



Two Four Seven Guards v Wangui t/a Abbyze Lounge Sportbar (Civil Appeal E355 of 2024) [2025] KEHC 17416 (KLR) (28 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E355 OF 2024
BM MUSYOKI, J
NOVEMBER 28, 2025**

BETWEEN

TWO FOUR SEVEN GUARDS APPELLANT

AND

EMMAH WANGUI T/A ABBYZE LOUNGE SPORTBAR RESPONDENT

(Being an appeal from ruling of the Small Claims Court at Ruiru (Hon. J.K. Tawai RM) claim number E567 of 2024 dated 28th October 2024))

JUDGMENT

- 1 The appellant filed a claim at the small claims court at Ruiru against the respondent claiming a liquidated sum of Kshs 251,000.00 being balance of sum due for services the appellant provided to the respondent between 2018 and 2023. On 16-09-2024, the matter was mentioned before the Adjudicator where the appellant’s counsel told the court that he had effected service on the respondent on 11-09-2024 and the matter was placed for mention on 8-10-2024.
- 2 On 8-10-2024, the court was again informed by the counsel for the appellant that service on the respondent had been done. The counsel prayed for default judgment but the matter was adjourned again to 17-10-2024 as the court made observation that the statement of claim had not been filed and directed that the same be filed. On 17-10-2024, the counsel for the appellant informed the court that the statement of claim had been filed and served and prayed for judgment in default but the court fixed another mention for 28-10-2024.
- 3 When the matter came before the court on 28-10-2024, the counsel again prayed for default judgment upon which the Adjudicator made the following orders;

‘I have considered request for default judgment by claimant. I have considered documents adduced and I note that the claimant has not adduce sufficient evidence to substantiate this claim. Claimant adduced CR12 of his company, demand letter and account statement



generated by itself. No evidence to show it provided security service to the respondent at all. As much as this is at default stage, the claimant still has obligation to prove its claim and has failed to do so. Consequently, claim is dismissed with no orders as to costs.’

It is against the above ruling that the appellant has preferred this appeal. I have noted and considered the grounds of appeal, the record of appeal and the appellant’s submissions dated 18th August 2025.

Proceedings before small claims court are governed by Part V of the Small Claims Courts Act and provisions of the Small Claims Court Rules. Section 27 of the said Act provides that;

1. If the respondent fails to respond to the claim within the prescribed period, the Court may, either on its own motion or on the claimant’s application enter judgment for the claimant and order the relief sought in the statement of claim.
2. If a respondent fails to appear at the hearing in person or by a representative, the claimant may apply to the Court for an order to be made against the respondent.
3. Upon application made by the claimant under subsection (2), the Court shall grant the claimant the order if it is satisfied that the claimant is entitled thereto.
4. An order shall not be made against a respondent under this section unless the Court is satisfied that a copy of the written claim and the notice of hearing have been served on the respondent under section 25 of this Act.

4 Under Rule 11 of the Small Claims Courts Rules, when the respondent fails to respond to the claim or appear, the court is called upon to enter judgment and issue a decree. The rule provides that;

‘Where a respondent fails to file a response to the claim within the time specified in these Rules or within such additional time as the Court may have allowed, the Court shall, on the written request of the claimant, enter default judgment and issue a decree in favour of the claimant.’

5 In my opinion, where the claim is for liquidated sum, the court has no business going into and analysing the documents which were intended to be produced as exhibits. I equate this Rule with Order 10 Rule 4(1) of the Civil Procedure Rules which states as follows;

‘Where the plaintiff makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants for any sum not exceeding the liquidated demand together with interest thereon from the filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.’

6 Looking at the statement of claim, I note that the appellant had asked for a liquidated sum of Kshs 251,000.00. Where a respondent fails to respond to a liquidated claim and there is no other prayer which needs formal proof, the court, if satisfied with the service should enter final judgment. It is not open to the court to skip procedural stage of considering entry of default judgement and rush to analyse the evidence of the claimant. Even if that would be necessary, the court is obligated to call upon the parties to prosecute their case.



- 7 There is nothing on record to show that the claimant was allowed to prosecute its claim. A court of law is an impartial arbiter who does not own the pleadings or the case and should not be seen taking a position of prosecuting a case on behalf of either of the parties. In this case, I think the Adjudicator shifted from her hallowed seat of an arbiter and descended into the arena of litigation.
- 8 In view of the above, I hold the position that the trial court was wrong in delving into analysing whether the documents filed together with the claim were sufficient to prove the claim. Even if the court was right in going into the analysis, it could only reach such a decision upon full trial in with the claimant being given an opportunity to speak to the contents of the documents. It was premature for the court to make a decision on the weight or authenticity of the documents without a hearing being conducted.
- 9 I have seen the certificates of service dated 4th October 2024, 14th October 2024 and 15th October 2024 which were the basis for the appellant asking for default judgment. I note from the proceedings that the court did not state whether it was satisfied with the service of the statement of claim or not. I do not wish to make comments on the mode of service as the trial court did not express itself on the same. In the circumstances, I believe that the appropriate order is to remit this matter back to the lower court for consideration of the service and appropriate directions of the court bearing in mind what I have stated in this judgment.
- 10 I proceed to make the following orders;
1. The ruling and orders of the trial court dated 28th October 2024 striking out the appellant's claim is hereby set aside.
 2. The matter is remitted back to the lower court for consideration of the appellant's request for judgment with directions that the court shall follow the procedures provided in Part V of the Small Clams Courts Act and Rule 11 of the Small Claims Courts Rules.
 3. The matter shall be heard by any Adjudicator other than Honourable J.K. Tawai, Resident Magistrate/Adjudicator.
 4. There shall be no orders as to costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Muriuki holding brief for Mr. Muibu for the appellant and in absence for the respondent.

