



**Raeli Hydro Systems Limited v Kapere & another (Civil Appeal
E317 of 2023) [2024] KEHC 9308 (KLR) (Civ) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9308 (KLR)

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

CIVIL

CIVIL APPEAL E317 OF 2023

AB MWAMUYE, J

JULY 4, 2024

BETWEEN

RAELI HYDRO SYSTEMS LIMITED APPELLANT

AND

BERNARD KAPERRE 1ST RESPONDENT

QUEENTER ATIENO 2ND RESPONDENT

*(Being an Appeal against the Judgment and Decree of the Hon. C. Ndumia (Adjudicator/
SRM) delivered on 18th April, 2023 in Nairobi SCCC Claim No. E1036 of 2013)*

JUDGMENT

1. The Appellant is aggrieved with the Judgment of the Trial Court in which the lower court awarded the Respondent Kes. 325,000.00 as damages for breach of contract and repair costs. The Memorandum of Appeal dated 12th July, 2023 elucidates five key grounds, being:
 - i. That the Learned Adjudicator erred in law and fact in finding that the Appellant had breached the terms of its contract with the Respondents;
 - ii. That the Learned Adjudicator erred in law and fact in failing to take into account the evidence and submissions of the Appellant in her judgment;
 - iii. That the Learned Adjudicator erred in law and fact in failing to state the reasons for her judgment and the reasons why she failed to consider the Appellant's submissions;
 - iv. That the Learned Adjudicator erred in law and fact in awarding an amount which was not strictly proved in view of the evidence on record; and



- v. That the Learned Adjudicator erred in law and fact in basing her judgment on a report which was not prepared by an expert.
2. The Appellant buttressed its position through the Appellant's Written Submissions dated 10th March, 2024. The Appellant advanced the following arguments:
 - i. The Respondents did not establish the term of the contract that the Appellant allegedly breached;
 - ii. The Respondents relied on a report which was prepared by an unqualified person who was not an independent expert but rather a representative of a business competitor of the Appellant; and
 - iii. The Respondents allowed the Appellant to replace the solar system installed and thereafter they continued using the borehole, a clear indication that the Respondents waived their rights to later on allege that the Appellant was in breach of contract.
3. Unsurprisingly, the Respondents find no fault in the Learned Adjudicator's judgment. The Respondents' Written Submissions dated 24th April, 2024 contend that the Appellant indeed breached its contractual obligations by providing ten solar panels of 200 watts each rather than the ten solar panels of 275 watts each that were on the bills of quantities prepared by the Appellant, a fact that was confirmed during cross-examination of DW1.
4. The Respondents also point to other equipment which the Appellant supplied and which they contend did not meet the specifications set out under the contract. The Respondents support the lower court's award of Kes. 352,500 as it was based on a report that was produced in court by its maker; and they proceed to fault the Appellant for not producing a contrary assessment report to challenge theirs.
5. On the final issue of whether the Learned Adjudicator consider the submissions and evidence of the Appellant, the Respondents point to Paragraph 2 of Page 2 of the impugned Judgment in which they say that the Learned Adjudicator paraphrased the Appellant's submissions; an indicator that they were considered by the lower court.
6. Having considered the record of the Trial Court, the Memorandum of Appeal, and the written submissions of the parties, I find no error in law or in fact in the Judgment dated 8th May, 2023.
7. The Respondents proved that the Appellant breached the terms of the contract between the parties by supplying equipment that did not meet the specifications of the bills of quantities prepared by the Appellant. The Appellant's contention that the report produced by the Respondents was not independent or based on expertise cannot be sustained, as the Appellant did not counter the same with its own contrary report and it also failed to satisfactorily impugn either the credentials of the maker of the report or the substance of the report. It is to be expected that if a supplier fails to satisfactorily perform its contractual obligations the client will seek quotes, estimates, or reports from other suppliers who would of course be business competitors of the supplier for the reason of being in the same field.
8. The Appellant's argument on waiver fails as it only goes to show that the Respondents acted in good faith by attempting to use the equipment installed by the Appellant rather than summarily rejecting it. I agree with the Trial Court that it was incumbent on the Appellant to prove that the project was properly installed and operating correctly, something it failed to do.
9. It is clear from the impugned Judgment that the Learned Adjudicator considered the evidence of both parties and thereafter properly applied the law to the facts that were established. The essence of the Small Claims Court is that it avoids the rigmarole and technical intricacies of mainstream civil suits.



In that regard, the dispute before the lower court was a simple one; whether the Appellant supplied a properly functioning project as per the contractual obligations on it. At both the trial and at this appellate stage, the Respondent was able to show that the Appellant had failed to do so, while the Appellant was and still is unable to rebut the Respondents' claim.

10. Consequently, I dismiss the Appeal herein with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4TH DAY OF JULY, 2024.

BAHATI MWAMUYE

JUDGE

In the presence of:

Mr. Apollo Counsel for the Appellant

Mr. Juma Counsel for the Respondent

Ms Achieng, Court Assistant

