



**Waiganjo v Karengata Academy Limited & another (Civil Appeal  
237 of 2019) [2024] KEHC 4591 (KLR) (Civ) (16 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4591 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 237 OF 2019**

**DAS MAJANJA, J**

**APRIL 16, 2024**

**BETWEEN**

**SAMUEL WAMUTU WAIGANJO ..... APPELLANT**

**AND**

**KARENGATA ACADEMY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PSYCHOLOGICAL SERVICES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. E. Wanjala, SRM dated 28th  
March 2019 at the Nairobi Magistrates Court, Milimani in Civil Case No.4422 of 2010)*

**JUDGMENT**

**Introduction and Background**

1. In the Subordinate Court, the Appellant filed suit claiming that he is engaged in the business of providing legal and company secretarial and other co-related services and that he provided the said services to the Respondents under an agreement entered into in November 2003. That the Respondents terminated it on 22.05.2009. The Appellant claimed that even after the termination, he continued offering services until 2013 under the agreement which was partly in writing and partly oral and which could be inferred from the conduct of the parties. That he was retained at a fee of Kshs. 72,000.00 per annum and payment was to be made against respective fee notes within 30 days of the delivery of the fee note. The Appellant claimed after rendering services and issuing fee notes, Kshs. 576,000.00 and Kshs. 720,000.00 remained outstanding from fee notes issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively which he claimed together with interest and costs of the suit.
2. In response, the Respondents urged the court to dismiss the suit and averred that in as much as the Appellant rendered company secretarial services, they denied being indebted to him as claimed. They



also denied any agreement, oral or otherwise setting out the terms of the scope of services to be rendered and the remuneration as claimed. They further denied that it was agreed that the Appellant be paid Kshs. 72,000.00 per annum and that the fee notes dated 09.06.2009 and all other fee notes for the years 2010, 2011, 2012 and 2013 were not due and payable as alleged.

3. When the matter was set down for hearing, the Appellant (PW 1) testified on his own behalf. The Respondents called one their directors, Lydia Wambui Kabithe (DW 1). In the judgment rendered on 28.03.2019, the trial court identified 3 issues for determination; whether there existed a retainer agreement between the parties, whether the Appellant had proved the Respondents' indebtedness to him and whether the Appellant was entitled to reliefs sought. From the evidence, it found that a retainer agreement existed between the parties partly by conduct and in writing and that the Appellant raised fee notes with respect to the period 2010-2013 but he had not proved that he rendered services to the Respondents for this period. Further, that there was no evidence that the Appellant rendered secretarial services for the 1<sup>st</sup> Respondent for the period 21.05.2005 to 22.05.2009 and for the 2<sup>nd</sup> Respondent for the period 2010 to 2013.
4. The trial court found that the Appellant had not proved the Respondents' indebtedness to him to the required standard envisaged in section 107, 108 and 109 of the *Evidence Act* (Chapter 80 Laws of Kenya) and was thus not entitled to the reliefs sought. That from the analysis of accounts, the trial magistrate found that the Appellant was paid for various services for the period 2005 to 2008 before termination of his services. Further, that from the statement/account analysis, the fee notes payable amounted to Kshs. 1,360,107.00 and the Respondents paid Kshs. 1,033,630.00 leaving an outstanding balance of Kshs. 326,477.00. However, the trial magistrate held that the amount was in relation to other services and not company secretarial services which were the subject of the suit.
5. The Subordinate Court thus dismissed the suit thus precipitating this appeal which is founded on the memorandum of appeal dated 18.04.2019. The appeal has been canvassed by way of written submissions which are on record and which I have considered and will make relevant references to in my analysis and determination below.

### **Analysis and Determination**

6. I agree with the parties' submissions that in determining this appeal, I should be mindful of the role of the first appellate court which is to re-evaluate and re-assess the evidence before the court of first instance and at the same time, keep in mind the fact that the trial court interacted first hand with the parties (see *Selle v Associated Motor Boat Co.* [1968] EA 123).
7. The Appellant faults the Subordinate Court for reaching a conclusion that was not supported by the evidence adduced at trial. As stated in the introductory part, it was not in dispute that the Appellant offered secretarial services to the Respondents, however, the Respondents opposed the Appellant's claim that there were some outstanding fees due in respect of the services rendered; that is Kshs. 576,000 by the 1<sup>st</sup> Respondent and Kshs. 720,000.00 by the 2<sup>nd</sup> Respondent. As stated by the subordinate court, the onus was on the Appellant to prove that the Respondents owed these claimed sums as per sections 107-109 of the *Evidence Act*. In civil cases, such as this one, the standard of proof required is on a balance of probabilities. The burden to prove a claim is on the person who alleges it and at no instance does it shift to the defendant. The Court of Appeal in *James Muniu Mucheru v National Bank of Kenya Ltd* [2019] eKLR simply put it that 'Courts will make a finding based on which party's version of the story is more believable.'
8. The Appellant claimed that there was an agreement that he be paid retainer fees of Kshs. 72,000.00 per year for being retained as the Respondents' company secretary and thus sought Kshs. 288,000.00 for



the years 2010-2013. He further sought Kshs. 288,000.00 for services rendered between 21.05.2005 to 22.05.2009, Kshs. 288,000.00 for the period 21.05.2005 to 22.05.2009 and Kshs. 432,000.00 for the period 01.01.2003 to 22.05.2009. These fees were hinged on the claim that there was an agreement with the Respondents that they would be paying Kshs. 72,000.00 per year.

9. Going through the record, I am in agreement with the Respondents and the Subordinate Court that there was no agreement that the Respondents were to pay the Appellant Kshs. 72,000.00 per year. Whereas there was such a proposal by the Appellant through his letter of 02.06.2008, there was no indication that this proposal was ever accepted by the Respondents. In the said letter, the Appellant expressly admitted that there was no agreement between the parties on the scope of his duties and remuneration thereof hence he could not make a demand on that basis.
10. The Appellant did not deny that the presentation of the fee notes after 22.05.2009 was triggered by the Respondents' termination of his services on the same date. As his services were terminated as at that date, there was no basis upon which he could seek payment for subsequent years until 2013. His contention that the payment was for his name remaining in the register was not proof of any services rendered as there was no agreement that he was to be paid for his name being retained in the register. Whereas the Appellant stated that he raised fee notes in respect of secretarial services for the years 2005-2008, he admitted that on 12.07.2007 and 26.02.2008 he partly billed the Respondents for secretarial services. The Appellant admitted that in the statement of account and analysis produced by the Respondents, staggered payments were made to him between 09.06.2005 and 18.10.2007.
11. According to the Registrar's letter dated 12.04.2013, the Respondents had not filed any returns for the period between 2010 and 2012 meaning that since his termination in 2009, the Appellant did not offer any secretarial service in respect of filing the companies' returns for the period 2010-2012. Other than stating that his name being retained in the register entitled him to Kshs. 72,000.00, the Appellant did not provide any evidence of such secretarial services rendered during this period. I cannot therefore fault the subordinate court's finding that no services were offered by the Appellant after his services were terminated in 2009 and even if there were any services, there was no agreement that he was to be paid Kshs. 72,000.00 per year for those services.
12. From the foregoing, the Subordinate Court was correct to find that in as much as the Appellant offered the Respondents secretarial services, there was no agreement that the said services would be paid at a rate of Kshs. 72,000.00. Further, the services offered by the Appellant between 2005 to 2008 were paid for as demonstrated by the Respondents and that no services were rendered by the Appellant between 2009 and 2013 after his services were terminated by the Respondents.
13. It is for these reasons that I find that from the evidence, the Appellant failed to prove his case against the Respondents. I therefore hold that the trial magistrate arrived at the correct conclusion in the judgment.

### **Disposition**

14. I dismiss the appeal. The Appellant shall pay costs of the appeal assessed at Kshs. 40,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF APRIL 2024.**

**D. S. MAJANJA**

**JUDGE**

Mr Waiganjo instructed by Samuel W. Waiganjo and Company Advocates for the Appellant.

Mr Mutwiri instructed by Gitonga Kamiti, Kairaria and Company Advocates for the Respondent.

