Mulika Wote Security Services Limited v Trans Nzoia County Services Board & another (Civil Appeal 65 of 2024) [2025] KEHC 15985 (KLR) (28 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15985 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITALE

CIVIL APPEAL 65 OF 2024

PJO OTIENO, J

OCTOBER 28, 2025

BETWEEN

MULIKA WOTE SECURITY SERVICES LIMITED ..... APPELLANT

AND

TRANS NZOIA COUNTY SERVICES BOARD ..... 1ST RESPONDENT

TRANS NZOIA COUNTY ASSEMBLY ..... 2ND RESPONDENT

(Being an appeal from the decision and judgment of the lower court, Hon. V Karanja, PM, in the original Kitale CMCC No. 291 of 2018, dated and delivered on the 24.01.2023)

JUDGMENT

1. In coming to its decision dismissing the claim, the trial magistrate rendered herself in the following words and fashion: -

2. The plain reading of the excerpt lead to the conclusion that the claim was dismissed on account of the fact that the contract was never reduced into writing in a single comprehensive text. That is a finding that affront the well-established principle of law that a contract can be discernible from one or a series of documents to establish whether there was ever a consensus ad idem.

3. Irrespective, the appellant was aggrieved with the judgment, filed the instant appeal and faulted the judgment on some eight grounds whose gravamen is however that; the trial court errored in her finding that there was never an agreement in writing when there were documents to the contrary and thus misapprehended the provisions of the *Law of Contract Act* on what constitutes a written contract, that there was no basis to find that the *Public Procurement and Asset disposal Act*, had been contravened and that the findings and conclusions were against the weight of the evidence led.

4. Being a first appeal, the court's mandate is to reevaluate and reassess the full record at trial afresh with a view to coming to own independent conclusions while giving deference to the trial court as the trier and master of the facts on factual conclusions.

5. Upon execution of its mandate, the court discerns the sole issue for determination to be whether the trial court erred in finding that there was never a written agreement in compliance with section 3(2) of the *Law of Contract Act*.

6. There is however a collateral issue whether there was even a question of compliance with the *Public Procurement and Asset Disposal Act* to attract the finding by the trial court that both parties flawed the provisions of the *Public Procurement and Asset Disposal Act*. The court views that as a collateral issue because, there was no pleading regarding compliance or noncompliance with the statute. When not pleaded, it is an alien issue and the court is not expected to deliver itself on nonissues. Court cases are decided based on the issues extracted from the pleadings and not elsewhere. It remains unchallengeable position of the law that both the parties as well as the court is bound by the pleadings on record. This remains the indubitable position of the law and one may only cite, Anthony Francis Wareham t/a AF Wareham & 2 others v Kenya Post Office Savings Bank [2004] eKLR, where the court of appeal reiterated the position by holding that: -

> ...we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or the Court, on the basis of those pleadings, pursuant to the provisions of order XIV of the Civil Procedure Rules. And the burden of proof is on the plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail. It also follows that a court should not make any findings on unpleaded matters...". (Emphasis added)

7. In coming to the determination that the procurement statute had been flawed (sic), the trial court committed an error of principle, determined an issue that not only never flowed from the pleading but also never addressed by the parties in the evidence led, and such a decision must not be left to stand but must be set aside. The finding that the procurement law was flawed is thus set aside.

8. Now, on the substantive issue, the law of contract on what constitutes a written contract is that, the contract may in a single or series of documents. What matters is that from reading the single document or the series of document one is able to discern an unequivocal consensus ad idem. In its decision in Waithaka v Wanyoike [2024] KEHC 14060 (KLR)

> "While it is true that it must be established that the parties intended to enter into legal relations, the contract is only implied or established when there is a meeting of minds or where the parties are ad idem. An intention to establish legal relations is an essential ingredient in the formation of a contract."

9. In this matter, there were documents including bills of quantities, requests for quotations, quotation for works to be executed, local purchase orders, invoices, cheques in part payments aggregating kshs 980,000 as well as demand letters. The court views the documents and the payment checks to demonstrate a meeting of minds that the works be undertaken for an agreed sums based on the bills of quantities, the quotations and local purchase orders. The court entertains no doubt that there were

indeed a series of contracts between the parties duly executed by the appellant for which the respondent paid partly in acknowledgment of the claims as valid.it was thus erroneous for the trial court to find that no contract was proved.

10. More importantly, court disputes are due for determination on the basis of the pleadings filed. Here the respondent filed a defense in which it advanced a general and bare denial, with a tacit admission that that it had paid for the contractual sums in two instalments totaling kshs 1,945, 930/.

11. To this court, the outstanding issue after there was sufficient proof of the contract was whether or not the respondent had paid a sum of kshs 1,945,930 as contended by them or kshs 980,000 as contended by the appellant. The appellant not only gave evidence supported with cheques but the respondent's witness came to court bare handed and merely relied on his witness statement. There was thus no proof of payment beyond what the appellant proved. As such, there was no evidence to controvert the otherwise cogent evidence by the appellant. The consequence was that the appellant sufficiently discharged the burden and standard of proof and was thus entitled to a judgment as prayed in the plaint. In failing to find for the appellant, the trial court clearly went against the grain and weight of the evidence adduced and that judgment cannot, in fairness and justice, be left to stand, but ought to be set aside.

12. The court sets aside the judgment of the trial court dismissing the suit and substitutes therefore a judgment for the appellant against the respondent in the sum of Kshs 3,143,060 with interest thereon from the date of the suit till payment in full.

13. The court equally awards to the appellant the costs of both proceedings at trial and in this appeal.

14. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 28TH DAY OF OCTOBER, 2025

PATRICK J O OTIENO

JUDGE