Enworld Holdings Limited v Riley Falcon Security Services Limited (Civil Appeal E155 of 2024) [2025] KEHC 10602 (KLR) (21 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10602 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL E155 OF 2024

A MABEYA, J

JULY 21, 2025

BETWEEN

ENWORLD HOLDINGS LIMITED ..... APPELLANT

AND

RILEY FALCON SECURITY SERVICES LIMITED ..... RESPONDENT

(Being an appeal from the judgment and decree of Hon. G. C. Serem RM delivered on the 23/7/2024 in the Ksm SCC Case No. E391 of 2024, Riley Falcon Security Services Limited v Enworld Holding Limited)

JUDGMENT

1. The respondent filed its claim before the trial court seeking judgment in the sum of Kshs. 962,288/- with interest from the date of filing the claim till payment in full. The same arose out of a contract relating to provision of security services.

2. The appellant entered appearance and filed an amended response dated 14/6/2024. It denied the respondent's claim and stated that the respondent unilaterally varied the terms of their agreement by increasing the wages of its guard by 5% from Kshs. 15,680/- to 27,000/-. The appellant counterclaimed for a sum of Kshs. 864,100/- being the value of goods worth Kshs.637,300/- that it lost following a theft at its premises and an overcharge of Kshs. 226,800/- by the respondent.

3. In her judgement, the trial adjudicator held that the respondent had proved its case on a balance of probabilities whereas the appellant failed to prove its counterclaim. The trial adjudicator thus proceeded to award the respondent judgment in the sum of Kshs. 962,288/- with interest from the date of filing suit.

4. Being dissatisfied with the said Judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated 2/8/2024 and raised six (6) grounds of appeal as follows: -

a. The learned magistrate erred in law in finding that the increase in guard rates was agreed upon by both parties to the contract when it was not.

b. The learned magistrate erred in failing to find that the claimant had invoiced excess amounts in the months of July 2018 – December 2021.

c. The learned magistrate erred in failing to find that the claimant was liable for the goods that were stolen from the respondent's premises.

d. The learned magistrate erred in dismissing the respondent's counterclaim in its entirety.

e. The learned magistrate erred in awarding the claimant Kshs. 962,288/- and dismissing the respondent's counterclaim.

f. The learned magistrate erred in law and in fact in disregarding the evidence tendered by the appellant and/or failing to consider the said evidence in totality.

5. The appeal was disposed of by way of written submissions. The appellant submitted that it was not agreeable to the increased rates as was evident from its action of continuing to pay the old rates and therefore the trial court erred in finding that the increase in guard wage rates was agreed by both parties.

6. That sufficient evidence was adduced to prove that there was breach of care by the respondent leading to the theft of the appellant's goods worth Kshs. 637,300/- therefore the trial court erred in dismissing its counterclaim.

7. The respondent submitted that there was a contract between the parties and that the increase in guard wages was not objected to as the appellant allowed the respondent to continue offering the services without negotiating the rates or terminating the service.

8. That the termination notice dated 4/2/2022 relied on by the appellant was dated after the notice had lapsed and further that the purported email sent was actually never sent as it had no email address. That by its conduct, the appellant had admitted the debt and sought to be allowed to settle the same as was evident from the fact that its cheques from December to March 2025 cleared.

9. That therefore the appellant was estopped from changing its position as was held in the case of *Sarah Njeri Warobi v John Kimani Njoroge* (2013) eKLR. That the burden of proof was upon the appellant to prove its counterclaim which being a special damage was to be strictly proven.

10. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See *Selles & Anor v. Associated Motor Boat Co Ltd & Others* [1968] EA 123.

11. Before the trial court, the respondent through its financial controller, Elijah Kulova, testified that it had an agreement with the appellant for the provision of security services. That in May 2018, it increased the guard wages by 5% and informed the appellant who neither objected nor responded.

12. That the respondent continued paying the old rates thus underpaying it till 8/1/2021 when it stopped making payments completely at which time the arrears stood at Kshs. 962,288/-.

13. On its part, the appellant through its director Neeral Panchmatia admitted that it had entered into an agreement for provision of security services with the respondent from 2016 – 2022. That it terminated the same via its letter of 4/2/2022. That it was notified of the increase of guard wages but that it was not agreeable to the same but continued to pay the old contractual rate.

14. That on 23/10/2018, it lost goods worth Kshs. 637,300/- following a theft at its premises and as such the respondent ought to settle its counterclaim of Kshs. 864,100/-. That its communication with the respondent was verbal up until its termination letter of 4/2/2022.

15. I have considered the evidence tendered before the trial court and the submissions made before me. The standard of proof in civil cases is on a balance of probability. The burden of proof is on the party alleging the existence of a fact which he wants the Court to believe.

16. Section 107 (1) and (2) of the *Evidence Act* provides as follows: -

    1) Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist

    2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person"

17. In its claim, the respondent sought dues of Kshs. 962,288/- being the unsettled wages pending from the appellant. It contended that it had notified the appellant of the increase in the wages of its security guards and the appellant did not respond to the same but merely continued to pay the old rates.

18. The record shows that the respondent notified the appellant of the increase of guard wages via its letters dated 20/6/2017 and 28/5/2018, respectively. There was no response from the appellant but it continued to pay the old rates while continuing to enjoy the security services and despite the numerous reminders by the respondent of the default. Evidence from the respondent's witness was that it gave the appellant notice of the increase.

19. No contract between the parties was placed before the trial court so as to enable the court to scrutinize the details therein regarding the possible variation of terms and as such the same would have to be gleamed from the conduct of the parties.

20. By continuing to enjoy the services of the respondent's guards after the notice of increase of wages, the appellant impliedly agreed to the new terms set on payment. The appellant averred that it rejected the said terms and as such continued paying the old rates. That cannot be the case. If it had rejected the same, nothing would have been easier than to communicate the same in writing as the respondent had done. The alleged verbal communication cannot stand in the face of the written notice and the continued enjoyment of the subject services.

21. It must be noted that the action by the appellant to pay the old rates was contested by the respondent who wrote to the appellant on the overdue amount as in the letters of 7/1/2022, 5/10/2022, 29/11/2022 and ending with the final demand of 14/7/2023. Those letters were enough notice to the appellant that the respondent had stuck to its guns.

22. From the evidence presented before the trial court, at no time did the respondent accede in conduct or otherwise to the appellant's payment of the old rates as the final payment for wages.

23. I thus uphold the trial adjudicator's finding that the respondent proved its case against the appellant on monies owed of Kshs. 962,228/-.

24. As regards the appellant's counterclaim, the appellant claimed that it lost goods worth Kshs.637,300/- following a theft at its premises. Further, that the respondent had overcharged it by Kshs. 226,800/-. That in the premises, the respondent ought to settle its counterclaim of Kshs. 864,100/-.

25. The issue of being overcharged has already been dispensed off as I have found that the appellant by his conduct agreed to the increase of the wages of the guards and thus was liable to settle the sum accrued and tabulated by the respondent.

26. As regards the loss that was incurred following the theft, I do note that the same were special damages which ought to have been specifically pleaded and proven. From the Record of Appeal at page 115, there is a list of goods alleged to have been moved to Bachulal Nyamasaria Store on the 11/11/2017. It is not clear whether these were the goods that were alleged to have been stolen on the 23/10/2018 as pleaded by the appellant. There should have been a report made to the police and the price for each stolen item.

27. Further, it should have been proved that the loss was one for which the respondent was liable. That by the contract between the parties, the respondent owed the appellant a duty of care which was breached either deliberately or by negligence. This was never proved and the trial adjudicator was right in her findings.

28. In the view of this Court, there was no sufficient prove of the special damages pleaded by the appellant as stolen goods. I find that the counterclaim fails and uphold the trial adjudicator's finding on this regard.

29. The upshot is that I find that this appeal lacks merit and I dismiss the same with costs to the respondent.

    It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE