjecting the Plaintiff's claim to scrutiny which is an afterthought.
 - IX. That there is no other suit and there have been no previous proceedings between the parties herein over the same subject matter in any Court.
 - X. The cause of action arose within the jurisdiction of this Honourable Court.
8. The plaintiff pleaded with the court to enter judgment in their favor as hereunder;-
 - a) Non-payment of monthly dues of the sum of Kshs. 68,264,923.27 together with interest from the date of filing.
 - b) Damages incurred for non-payment to be assessed by the Court.
 - c) Costs of the suit be provided for.
 - d) Any other or further reliefs that the Honourable Court may deem fit to grant.
 9. The defendants filed a joint statement of defence dated 21st February 2020 in which they generally denied each and every claim by the plaintiff.
 10. In fact, the defendants deny ever entering into any contract with the plaintiff thus their joint plea that the suit is misconceived, misconstrued and misdirected.
 11. The defendants go further to plead that the plaint as presented discloses no cause of action against them thus the suit should be struck out with costs.
 12. The defendants further contend that the suit is calculated at embarrassing them and or is meant to coerce them to pay that which they do not legally owe the plaintiff.
 13. The defendants however acknowledge having received a demand notice from the plaintiff but for the reasons stated in their defence did not honor the same.

Plaintiff's Case

14. The plaintiff in support of his case called one witness Jackson Kimani Mwangi who by way of a letter of authority dated 23rd January 2020 was duly appointed by the company to represent it in connection with the suit.
155. The letter of authority was duly signed by Stephen Mwangi Kimani And Jackson Ruitiari Kimani who are directors. The letter was produced in the case as part of the plaintiff's evidence.
16. The letter of authority was duly sealed and filed in court on 31st January 2020.
17. The witness testified that the plaintiff company deals with security business and that the company was contracted by the defendants to offer security services by providing guards to the defendants on a daily basis to guard at locations appointed by the defendants. According to the witnesses the guards were provided as per the contract and they still offer service to the defendants to date.



18. The witness went further to produce a bundle of documents and his witness statement which he sought to rely on as Plaintiff Documents 1 and 2 respectively (Plaintiff Exhibit 1 and 2).
19. According to the witness, the plaintiff had a contract with the 1st defendant which contract he indicated to the court was to be found at page 55 of the Bundle of Documents marked PD1.
20. The agreement as per the witness was for the defendants to pay to the company the sum of Kshs. 23,200 per guard.
21. The agreement was signed between Nairobi City County and the Company Hatari Security Services Limited the plaintiff company.
22. The witness went further to state that the 1st defendant Nairobi City County has so far paid Kshs. 11.1 million since the time they entered into the agreement. The evidence of payment according to the witness is a clear admission by the defendants that they indeed had entered into a contract with the plaintiff.
23. The plaintiff Company has, notwithstanding the non- payment, continued to render Security Services to the 1st Defendant since 2016 to date.
24. On Cross -examination by counsel for the Defendants, the witness explained to this court that although their agreement with the 1st defendant covered the period between 2016-2017, the same was continued and as proof thereof he referred the court to letters appearing at pages 38, 39 and 40 of the bundle of documents marked Plaintiff's Document 1(PD1).
25. Indeed, at Page 41 of the document marked PD1 (an opinion generated by the County Attorney Lydiah Kwamboka) the 1st defendant acknowledged the existence of an implied contract of service between the 1st defendant and the plaintiff.
26. The plaintiff went further to testify that their guards were deployed to Pumwani Maternity Hospital, Mbagathi Hospital, Mama Lucy and Mutuini Health Centre all at the request of the 1st defendant and to date the 1st defendant continues to enjoy the services provided by the plaintiff without pay.
27. According to the plaintiff, the contract between them is still continuing and the defendants by conduct have not terminated the service thus they are bound to pay the plaintiff company.
28. The plaintiff's witness testified further that at some point the company was about to withdraw services but, when they were about to do so, the 1st defendant summoned them to a meeting and they were advised not to withdraw the service.
29. The witness referred the court to a document appearing at page 39 of the Bundle marked PD1 which document is dated 22nd August 2019.
30. It is the said document that the witness says was confirmation that there was a meeting called between the plaintiff company and the management of the 1st defendant.
31. The plaintiff urged this court to consider the contents of the opinion of the County Attorney contained in the document at pages 40,41 and 42 of Exhibit PD1 and enter judgment in favor of the plaintiff.
32. The plaintiff maintained throughout the evidence of the witness, that they have diligently performed their part of the contract and that is what led them to being paid 11.1 Million shillings by the 1st Defendant through the second defendant.



33. The witness under cross-examination maintained that their contract was still subsisting and if it were not so, the County Attorney would not in 2021 have rendered the opinion she did in which she essentially admitted the fact of there being a subsisting contract.
34. The plaintiff informed the court that the amount owed to them was Kshs.145 million less the sum of Kshs. 11.1 million already paid to them. However, the figure of Ksh.145 million the court observes was not pleaded and that the plaintiff sought a lesser figure.
35. The witness denied that there were any security gaps in the delivery of service thus their claim was properly founded.
36. In a bid to explain the disparity in the figure claimed in the plaint and the evidence the plaintiff's witness stated that at the time of the filing of the plaint, the figure indicated in the plaint is what was owing being Kshs. 68,264, 923.27.
37. The witness explained that the plaintiff did not anticipate a situation of continued breach.
38. The plaintiff's witness ended by informing this court that the guards provided by them were still on site and the continued provision of service to the defendants without pay is amounts to unjust enrichment on their part which this court should remedy.

1ST AND 2ND DEFENDANT'S CASE

39. The defendants by way of a joint statement of defence dated 21st February 2020 denied the claim and specifically pleaded at paragraph 4 of the Defense that:-

“The defendants deny ever entering into a contract with the plaintiff for supply of Security Services to their various hospitals and put the plaintiff to task in providing any advertisement for tender”
40. The defendants called one witness Zadock Angaya a health Administrative Secretary Nairobi County.
41. The witness testified that he was aware that the plaintiff took them to court over the issue of the unpaid services.
42. He went further to state that sometimes in 2021 he was nominated by his Director Health Services represent the County in mediation sessions between the County and the plaintiff.
43. The mediation effort collapsed and they filed a defense to the suit.
44. The witness produced his statement which he had filed in this matter and adopted it in evidence as his examination in chief.
45. The witness produced his bundle of documents and asked the court to consider them in arriving at its decision.
46. The witness testified that the plaintiff was contracted sometimes in 2016 and according to him the plaintiff was to begin rendering service in 2017. The guards here to be deployed at Mama Lucy Hospital, Pumwani, Mbagathi, Mutuini Hospitals. The statement by the witness was a clear departure from the statement of defense with regard to the contract.
47. MR. ZADOCK ANGANYA added that they got 24 HR Security Services from Hatari Security Guards Limited for a period of one year as per the contract.
48. According to him the contract was to lapse by December 2017.



49. He however, went ahead to state that the plaintiff continued to supply the service with 70 guards deployed to all the facilities.
50. The witness went further to testify that at some point there were complaints about the guards but he couldn't tell whether the matter was regularized for he was not on the ground.
51. The witness acknowledged that at some point the plaintiff's wanted to terminate the services due to non-payment. That piece of evidence corroborated the plaintiff's case.
52. The request to terminate was from the county but when the plaintiff got the notice informing them to withdraw service, they claimed that they were not given adequate time to handover. The witness could however not tell how the matter was resolved because services continue to be provided.
53. The witness also stated that Hatari Security Services had raised the issue of the outstanding payments with the 1st Defendant.
54. The testimony of the witness as to the current status was that the services were still being rendered since 2017.
55. Further, the witness admitted that the 1st defendant advertised for the services and the plaintiff responded.
56. He also admitted that the contract between the plaintiff and the defendant was signed.
57. On cross-examination the witness withdrew his statement that the services rendered were substandard.
58. He went on to testify that the county declined to renew the contract but he did not have the letter declining the renewal.
59. The witness also testified that the county had paid to the plaintiff about Kshs. 9 million and that all that was owing according to him was approximately Kshs. 9 million for the contract period 2016-2017.
60. The witness confirmed that the letter appearing at pages 39, 40 and 41 of the Bundle marked PD1 was written by the County Attorney and the County Attorney had admitted in it that there was wrongdoing on the part of the county.
61. The witness further stated that he could not tell what was owing over and above the Kshs.19 million for the contractual period but the invoices amounted to Kshs. 68,000,000.

ANALYSIS AND DETERMINATION

62. The plaintiff and the defendants have each filed written submissions which I have duly considered.
63. The case between the Plaintiff and the Defendants is premised on a contract for supply of services.
64. The evidence by both the Plaintiff and the defense witness confirms indeed there was a contract between the two parties covering the period of 2016- 2017.
65. The parties further agree that there was partial payment made to the plaintiff for the period of 2016-2017. The plaintiff stated that they were paid Kshs. 11.1 million whereas the defendants witness put it at Ksh. 9 million.
66. The plaintiff having been the recipient of the payments and being the aggrieved party in this suit his word that he was paid Ksh.11.1 Million in the absence of any contradictory evidence, cannot be ignored. In any case the defendants have by their own statement of defense placed themselves in a position that they cannot be trusted since they were bent on denying even the most obvious of things



like the subsistence of a contract yet there was adequate material emanating from them to show that there was indeed a contract.

67. The witness called by the defendants did not effect the payment thus his evidence as to what had been paid must be treated with circumspection as it was not supported by any documentary evidence.
68. It follows therefore that the two parties having agreed that there was a contract signed for the period of 2016-2017 through their respective witness, the obligation by the 1st Defendant to pay the plaintiff was undisputed. The world today has no room for free services and gratuitous acts by people engaged in business. The defendants knew for a fact that the plaintiff company was formed with the sole purpose of doing business and such any services rendered and consumed by the defendants attracted some form of consideration as agreed in the contract signed between them.
69. The defendants continued consumption of security services provided by the plaintiffs without pay amounts to unjust enrichment and must attract the sanction of this court. The plaintiff is not a charitable organization and it only exists for the purpose of doing business and making profit. The objective of the company cannot therefore be achieved through provision of free service and that was made clear to the defendants when they signed the contract with a stated figure as consideration per guard.
70. The defense by the defendants that there was no contract between them crumbles under its own weight. The defense witness admitted its existence and the county attorney by her opinion which has been received in evidence and reviewed by the court put the matter beyond doubt.
71. The defense witness walked away from the line of defense adopted by the defendants and chose to tell the truth in line with the oath he took. He came out as a very honorable man who respects the law and appreciates the dynamics of contractual relations more so where one party cunningly seeks to avoid contractual liability.
72. The witness was candid and given to telling the truth however inconvenient and uncomfortable that would be to his employer, the 1st Defendant.
73. The testimony by the plaintiff's witness was supported by the document authored by the County Attorney who in the opinion of this court summed up the case for the parties. The county attorney being the legal adviser in her written opinion did not mince her words on the status of the contract and the obligations of each party under the contract.
74. The 1st Defendant having entered into a written contract in December 2016 for a period of one year with the plaintiff, at the very minimum was under duty to perform their part and there is evidence that there was an element of part performance by way of payment of the sum of Kshs.11.1 million to the plaintiff.
75. The factual matrix that played out before this court established the existence of a valid legal and enforceable written contract between the plaintiff and the 1st Defendant for the period of 2016-2017 and an implied contract for the period beyond 2017 that the plaintiff has continued to render service.
76. The performance of the written contract spilled over and to date the 1st defendant continues to enjoy Security services provided by guards supplied by the plaintiff.
77. That fact alone confirms that the contract by implication alluded to by the County Attorney in his opinion contained in the plaintiff's bundle marked PD1 at pages 39-41 still subsists to date.
78. The conduct by the 1st Defendant of accepting to continue receiving services from the plaintiff conclusively sealed a contract between him and the plaintiff by operation of the law.



79. The plaintiff did not come into the premises of the 1st Defendant to render volunteer services. The plaintiff was in business and the contract was concluded on that understanding.
80. The admission by the defense witness that the 1st Defendant has continued to enjoy the services provided by the plaintiff company is sufficient ground for this court to imply that the two parties are in a contractual relationship which is capable of enforcement.
81. The conduct of the 1st defendant of summoning the plaintiff's representation to a meeting in 2019 as is apparent from the document appearing at page 39 of the Bundle by the plaintiff, is sufficient proof of recognition of the continued relationship.
82. Further, I am persuaded that the County Attorney in the opinion appearing at page 40, 41 and 42 of the Bundle Marked PD1 must have been fully cognizant of the rights that had accrued to the plaintiff and the attendant obligations by the 1st Defendant.
- 83 The opinion generated on 1st March 2021 captured the matter in the following words:-

“The office of the County Attorney has come across communication dated the 12th January 2019 and 26th July 2020 from the said service provider requesting to have the contract extended upon expiry. Unfortunately, the said letters never solicited any response from Nairobi City County Government instead a meeting was called vide a letter dated 22nd August 2019 inviting the service provider amongst other Security Service providers.”

84. The above quoted statement in the opinion of this court is the clearest indicator that the plaintiff made efforts to have the extension formalized but the 1st Defendant slept on the letters but continued to enjoy the services undeterred and uninterrupted.
- 85 The 1st Defendant having continued to enjoy the services provided by the Plaintiff cannot be allowed to avoid the contract.
86. The court in *Transnational Computer Technology (Kenya) Ltd v Principal Secretary, the National Treasury & Planning & 2 others (Civil Suit E321 of 2022) [2024] KEHC 2472 (KLR) (Commercial and Tax) (8 March 2024) (Judgment)* the court held:-

“An implied contract is distinguished from an express contract by its formation, which is through the behavior and interactions of the involved parties rather than explicit written agreements. An implied-in-fact contract is inferred from the situation, conduct, activities, or established relationship between the parties, demonstrating a collective intent to form a contract. Conversely, implied-in-law contracts, or quasi-contracts, are not genuine contracts per se but are duties enforced by law to rectify instances of unjust enrichment.

The Halsbury's Laws of England Vol 9(1) at pg 23 defines a contract implied by law as: an obligation imposed by law independently of an actual agreement between the parties and may be imposed notwithstanding an expressed intention by one of the parties to the contrary.

In other words, if the plaintiff performed work under the reasonable belief that they were acting within the scope of a contract, and the defendants benefited from this work without an intention to compensate, the principles of reliance and unjust enrichment could support the existence of an implied contract. This was echoed in *Lamb V Evans, (1893) 1 Ch 218* where the Court stated that:“... What is an implied contract or an implied promise in law? It is that promise which the law implies and authorizes us to infer in order to give the



transaction that effect which the parties must have intended it to have, and without which it would be futile.”

87. It follows from the above decision that, whereas in the year 2016 to 2017 the parties had an express written contract, upon the expiry of the same the plaintiff requested the 1st Defendant to have the contract extended but that never happened since as ably stated by the County Attorney the requests by the plaintiff were met with dead silence.
88. In line with the above cited authority, this court finds that an implied contract crystalized upon the expiry of the express contract therefore the 1st defendant cannot avoid liability.
9. Needless to say, the 1st Defendant had an opportunity to expressly indicate to the plaintiff that she did not wish to renew the contract in which case the court would have excused the 1st Defendant from satisfying the contract.
90. The defense by the two defendants amounted to a sham in this court’s view. It amounted to nothing since the only witness who testified for the defense admitted each and every allegation made by the plaintiff including the fact that there was a contract between the plaintiff and the 1st Defendant, a fact that the defendants had expressly denied in their written statement of defense. In this court’s view, the statement of defense would have been a good candidate for striking out had the plaintiff made an application to that effect in view of the multiplicity of documents authored by agents of the defendants that clearly showed that the defendants were simply trying to avoid performing their contractual obligation.
91. The Court of Appeal in *Coast Projects Ltd vs M. R. Shah Construction (K) Ltd* (2004) K.L.R 119 at page 122 stated in part as follows:
- “The Plaintiff is entitled to proceed with an application for striking out a defence with the consequential entry of judgement for liquidated claim in situations where the defence is frivolous and or vexatious. It is a procedure, which is intended to give a quick remedy to a party which is being denied its claim by what may be described as a sham defence. This is, however, a procedure which is to be resorted to in very clear and plain cases. A mere denial is not sufficient defence in most cases.”
92. The defense in this matter was frivolous and vexatious but the plaintiff opted to let the matter proceed to full hearing and through evidence by the defendant’s witness it has emerged that the defense was frivolous and vexatious thus this court rejects the same in toto.
93. Although, the plaintiff urged in his evidence that this court awards him the sum of Kshs. 145,000,000, the court finds that sum is not supported by the evidence and neither was it specifically pleaded in the plaint. The figure stated in the plaint was Kshs. 68,264,923.27 thus this court cannot award that which was not specifically prayed for.
94. It is trite law that parties are bound by their pleadings therefore the plaintiff having filed the suit way back in 2020, wisdom should have prevailed that since the contract was still continuing, an amendment to the pleadings should have been done. See *Barclays Bank (T) vs Jacob Muro* , Civil Appeal No. 357 of 2018. Having failed to do so the plaintiff cannot ask this court to go against the law and award a figure that is unsupported by the pleadings and evidence.



95. In the case of Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR, A C Mrima stated as follows: -“

11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

“.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded..... In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

a. Following in the wisdom expressed in the above quoted decision, this court declines to enter judgment for the plaintiff in the sum of Kshs. 145,000,000. However the court hereby enters judgement in favor of the plaintiff in the sum of Kshs. 68,264,923.27 together with interest from the date of filing being the figure pleaded specifically and proved by the plaintiff.

PARA91.

This court further acknowledges that from the evidence adduced by both parties the plaintiff has incurred costs through payment of wages to his guards at the instance of the 1st Defendant who continues to consume the service without pay. That by itself is unjust enrichment on the part the 1st Defendant thus this court hereby awards damages incurred for non-payment of the sums due and owing to the plaintiff. Thus, the court doing the best it can in the circumstances will assess damages at 14% of the sum pleaded in the plaint being the commercial rate applicable in Kenya today.

82. In the end, this court enters judgment in favor of the plaintiff in the following terms:-

- b. Special damages in monthly dues of the sum of Kshs. 68,264,923.27 together with interest from the date of filing.
- c. Damages incurred for non-payment Kshs. 9,557,089.26
- c) Costs of the suit

83. It is so ordered.

DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 8TH day of MAY 2025.

A. M. MUTETI



JUDGE

In the presence of:

Court Assistant: Kiptoo

Sausi for plaintiff

Nyakoe for defendant

