



REPUBLIC OF KENYA



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Midland Emporium Limited v Bedrock Holdings Limited (Civil Appeal E081, E082, E083 & E084 of 2022 (Consolidated)) [2025] KEHC 5733 (KLR) (9 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E081, E082, E083 & E084 OF 2022 (CONSOLIDATED)**

BM MUSYOKI, J

MAY 9, 2025

BETWEEN

MIDLAND EMPORIUM LIMITED APPELLANT

AND

BEDROCK HOLDINGS LIMITED RESPONDENT

(Beings appeals from consolidated judgment and decree of Chief Magistrate's Courts Kisumu (Lina Akoth RM) civil cases numbers 4 of 2019, 5 of 2019, 6 of 2019 and 8 of 2019 dated 7-07-2022)

JUDGMENT

1. This appeal emanates from the Chief Magistrates Court at Kisumu civil cases numbers 4 of 2019, 5 of 2019, 6 of 2019 and 7 of 2019 where the trial court delivered a consolidated judgement for the four matters. The appellant herein then chose to file an appeal for each of the cases vide this court's civil appeals numbers E081 of 2022, E082 of 2022, E 083 of 2022 and E084 of 2022 despite the judgement of the lower court having been a consolidated one.
2. The cases in the lower court were against the named defendants as follows;
 - a. Civil suit number 4 of 2019, Midland Properties Limited for Kshs 343,500.00;
 - b. Civil suit number 5 of 2019, Midland Emporium Limited for Kshs 213,476.00;
 - c. Civil suit number 6 of 2019, Midland Construction Limited for Kshs 377,739.00; and
 - d. Civil suit number 8 of 2019, Stone Crushers Limited for Kshs 290.902.00.
3. The claims made by the respondent in the lower court was that the appellants owed it money being debts for provision of security services which the respondent provided at the request of the appellants. The appellants denied having contracted the respondent for the services as pleaded but when it came



to testimony, the common witness for the appellants owned up to having contracted the respondent for the services for Stone Crushers Limited and Midland Construction Company Limited and denied knowing the other two. The Honourable trial Magistrate found in favour of the respondent in all the matters and entered judgment for the pleaded amounts. The appellants were aggrieved by the judgement and hence these appeals.

4. This is a first appeal and the court is obligated to revisit, re-analyze and re-evaluate the evidence tendered in the trial court and come to its own independent conclusion. In other words, the appeal should be conducted as a re-hearing but with the court always bearing in mind that it did not have the advantage of taking the evidence of the witnesses first hand or observing their demeanor and should therefore give due allowance for that.
5. The respondent's witness one Tobias Otieno Ouko told the court that he worked for the respondent and knew Midland Properties Limited and other sister companies having been their clients. He named the sister companies as Midland Properties Investment Limited, Midland Emporium Limited, Midland Construction Limited and Stone Crushers Limited. He produced a total 16 cheques which were paid by Midland Properties Investment Limited which were meant for payment for services offered for all the other companies. The relationship went on cordially until in early 2017 when the appellants stopped paying and started demanding separation of invoices for each of the four companies and the relationship became strained and the respondent terminated the services on 26-07-2017. The witness then went on to tabulate what the appellants owed them for July, August and September 2017. He did not make claim for any payment prior to this period.
6. In cross examination, he stated that he did not come into contact with any written agreement between the parties. He added that the appellants did not accept their letters and documents for handing over. At one point he said that the respondent was not asking for any payment past 26-07-2017 as they were not providing services after the handover but in the next sentence, he changed and stated that after the handover, they continued offering services until September 2017 as they could not leave the premises unsecured. He added that they had an occurrence book which had information in proof that they continued offering services until September 2017 but he did not have it in court as it was in their office.
7. The appellants' joint witness in all the matters was one Divesh Kotecha. Through his witness statements dated 11-02-2019 across all the matters which he adopted in evidence, he stated that he was one of the directors of the appellants but when it came to oral examination in chief, he shifted the stand and told the court that he was a director in Midland Properties Investment Limited and a financial director at Midland Emporium Kakamega Limited and was also related to Stone Crushers Limited. He denied being related to Midland Emporium Limited and Midland Properties Limited.
8. The witness produced five exhibits all being certificates of search officially known as CR12 for the Stone Crushers Limited, Midland Emporium (Kakamega) Limited, Midland Construction Co. Limited, Midland Properties Limited and Midland Properties Investment Limited. These certificates showed that the witness was a director in Stone Crushers Limited, Midland Construction Co. Limited and Midland Properties Investment Limited. In a rather confusing part, he confirmed that Stone Crushers Limited, Midland Emporium Kakamega Limited and Midland Properties Investment Limited had a contractual relationship with the respondent which ended on 30-06-2017 when the guards disappeared from the sites and that by that time there were known monies owing.
9. The witness added that on 26-07-2017, the respondent attempted to validate their disappearance by issuing a letter but he refused to accept the handover documents. He added that he asked for proof of presence of the guards at the sites but none was presented. He also stated that the invoices provided by the respondent were not valid as they did not have an ETR receipts as required by the law.



10. When he was cross examined by Mr. Onsongo for the respondent, the witness admitted that the respondent had relationship with four companies which was oral. He denied knowing Midland Properties Limited as he was a director in the other three.
11. The parties filed one set written submissions in respect of the four matters in this file since the appeals had been consolidated for hearing. Having read the memorandums of appeal and the submissions of the parties, I have collapsed the grounds to three issues;
 - a. Whether there were agreements between the appellants and the respondent.
 - b. Whether the respondent had proved that it was owed the pleaded sums.
 - c. Who should pay the costs of these appeals?
12. Upon analysis of the evidence, I hold that the answer to the first issue is in the affirmative. The appellants' witness admitted having had contractual relationship with the respondent except for the company described as Midland Emporium Limited. I note that in a letter dated 15th March 2017 which was produced as the respondent's exhibit, the respondent addressed it to the director of Midland Emporium Properties which the witness claimed not to be associated with. In response to the said letter, Midland Properties Investments Limited wrote to the respondent on 17th March 2017 where it addressed issues raised in the former letter.
13. I also note from the proceedings that DW1 kept on shifting gears about which companies he was a director. At one point he mentioned two and then retracted to three and at some other time said that he was in four. In the premises and based on the above analysis, I agree with the finding of the Honourable Magistrate that the four companies in these appeals are related and misdescription of any of them should not be a ground for defeating the suits. I also agree with the holding of Justice F. Gikonyo in *Fubeco China Fushun v Naiposha Company Limited & 11 others* (2014) KEHC 8694 (KLR) thus;

‘The use of Fubeco China Fushun as the Plaintiff, at worst, is a misdescription of the party, that is, China Fushun No. 1 Building Engineering Company Limited. Such misdescription of the Plaintiff is not fatal to the proceedings and does not defeat a party's cause of action. In taking this decision, the Court is guided by the constitutional desire to serve justice which is the very reason why courts have been given unfettered discretion in ordering an amendment in such case in order to reflect and have the correct parties before the Court. Under that power, the Court would still allow the amendment to correct the misdescription. I so order for the avoidance of doubt. I hold and find that this is not a case of non-existent or faceless entity that would invariably be incapable of suing or being sued. It is a case of pure misdescription of a party and is governed by the same law on misdescription of parties in a contract.’
14. I now turn to the second issue on whether the respondent had proved that the monies it was demanding from the appellants was rightly due to it. The plaintiffs which are identical in the four matters do not indicate the period for which the claims were made. They state that the services were offered during the year 2017. However, when we come to the witness statements and the oral testimony and evidence adduced including the invoices, it becomes clear that the respondent was claiming for services allegedly rendered in July, August and September 2017. The witness in his statements simply states that he noticed in November 2017, that the appellants' accounts with the respondent had outstanding debts to the tune as pleaded in each case.
15. The respondent produced internal memos dated 26-07-2017 as exhibits 21 and 22 which it described as handover reports. The two identical memos are authored by the respondent. There is an endorsement



by hand at the top of the memos signed on 26-09-2017 with directions that they be filed under Midland Properties. This endorsement seems to be the basis for the respondent's argument that they left the premises in September 2017. The date of the memorandums remains 26-07-2017 notwithstanding when the respondent decided to file away its documents. The memos clearly stated that the sites were handed over to one Madam Alice Bett whose telephone number is given. The memos are also clear that the said Alice was given by a Mr. Raj the client to take over security duties from the respondent. The memos continue to say that the handover was done despite the fact that Mr. Raj refused to sign handover documents. The memos also state that one Joel Okwaro the caretaker was present and the respondent's guards were removed from the premises.

16. The respondent's witness also told the court that he had an occurrence book where its guards are indicated to have been on duty and the same was in office. If indeed the book was there and the respondent decided to hold it away from court, it has itself to blame. This is a court of law and can only make decisions based on evidence produced and I find that there is no evidence of presence of the respondent's guards at the sites in August and September 2017.
17. Based on the above circumstances, this court cannot buy the argument by the respondent that they continued guarding the premises up to September 2017. With the handover reports having been authored in July, it could not take a prudent security company up to November to discover that the accounts had outstanding debts. I also do not buy the argument of the appellants that the guards abandoned the premises at the end of June 2017. The appellants would not have just kept silent with such withdrawals without writing letters of complaints or taking an appropriate action considering the number of the guards withdrawn.
18. Flowing from the above, this court holds that the respondent did not provide services for August and September 2017 and what was due to it were payments for July 2017 only. Having gone through the invoices, the amounts due to the respondents for July 2017 are as follows;
 1. From Midland Construction Limited - Kshs 125,913.00 represented in invoice number 2015XXXX35 which is in relation to civil case number 6 of 2019.
 2. From Midland Properties Limited - Kshs 114,500.00 as per invoice number 2015A-012159 which is related to civil case number 4 of 2019.
 3. From Midland Emporium Limited - Kshs 61,248.00 as shown in invoice number 2015AXXXX60 which was for civil case number 5 of 2019.
 4. From Stone Crushers Limited - Kshs 105,560.00 as per invoice number 2015XXXX65 which falls in civil case number 8 of 2019.
19. In view of the above, I make a finding that the respondent did not prove the sums pleaded. What was proved are the amounts enumerated above. The Honourable Magistrate therefore erred in entering judgment for the respondent as she did. In the premises, the judgement of the trial court dated 7th July 2022 in her cmcc numbers 4 of 2019, 5 of 2019, 6 of 2019 and 8 of 2019 is hereby set aside and subsisted for an order entering judgment for the respondent herein against the respective appellants as follows;
 1. In Cmcc number 4 of 2019 - Kshs 114,500.00.
 2. In Cmcc number 5 of 2019 - Kshs 61,248.00.
 3. In cmcc number 6 of 2019 - Kshs 125,913.00.
 4. In Cmcc number 8 of 2019 - Kshs 105,560.00.



5. The above decretal sums shall attract interest from the date of filing suit in the subordinate court until payment in full.
6. The respondent is also awarded costs of the respective suits in the lower court.
7. Each party shall bear its own costs of this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in absence of the parties.

