



**Kilonzo v Delta Guards Limited (Civil Appeal 332 of 2023)
[2025] KEHC 8099 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 332 OF 2023
FN MUCHEMI, J
JUNE 5, 2025**

BETWEEN

VINCENT KILONZO APPELLANT

AND

DELTA GUARDS LIMITED RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. O. J. Muthoni (RM/Adjudicator)
delivered on 30th August 2023 in Thika Small Claims Court SCCCOMM No. E783 of 2023)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Thika Resident Magistrate/Adjudicator in SCCCOMM No. E783 of 2023 whereby the trial court entered judgment in favour of the respondent in the sum of Kshs. 466,000/- for security services rendered to the appellant.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 7 grounds of appeal summarized as follows:-
 - a. The learned adjudicator erred in law by finding that the respondent had proved its case against the appellant to the required standards.
 - b. The learned trial magistrate erred in law in holding that the respondent is entitled to compensation of Kshs. 466,000/- whereas there was no proof thereof.
3. Parties disposed of the appeal by way of written submissions.



The Appellant's Submissions

4. The appellant refers to Section 107 and 108 of the *Evidence Act* and the cases of Midas Services Limited & Another vs Ronal Kapute (2002) eKLR and Bonham vs Hyde Park Limited (1948) 64 TR 177 and submits that the claim in the trial court was for provision of guards at his residential home and thus it was upon the respondent to prove that the guards were deployed on the said dates and provide invoices to that effect. The respondent failed to do so and produced an agreement dated 25th June 2017 between itself and Matuu Dallas Hotel for provision of security guards to the said hotel. As per the agreement, the same was to take effect from 24th June 2017 for the provision of one day guard and the agreement was to last a year.
5. The respondent further produced a temporary work order dated 14th December 2010 for the provision of two guards as well as invoices, all for Matuu Dallas Hotel.
6. Relying on the cases of *Ogando vs Watu Credit Limited & Another (Civil Suit E098 of 2022)* [2024] KEHC 3074 (KLR) (14 March 2024) and Mbuthia Macharia vs Annah Mutua & Another [2017] eKLR, the appellant submits that the respondent failed to provide evidence to substantiate their pleadings that they offered guards to the appellant's residential home.
7. The appellant further relies on the case of Robert Ngande Kathathi vs Francis Kivuva Kitonde [2020] eKLR and submits that the trial court erred in law as pleadings are not evidence which can be relied on by the court to enter judgment. The appellant argues that it made no admissions and it was upon the respondent to prove its case.
8. The appellant submits that the trial court erred by failing to show its reasoning on how it arrived at Kshs. 466,000/- as awarded since the same is not supported by any pleadings or documents adduced by the parties.

The Respondent's Submissions.

9. The respondent refers to the cases of Kanyungu Njogu vs Daniel Kimani Maingi [2000] eKLR and Ocean Freight Shipping Company Ltd vs Oakdale Commodities Ltd, Civil Appeal No. 198 of 1995 and submits that it proved that there was a contract between them and the appellant for his residence and produced a Service Contract, the temporary work order and invoices which bear the name of the appellant as the order person and executed the same. The temporary work order was executed on 13th December 2018 and provided that the guards as offered were to patrol the garden to prevent people from the area grazing on the farm and the guards were not to allow strangers from accessing the compound apart from the workers in the farm.
10. The respondent argues that the appellant disputed the dates of the service contract as well as the number of guards offered and thus the burden of proof shifted to the appellant to prove the same. The respondent further argues that by parties agreeing to proceed pursuant to Section 30 of the *Small Claims Court Act*, their pleadings were deemed to be their evidence.

Issues for determination

11. The main issues for determination are:-
 - a. Whether the appeal is defective.
 - b. If not, whether the respondent proved its case on a balance of probabilities.



The Law

12. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the *Small Claims Court Act*, set out the duty of the second appellate court in the case of *Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited* [2020] eKLR as follows:-

I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

13. In distinguishing between matters of law and fact the Court of Appeal stated in *Kenya Breweries Ltd vs Godfrey Odoyo* [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. 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.

Whether the appeal is defective.

14. Section 38 of the Act provides:-

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.

15. The Court of Appeal in *Mwangi vs Wambugu* [1984] KLR 453 commented of what amount to points of law as follows:-

A Court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding; and an appellate court is not bound to accept the trial Judge's finding of fact if it appears either that he has clearly failed on some material point to take account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.

16. Similarly in *Peter Gichuki King'ara vs Independent Electoral and Boundaries Commission & 2 Others* [2014] eKLR the court held that:-

Bearing in mind the above principles, the most contentious issues in this appeal is whether the grounds of appeal are matters of law or facts. Having established that we have jurisdiction to determine only issues of law as per the provisions of Section 85A of the *Elections Act*,



to us the whole question of whether the trial Judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence with of course the usual caveat, that we did not see the witness demeanor is an issue of law.

17. I have perused grounds 1-7 in the Memorandum of Appeal and note that the grounds touch on the fact that the learned adjudicator found the respondent had proved its claim by offering security guards services to the appellant and entered judgment in their favour for a sum of Kshs. 466,000/-. It is important to note that the grounds as raised by the appellant touch on matters of fact which requires this court to scrutinize and re-evaluate the evidence on appeal.
18. It is noted the respondent did not raise the issue of jurisdiction of this court. However, Section 38 of the *Small Claims Court Act* provides that appeals from the Small Claim Court to this court shall be only on matters of law. As such, appeals on matters of fact are contrary to the law and ought not to be entertained.
19. It is my finding that this appeal is misconceived and incompetent. It is hereby struck out with costs to the respondent.
20. It is hereby so ordered.

JUDGMENT DELIVERD VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF JUNE 2025.

F. MUCHEMI

JUDGE

