Ndochi t/a Transwest Security v Board of Management St Paul's Lugari Boys High School (Civil Appeal E098 of 2024) [2025] KEHC 8262 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8262 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL APPEAL E098 OF 2024

S MBUNGI, J

JUNE 12, 2025

BETWEEN

HARRISON JUMA NDOCHI T/A TRANSWEST SECURITY ..... APPELLANT

AND

BOARD OF MANAGEMENT ST PAUL'S LUGARI BOYS HIGH SCHOOL ..... RESPONDENT

(Being an appeal from the judgment of Hon. C.J Cheruiyot RM delivered on 22nd April, 2024 in Kakamega Small Claims Court Commercial Case No. E083 of 2024)

JUDGMENT

Background.

1. The appellant, Harrison Juma Ndochi t/a Transwest Security, filed a statement of claim before the Kakamega Small Claims Court in Comm E083 of 2024, seeking payment of arrears for security services rendered to the respondent, St. Paul's Lugari Boys High School. He averred that although the initial contract dated 1st February 2015 had expired, the parties continued to operate under an implied contract until the respondent terminated the engagement through a letter dated 18th January 2024. The trial court considered all the evidence adduced by parties and dismissed the claim on grounds that the cause of action was time-barred and that no valid contract existed between the parties at the time of termination, prompting this appeal.

The Appeal

2. Having been dissatisfied with the judgment proffered in the trial court, the appellant filed a Memorandum of appeal dated 14th May, 2024 on the following grounds: -

a. That the Learned Trial Magistrate/ Adjudicator erred in law and fact in finding that the cause of action arose in 2015 and therefore limited by *Limitation of actions Act* Cap 22 of the Laws of Kenya yet the cause of action arose in February 2024.

b. That Learned Trial Magistrate/ Adjudicator erred in law and fact in finding that no evidence was tendered by the appellant to establish a valid agreement between the parties yet the agreement could be inferred from the conduct of the parties.

c. That the Learned Trial Magistrate/Adjudicator erred in law and fact in finding that no evidence was tendered by the appellant on subsequent renewals after the expiry of the initial contract yet there was sufficient evidence to prove the appellant was still on contract with the Respondent until the same was terminated by the Respondent in February 2024.

d. That the Learned Trial Magistrate/ Adjudicator erred and misdirected herself in law and fact by failing to appreciate sufficiently or at all, consider and correctly analyze the evidence and submissions tendered by the parties in determining the suit.

3. The appellant prayed that the appeal be allowed, the entire judgment in Kakamega Small Claims Court Comm E083/2024 be set aside and/or quashed and the same substituted with an order allowing the appellants claim with costs awarded to the appellant.

4. The court directed that the appeal be canvassed by way of written submissions. At the time of writing this judgment, only the appellant had filed.

5. The respondent never entered appearance in the appeal, despite being served with the mention notice by the Deputy Registrar as ordered by the court, and the judgment notice served by the appellant on 9th April, 2025.

Appellant's Case.

6. Vide submissions dated 10th February, 2025, the appellant isolated three key issues for determination.

7. On whether a contract could be inferred from the conduct of the parties, the applicant submitted positively and averred that he and the respondent entered into a written agreement dated 1st February 2015 for the provision of security services, which included a renewal clause under clause 10. Although the initial period was not expressly stated, the agreement continued through the parties' conduct, with the appellant rendering services uninterrupted until the respondent issued a termination letter dated 18th January 2024.

8. The appellant contended that the letter dated 27th February 2015, issued by the respondent requesting the provision of security services from 1st March 2015, did not specify a fixed term and thus allowed for implied continuation. He argued that the respondent's termination letter dated 18th January 2024 clearly acknowledged an ongoing relationship and referenced the respondent's intention to settle "the balance owed," which would not have arisen in the absence of an active contract.

9. Relying on the Court of Appeal decision in Ali Abdi Mohamed v Kenya Shell & Co. Ltd [2017] eKLR, the appellant emphasized that a contract may be inferred from the conduct of the parties even in the absence of formal renewal, and that the continuous provision and acceptance of services confirmed such inference.

10. Regarding the question of limitation, the appellant submitted that the cause of action arose on 18th January 2024, when the respondent terminated the contract. He contended that the obligations under the initial agreement were renewed by conduct over the years, with monthly payments continuing to

be made and services accepted until early 2024. The appellant relied on South Nyanza Sugar Co. Ltd v Dickson Aoro Owuor [2017] eKLR, where the court held that the limitation period in contract claims begins to run from the date of breach, and not necessarily the date of execution of the agreement. He argued that the trial court erred by computing limitation from 2015 instead of the actual date of breach in 2024.

11. On the issue of entitlement to payment, the appellant stated that upon receipt of the termination notice, he wrote a letter dated 26th January 2024 enclosing a schedule showing outstanding arrears of Kshs. 380,000/=, plus an additional Kshs. 30,000/= for February 2024, totaling Kshs. 410,000/=. He submitted that the respondent never disputed the existence of the arrears in its official correspondence and that its witness's denial during trial was merely a bare statement unsupported by evidence.

12. The appellant cited Mugunga General Stores v Pepco Distributors Ltd [1987] eKLR, emphasizing that a mere denial of a debt without justification does not constitute a sufficient defence. The respondent failed to provide any explanation, payment records, or alternative computation to rebut the appellant's claim.

13. Lastly, the appellant submitted that the termination of the contract was in breach of clause 11 of the agreement, which required a minimum of ninety (90) days' notice. The termination letter dated 18th January 2024 directed cessation of services by 1st March 2024, which fell short of the required notice period and thus constituted breach.

Analysis and Determination.

14. This being a first appeal, this Court has the duty to analyse and re-examine the evidence adduced in the lower Court and reach its own conclusion but bear in mind that it neither saw nor heard the witnesses testify and make due allowance for the said fact. In Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, the Court stated as follows-

> "This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

15. I have looked at the record of appeal, the lower court judgment, the memorandum of appeal, and submissions filed.

16. I identify the issues for determination as follows:

    a. Whether the trial court erred in holding that the claim was time-barred under the *Limitation of Actions Act*;

    b. Whether the trial court erred in finding that there was no valid or subsisting contract between the parties at the time of the alleged breach;

    c. Whether the appellant proved his claim on a balance of probabilities.

17. On the issue of limitation, the trial court found that the claim was time-barred, having arisen in 2015. However, from the record and the appellant's submissions, it is not in dispute that the original contract was entered into in February 2015, and that the respondent issued a termination letter dated 18th January 2024. The letter refers to the cessation of services effective 1st March 2024 and the intention to settle outstanding balances. This indicates that the parties had a continuing relationship up to that point.

18. In the case of South Nyanza Sugar Co. Ltd v Dickson Aoro Owuor [2017] eKLR, the court clarified that the cause of action in contract accrues when a party breaches the contract, not necessarily when the contract is entered into when it held as follows:

> " .... there is no doubt in this matter that the parties entered into a contract and which contract was allegedly breached. What is for determination is when exactly the cause of action accrued since from that time the limitation period of six years starts running. I do not find that issue difficult to decide on. I say so because when a party enters into a contract for a specific period of time, it does so in the understanding and belief that each of the parties to the contract will observe its part thereof until full execution of the contract. It is only when one of the parties happens to be in breach of the contract that a possible cause of action arises as at that date of the alleged breach and not at the end of the contract period..."

19. Applying that reasoning, the cause of action herein arose in January 2024 upon the respondent's termination of the engagement. The appellant filed suit in the same year, within time. The trial court thus erred in concluding that the claim was statute-barred.

20. As to whether there was a valid or subsisting contract, the appellant provided the initial agreement dated 1st February 2015 and adduced evidence of continued service provision over the years and thus submitted that this implied that the contract was still place.

21. In the case Kleen Homes Security Limited v Jacqueline Awuor t/a Cabrando Enterprises Ltd (Civil Appeal E163 of 2023) [2024] KEHC 14663 (KLR), the court held as follows in a similar case:

> " What is an implied term in a contract?
>
> Implied terms are clauses that are not directly mentioned in a contract but are deemed essential elements of the agreement and assist in filling the potential gaps in a written agreement. They promote fairness, reasonableness, and effectiveness in the contractual relationship. Contract terms can be implied in a number of ways: customary business practice, common law precedent, and statutory law."

22. The court notes that the respondent, through the witness statement of J. Pitia Rombosia, admitted that upon assuming the role of Principal in July 2023, he found security guards stationed at the school. He questioned the professionalism and standards of their service but acknowledged their presence and the fact that they were operating within the school premises. This alone is significant.

23. Notably, the respondent's own letter dated 18th January 2024 acknowledges the security contract and commits to settling an outstanding balance. That letter alone is indicative of a contractual relationship continuing beyond 2015. As stated in Ali Abdi Mohamed v Kenya Shell & Co. Ltd [2017] eKLR, a contract can be inferred from the conduct of the parties even in the absence of a formal document.

24. In Brogden v Metropolitan Railway Co. (1877) 2 App Cas 666, the House of Lords held that a contract may be implied from the conduct of the parties even where a formal agreement was not concluded, so long as both parties acted in a manner that indicated mutual assent. The respondent's continued acceptance of security services constitutes such assent.

25. Similarly, in Kenya Ports Authority v Modern Handling (EA) Limited [2017] eKLR, the court stated that:

> " Where a contract is inferred from the conduct of the parties, it is sufficient to show that both parties acted in such a way that would lead a reasonable person to conclude that a contract existed between them."

26. The respondent contends that no valid contract was renewed after the expiry of the original agreement in 2017. However, the appellant only seeks payment from the year 2023 onward. The respondent has not denied that the appellant was paid for services rendered in that period. This continuous provision of service coupled with payment creates an implied contract recognized in law.

27. Moreover, even in the absence of a formally renewed contract, the law provides for quasi-contractual relief in situations where one party has benefited from the services of another. As held in Planfarm Agencies Limited v County Government of Bungoma [2017] eKLR, where services are rendered and accepted, the law implies an obligation to pay. This prevents unjust enrichment of one party at the expense of another. The respondent here benefited from the appellant's services, acknowledged their existence, and indicated an intention to settle the outstanding balance.

28. The court therefore finds that the continued provision and acceptance of security services, the termination letter issued, and the implied acknowledgment of debt together constitute sufficient basis to infer an implied or quasi-contract between the parties. This court deems the said implied agreement to be binding on the parties.

29. On the question of whether the appellant proved his claim, the record shows that he wrote a letter dated 26th January 2024 setting out the arrears due and attached a breakdown of the claimed sum of Kshs. 410,000/=. The respondent did not file any evidence or submissions to dispute the specific claim amount. While the respondent's witness denied owing the sum, that denial was not substantiated by any documentation, account records, or alternative computation. The respondent's earlier letter clearly indicated a willingness to settle "the balance owed," reinforcing the appellant's position. Their denial in the witness statement was unsupported by documentation and was inconsistent with their earlier letter acknowledging a debt.

30. Furthermore, clause 11 of the contract provided for termination by giving ninety (90) days' notice. The respondent's letter of 18th January 2024 directed cessation of services by 1st March 2024, barely 42 days later, thus falling short of the contractual notice requirement. Based on the material on record, the court finds that the appellant proved his claim on a balance of probabilities.

31. In view of the foregoing analysis and findings, I do find that the appeal is meritorious. I hereby order as follows:

    I. The judgment of the Honorable Magistrate in Kakamega Small Claims Court Case No. Comm E083 of 2024 is hereby set aside in its entirety.

    II. The respondent shall pay the appellant the sum of Kenya Shillings Four Hundred and Ten Thousand (Kshs. 410,000/=) being the arrears for services rendered.

    III . Costs of the appeal and lower court awarded to the appellant.

32. Right of appeal 30 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 12TH DAY OF JUNE, 2025

S.N. MBUNGI

JUDGE

In the presence of:

Court Assistant: Elizabeth Agong'a

Ms Anwar for the Appellant present online.

Parties absent.