



Riley Falcon Security Limited v County Government of Siaya (Civil Case E005 of 2023) [2025] KEHC 16142 (KLR) (7 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL CASE E005 OF 2023
DK KEMEL, J
NOVEMBER 7, 2025**

BETWEEN

RILEY FALCON SECURITY LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF SIAYA DEFENDANT

JUDGMENT

1. Vide a plaint dated 1st December, 2023 and amended on 29/1/2024, the Plaintiff sued the Defendant for recovery of an outstanding sum of Kshs21,066, 010.56/= plus costs and interests. The plaintiff's gravamen is that it had entered into contract dated 1st June 2014 with Defendant wherein it was contracted to render security services at its various county offices and premises. That it was a term of the contract that upon the Plaintiff rendering the services agreed upon, the Defendant would pay for the same. That the Defendant made some payments but left out a huge amount which is still outstanding as stated in the Plaintiff. That despite repeated requests for payment, the Defendant has refused and/or failed to comply hence the filing of this suit.
2. The Defendant filed a defence dated 26th February 2024 wherein it denied the Plaintiff's claim and sought for its dismissal. The Defendant further denied the existence of any such contract or alleged breach thereof and sought for the dismissal of the suit with costs.
3. The hearing of the matter proceeded on 7th May 2025. The Plaintiff's witness Elijah Wekesa Kuloba (PW1) testified that he is the financial controller of the Plaintiff. He relied on his witness statement dated 1st December 2023 and that he was aware of this suit. He adopted his witness statement and list of documents dated 1st December 2023 as his evidence in chief which were produced as Exhibit 1-12.

On cross examination, he testified inter alia; that he has served for seven years and that they had gotten a contract at Siaya County; that he had seen the invoice on page 158 of the bundle of documents and that there was no indication that the invoice dated 27/5/2023 was served upon Siaya County Government;



that upon filing of the suit, the Plaintiff was paid a sum of Kshs 15,000,000/= by the Defendant; that they did reconciliation after the payment; that the letter dated 17/12/2021 is an acceptance of the offer to render security services; that page 13 of the documents contains the documents used to pursue their claim against the Defendant; that the County Assembly does not owe the Plaintiff any money but that they have not sent a demand letter; that the document on page 158 does not indicate how the debt has been loaded to either County Assembly or County Government of Siaya.

On re-examination, he stated inter alia; that the claim is on paragraph 10 of the Plaintiff and that page 158 relates to the statement of outstanding invoice which is the debt owed by the Defendant; that it is true that Kshs 15,000,000/= was received but they were yet to do a reconciliation; that the balance outstanding at the time of filing the suit was Ksh 21,066,010.56/=.

4. Learned for the parties filed and exchanged submissions regarding their rival standpoints. The Plaintiff's submissions are dated 3/7/2025 while those of the Defendant are dated 23/9/2025.
5. The Plaintiff raised two issues for determination namely, whether the Defendant breached the contractual agreement and whether the Plaintiff is deserving of the recovery of Kshs21, 066,010.56/ = plus interest.
6. As regards the first issue, learned counsel for the Plaintiff submitted that this matter proceeded as an undefended claim under Order 10 Rule 9 of the Civil Procedure Rules since it is only the Plaintiff who tendered evidence while the Defendant did not avail any evidence in rebuttal. Counsel further submitted that although the County Government of Siaya filed a statement of defence, it failed to call any witness or tender evidence to support its pleadings. It was therefore contented that the defence remains as mere allegations without evidentiary weight. Reliance was placed in the case of Phelista Mukamu Makau v Elizabeth Mulumba [2015] eKLR where the court upheld the principle that uncontroverted plaintiff's evidence stands unchallenged and cited Janet Kaphiphe Ouma & Another v Marie Stopes International (Kisumu HCCC No. 68 of 2007) where Ali- Aroni J, (as she then was) held that where a defendant fails to adduce evidence, the Plaintiff's case remains uncontroverted, and that the defence amounts to mere assertions. Further reliance was placed in Stanly Mwangi Gachugu & Another v Barclays bank of Kenya Ltd [2019] eKLR, where the court affirmed the decision in Drippy Empire v Attorney General (Nairobi HCCC No. 2666 of 1996) where Rawal J, (as she then was) held that where a defendant fails to challenge the plaintiff's evidence, the standard of proof on a balance of probabilities is deemed satisfied.

Learned counsel further submitted that basing on the aforesaid citations, the Plaintiff's evidence stands unchallenged and thus urged this court to proceed and determine the claim based on the uncontroverted testimony and documents presented.

7. As regards the issue of existence of a valid contract, the Plaintiff's counsel submitted that the Plaintiff adduced compelling evidence demonstrating that a valid and enforceable contract existed between itself and the Defendant which was established through tender documents, executed contracts, and record of performance, all of which satisfy the essential elements of a contract under Kenyan law. That the contractual relationship commenced with the notification of Tender Award dated 15/5/2014 where the Defendant formally awarded the Plaintiff the contract for provision of security services. It was further submitted that the document which constitutes clear offer and acceptance, fulfilling the first pillar of contract formation under the *Law of Contract Act* (Cap 23). That the subsequent contract agreement dated 1/6/2014 (Exhibit 4) further crystalized the terms, including the scope of services, payment obligations, and duration and that it was a written agreement and which complied with the said provisions of the law. That the contract was renewed multiple times between 2016 and 2022 as evidenced by Exhibit 5 and 8 including subsequent tender awards and signed extensions. That



the renewals were not unilateral but followed formal requests from the Defendant particularly letters dated 20/10/2016 and 11/12/2019 annexed as Exhibit 6 wherein the Defendant sought for continued services which pattern of conduct affirms the mutuality of obligations. The counsel further submitted that the contract's validity was tied in the Plaintiff's performance. That there are deployment records as per exhibit 9 which confirm that security personnel were stationed at the Defendant's offices and key residences as agreed and that the Defendant never contested the quality or adequacy of the services but instead requested additional deployments and which conduct amounts to ratification under the doctrine articulated in *Baber A Mawji v United States International University & Another* [1976] 16 KLR where the court held that a party who knowingly accepts benefits under an agreement cannot later deny the contract's existence and that they are estopped by the doctrine of promissory estoppel.

8. On the issue of breach of contract by the Defendant, counsel submitted that the Defendant has breached its contractual obligations as follows:
 - i. Systematic default on payment obligations in that the executed contract annexed as Exhibit 4 required monthly payment for security services rendered as opposed to what the payment history demonstrates.
 - ii. Chronic non-payment of invoices from 2014 – 2023 as per exhibit 10.
 - iii. Irregular partial payments that failed to meet contractual terms as per Exhibit 11.
 - iv. Persistent arrears documented through demand notices as per Exhibit 12.
 - v. Failure to fulfil payment undertakings despite written commitments to clear outstanding amounts such as letters dated 21/12/2018 and 15/3/2019 as per Exhibit 12 where the Defendant repeatedly failed to honour these payment plans.
 - vi. Legal characterization of breach constitutes material breach and repudiatory breach entailing termination under common law principles.

Reference was made to Black's Law Dictionary which defines a breach of contract – 29th Edition, page 213 as a violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance. A breach may be one by non-performance or by repudiation or by both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss, or is unable to show such loss, with sufficient certainty, he has at least a claim for nominal damages.

Counsel further submitted that the compensatory nature of damages for breach of contract, and the nature of the loss for which they are designed to compensate, were explained by Lord Diplock in *Photo Production Ltd v Securicor Transport Ltd* – 1717 [1980] AC 827, 848-849 held: "The contract is just as much the source of secondary obligations as it is of primary obligations....every failure to perform a primary obligation is a breach of contract. This secondary obligation on the part of the contract breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for the loss sustained by him in consequence of the breach.....(p 849).

Learned counsel urged this court to award damages plus costs to the Plaintiff as prayed.

9. Learned counsel for the Defendant raised one issue for determination namely whether the Defendant is in breach of the contract. Learned counsel relied on Black's Law Dictionary, 9th Edition regarding defining breach of contract in the following manner:

“a violation of a contractual obligation by failing to perform one's own promise, by repudiating, or by interfering with another party's performance. A breach may be one by



non-performance or by repudiation or both. Every breach gives rise to a claim for damages and may give rise to another remedies. Even if the injured party sustains no pecuniary loss or unable to show such a loss with sufficient certainty he has at least a claim for nominal damages.”

The defence counsel further submitted that the Plaintiff alleges in the plaint that the contracts which are alleged to have been breached provided that the Defendant was required to make payment at the end of every month and that because the Defendant has not been making payments on monthly basis, they are in breach of the said contract. He further urged the court to make a perusal of the contracts which will reveal that the special conditions provided for in the contract required payment being made monthly after submission of invoices. That in the entire bundle of documents, there is absolutely no evidence of invoices which is expressed to have been served upon the Defendant and that the Defendant refused to pay. That what the plaintiff has produced is a statement of outstanding invoices whose evidentiary value is doubtful in the absence of corresponding invoices representing the figures in the said summary. That the Plaintiff has annexed a letter dated 17/12/2021 in respect to an entity of the Defendant and which the Defendant is not responsible for their financial obligations. That the Plaintiff was not in a position to explain what amount that erroneous letter represents in the entire amount the Plaintiff is claiming.

Further, it was submitted that his client produced evidence of RTGS showing payment of Kshs15,082,965.25/= to Plaintiff. That the Plaintiff never filed any of their bank statements to demonstrate that the said money never hit their account. That in the circumstances, the legitimacy of the payment is not in doubt. That it would be greatly prejudicial to the Defendant if this court were to allow the Plaintiff's suit as prayed considering that the Defendant has demonstrated payment of Ksh15,082,965.25/= which if reduced from the amount claimed by the Plaintiff would substantially reduce the said amount claimed by the Plaintiff and that even if the said amount already paid is reduced from the figure claimed in the suit, that this court would still not be certain that the resultant figure is the correct amount owed to the Plaintiff as it has been indicated by the Plaintiff in its list of documents, a document for which the Defendant herein is not responsible, and therefore this court is not in a position to tell what figure that letter represents in the entire amount claimed.

It was further submitted that even if this court was to be persuaded that there is any determinant figure owed to the Plaintiff by the Defendant that alone would not amount to breach on the part of the Defendant. That this court takes judicial notice of the fact that county governments rely on exchequer releases from the National Treasury to meet all their financial obligations. That this releases usually do not come within the timelines that the Defendant, and indeed other counties as well, would expect and which is not an exception. That the payment of Kshs 15,082,965.25 already alluded to hereinabove should be demonstrative of the fact that the Defendant has, in the difficult circumstances it many times find itself in, endeavored to pay its obligations. Reliance was placed on the case of Kenya Airways Ltd vs Satwant Singh Flora [2013] eKLR, where the court while relying on the doctrine of frustration, observed that nonperformance in that instant case arose from circumstances beyond the Defendant's control. It was finally submitted that the suit dated 1/12/2023 has no merit and that the same should be dismissed with costs. It was further submitted that in the alternative, parties be allowed to reconcile their accounts and file a correct figure taking into account what has already been paid to the Plaintiff in order to avoid the risk of committing the Defendant to spend public funds in making double payments



when the same can be put to other useful purposes before this court can make determination in the matter.

10. I have given due consideration to the pleadings and evidence presented as well as the submissions tendered. I find the issue for determination is whether the Plaintiff proved its case on a balance of probabilities.
11. It is noted that the basis of the Plaintiff's case is founded on a contract for supply of services namely provision of security services at the Defendant's offices, premises and residences of various County Officers. Indeed, vide paragraph 3 of the Defendant's statement of defence dated 26th February 2024, the Defendant admits the existence of such a contract which was entered on 1st June 2014. It is also noted that the said contract was subsequently renewed and extended through several contract numbers namely CGS/Q/GOVERNANCE/RT/2016-18/005, CGS/Q/GOVERNANCE/RT/2016-18/004, CGS/SCM/GOV.& ADM/OT/2018-2019/003, CGS/GOV.&ADM/OT/2020-2021/03 and CGS/GOV.&ADM/OT/2022-2023/01. It is noted that the Plaintiff through its Financial Controller (PW1) presented bundle of documents in the Plaintiff's list of documents dated 1/12/2023. All these documents leave no doubt about the existence of the aforesaid contract as well as the subsequent renewals/extensions. The Defendant despite filing a statement of defence and denying the claim, failed to present witnesses to controvert the evidence by the Plaintiff. Hence, I find the Plaintiff's evidence remained uncontroverted. The Defendant had the opportunity to contest the claim but failed to file any contrary documents or call witnesses so as to give their version of evidence. In *Stanley Mwangi Gachugu & Another v Barclays Bank of Kenya Ltd* [2019] Eklr, the court affirmed *Drappery Empire v Attorney General* (Nairobi HCC No. 2666 of 1996), where Rawal J (as she then was) held:

“where a Defendant fails to challenge the Plaintiff's evidence, the standard of proof on a balance of probabilities is deemed satisfied.”

From the evidence of the Plaintiff's witness, it is quite clear that there existed a valid contract between the Plaintiff and the Defendant as can be seen from the Tender documents, executed contracts, records of performance all of which satisfy the essential elements of a contract under the *Law of Contract Act*.

12. As regards the issue of existence of a valid contract, the Plaintiff adduced compelling evidence demonstrating that a valid and enforceable contract existed between itself and the Defendant which was established through tender documents, executed contracts, and record of performance, all of which satisfy the essential elements of a contract under Kenyan law. The contractual relationship commenced with the notification of Tender Award dated 15/5/2014 where the Defendant formally awarded the Plaintiff the contract for provision of security services which constitutes clear offer and acceptance, fulfilling the first pillar of contract formation under the *Law of Contract Act* (Cap 23). The subsequent contract agreement dated 1/6/2014 (Exhibit 4) further crystalized the terms, including the scope of services, payment obligations, and duration and that it was a written agreement and which complied with the said provisions of the law. It is noted that the contract was renewed multiple times between 2016 and 2022 as evidenced by Exhibit 5 and 8 including subsequent tender awards and signed extensions. The renewals were not unilateral but followed formal requests from the Defendant particularly letters dated 20/10/2016 and 11/12/2019 annexed as Exhibit 6 wherein the Defendant sought for continued services which pattern of conduct affirms the mutuality of obligations between the parties herein. From the bundle of documents, it is clear that there are deployment records as per exhibit 9 which confirm that security personnel were stationed at the Defendant's offices and key residences as agreed and that the Defendant never contested the quality or adequacy of the services but instead requested additional deployments and which conduct amounts to ratification under the



doctrine articulated in *Baber A Mawji v United States International University & Another* [1976] 16 KLR where the court held that a party who knowingly accepts benefits under an agreement cannot later deny the contract's existence and that they are estopped by the doctrine of promissory estoppel. Indeed, the contract was first entered in 2014 and that the current County Government of Siaya is under obligation to satisfy claims/debts that had been incurred/acquired by the previous government since current governments usually acquire/take over assets and liabilities of the outgoing governments. Hence, the Defendant is under obligation to settle any liabilities that had been incurred by the outgoing government. Even though the Defendant's learned counsel in his submissions has contended that the Defendant has since made payment at a tune of Kshs15,000,000/= to the Plaintiff, the Plaintiff maintains that the Defendant still owes it the sum pleaded in the plaint herein. The Defendant did not present any document giving a breakdown of how it has paid the money owed to the Plaintiff. This then leaves this court to find the documents presented by the Plaintiff which gives a breakdown of what has been paid and what is remaining to be the correct position regarding the dispute. Hence, the claim still remains unclear. That being the position, the issue of the existence of a contract between the Plaintiff and the Defendant is not in dispute. What is in dispute however is on the question whether the Defendant has paid the Plaintiff the full amounts claimed.

It is noted that the Plaintiff has claimed that the failure by the Defendant to settle the claim in good time has caused it to suffer prejudice and has therefore sought damages for breach of contract. The Black's Law Dictionary – 29th Edition, page 213 defines a breach of contract as a violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance. A breach may be one by non-performance or by repudiation or by both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss, or is unable to show such loss, with sufficient certainty, he has at least a claim for nominal damages.

13. Also, the Black's Law Dictionary defines a breach of contract in the following manner:

“a violation of a contractual obligation by failing to perform one's own promise, by repudiating, or by interfering with another party's performance. A breach may be one by non-performance or by repudiation or both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss or unable to show such a loss with sufficient certainty he has at least a claim for nominal damages.”

Again, the courts have held that the compensatory nature for breach of contract and the nature of the loss must be properly argued by the party who has suffered damages due to the breach. In most cases, the rule of thumb is that damages for breach of contract are usually not awarded and that if they are to be awarded, then the same must have been captured in one of the clauses in the contract. Lord Diplock in *Photo Production Ltd v Securicor Transport Ltd* 1717 [1980] AC 827,848-849, “the contract however, is just as much the source of secondary obligations as it is of primary obligation... Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for the loss sustained by him in consequence of the breach...(p 849).

Going by the foregoing authorities, whereas the Defendant delayed in settling the claim over a long period of time, it is my considered view that if the parties really intended that damages for breach should be payable, then the same should have been captured and indicated as one of the clauses in the contract. A perusal of the said contract does not reveal any such clause which entitles the Plaintiff to claim general damages for breach of contract. Even though the foregoing authorities indicate that a party who has suffered damage for breach of contract is entitled to nominal amounts, I am not persuaded that the



Plaintiff is entitled to any damages for breach of contract. In any case, the amounts claimed is expected to attract interest thereon and which has been pleaded by the Plaintiff. I find the issue of interest will take care of the Plaintiff's concerns.

14. It is noted from the submissions of the counsel for the Defendant that the Defendant should not be condemned since it has tried to make some substantial payments to a tune of Kshs15,082,965.26/= and that the said sum should be reduced from the total figure claimed in the suit. However, as noted in the preceding paragraphs, the Defendant failed to present a proper and accurate breakdown of the amounts owed as well as the amounts already paid and the balance if any, this is in contrast to the amounts presented by the Plaintiff who has given a proper and accurate breakdown amounting to Kshs 21,066,010.56/=. As the Defendant has not presented any document to counter that of the Plaintiff, the Plaintiff's claim must be allowed.
15. Finally, it is noted from the submissions of the Defendant's counsel that the parties should be allowed to reconcile their accounts and file a correct figure taking into account what has already been paid to the Plaintiff in order to avoid the risk of committing the Defendant to spent public funds in making double payments when the same can be put to other useful purposes before the court can make a determination in this matter. Whereas this suggestion is workable, it is noted that the Defendant had plenty of time to file its documents if any regarding the claim. The record shows that the Defendant not only failed to present its version of events as well as their documents, but it also failed to present witnesses to controvert the evidence of the Plaintiff. Further, the Defendant did not make the aforesaid request early enough before the trial commenced. Hence, the suggestion by the Defendant at this stage is too late in the day. This court must proceed to make a determination based on the evidence presented before it.
16. In view of the foregoing observations, it is my finding that the Plaintiff has proved its claim on a balance of probabilities. The same has merit and is allowed as prayed save only that the rate of interest shall be at court rates from the date of filing suit.

DATED AND DELIVERED AT SIAYA THIS 7TH DAY OF NOVEMBER 2025.

D. KEMEI

JUDGE

In the presence of:

Kapinde.....for Plaintiff.

Okanda.....for Defendant.

Kimaiyo/Maureen....Court Assistant.

