

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CIVIL APPEAL NO. E175 OF 2024**

**RANA AUTO SELECTION LIMITED.....**  
**.....APPELLANT**

**VERSUS**

**PRIDE KINGS SERVICES LIMITED.....**  
**RESPONDENT**

*(Being an Appeal from the Judgement and Decree of Hon. G. C. Serem, Resident Magistrate/Adjudicator dated 15<sup>th</sup> August, 2024 in Kisumu SCCCOMM No. E393 of 2024 Pride Kings Services Limited v Rana Auto Selection Limited.*

**JUDGEMENT**

1. This appeal emanates from the judgement and decree of **Hon. G.C. Serem** Resident Magistrate/Adjudicator dated 15<sup>th</sup> August, 2024 in Kisumu SCCCOMM No. E393 of 2024 Pride Kings Services Limited v Rana Auto Selection Limited.
  
2. The grounds of appeal presented by the Appellant vide the memorandum of appeal dated 19<sup>th</sup> December, 2024 upon which he seeks to upset the judgement and decree of the lower court are as follows:
  - i. **The Learned Adjudicator erred in law when she awarded Ksh.393,600/-, an amount which she plucked from the air, when no credible evidence was led in that regard, and when claim for unpaid monies for services rendered is an aspect of damages in the nature of specials which had to be specifically**

**pleaded and strictly proved by evidence before they could be awarded.**

- ii. The Learned Trial Adjudicator erred in law when she arrived at the finding that the Respondent provided eleven (11) guards to the Appellant, a finding which ran counter to the Witness Statements adopted by all the Respondent's three (3) Witnesses as part of their testimony in Court. The Learned Trial Adjudicator further erred as all the Respondent's witnesses when under cross examination did affirm the position as per their Witness Statements that the Respondent supplied six (6) guards to the Appellant.**
  
- iii. The Learned Adjudicator erred in law when she failed to appreciate that the value of monies owed to the Respondent if any could not exceed Ksh.198,000/-, the Respondent's case having been that they hired out six (6) guards to the Appellant at a cost of Ksh.11,000/- per month for the 3 Months of August, September and October 2022 in which they were claiming that monies were not paid for services rendered, and therefore the amount of Ksh.393,600/- which she plucked from the air and awarded to the Respondent, had no basis.**
  
- iv. The Learned Trial Adjudicator erred in law in allowing the amount of Ksh.393,600/- as claimed in the Statement of Claim on the basis of the three (3) invoices produced by the Respondent for the Months**

**of August, September and October 2022; yet there was no evidence availed to prove that the parties had agreed that the Appellant would pay the Respondent as per the amounts claimed in the said invoices, these being Ksh.123,000/- for the Month of August, 2022, Ksh.135,300/- for the Month of September, 2022 and Ksh.135,300/- for October, 2022. The Trial Adjudicator only further erred as the Invoices produced by the Respondent do not constitute an agreement and/or proof that the Appellant was to pay monies for services rendered in the amounts stated therein.**

- v. The Learned Trial Adjudicator erred in law when she failed to appreciate that the Respondent failed to discharge the burden of proof in the circumstances of the case and therefore there was no basis for the awards which she made to the Respondent.**
- vi. The Learned Adjudicator could only further err in law as there being no proof in support of the claim for Ksh.393,600/- she could only further err in law in failing to dismiss the claim in its entirety.**
- vii. The Trial Adjudicator erred in law in finding that the Contract between the parties was terminated in the Month of October, 2022 absent any proof.**
- viii. The Trial Adjudicator therefore erred in law when she made an arbitrary, injudicious and excessively high and unreasonable award in the circumstances.**

- ix. **The Learned Adjudicator failed to consider the pleadings, reappraise the evidence before the court and decide the suit by applying the law and in the process failed to render a considered Judgment in the circumstances.**
- x. **The Learned Trial Adjudicator erred when she failed to consider the various binding authorities on her Court which had been submitted before her by the Appellant by way of written submissions.**

3. The Appellant proposes that the appeal be allowed and that this court sets aside the trial court's judgement and decree and substitutes the same with its own findings.

4. This being the first appellate court, I am required under *Section 78* of the *Civil Procedure Act* and as was espoused in the case of ***Selle v Associated Motor Boat Co. Ltd [1969] E.A. 123*** to reassess, reanalyze and reevaluate the evidence adduced in the trial court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.

5. In ***Selle***, **Sir Clement De Lestang** observed that:

***"This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.***

***However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."***

6. The duty of the first appellate court was also discussed by the Court of Appeal for East Africa in the case of ***Peters v Sunday Post Limited [1958] EA 424*** in which it was held that the appropriate standard of review established in cases of appeal can be stated in three complementary principles:

***"i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;***

***ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and***

***iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time."***

7. The matter before the trial court, based on an alleged monetary claim for services rendered, was commenced by the Respondent (the Claimant before the trial court) against the Appellant (the Respondent before the trial court) by way of a statement of claim dated 7<sup>th</sup> May, 2024.
8. The Respondent pleaded that at the time material to the suit, the Respondent rendered security services to the Appellant's premises pursuant to a contract entered into between the parties, from 30<sup>th</sup> June, 2022 to 31<sup>st</sup> October, 2022, to the tune of Ksh.393,600/-.
9. The Respondent therefore sought judgement against the Appellant for the amount of Ksh.393,600/-.
10. The Appellant resisted the Respondent's claim by filing a response to the statement of claim dated 5<sup>th</sup> June, 2024. In its response, the Appellant denied the allegations that the Respondent rendered security services that were not paid for, stating that it paid to the Respondent the entire amount pleaded in the statement of claim.
11. The Appellant pleaded that it is the Respondent that owed it the amount of Ksh.200,000/- being the balance of the purchase price of motor vehicle registration number KDE 902Y, which the Appellant averred that it sold to the Respondent on 7<sup>th</sup> May, 2022.

12. The Appellant thus stated that it was, without prejudice to the denial of indebtedness to the Respondent, entitled to a set off in the sum of Ksh.200,000/-.
13. The Appellant prayed that the Respondent's claim be dismissed with costs and that judgement be entered for the Appellant against the Respondent for the counter-claimed amount of Ksh.200,000/-.
14. When the matter was placed before the trial court on 9<sup>th</sup> July, 2024, the Appellant withdrew the set-off against the Respondent.
15. The Respondent called its Human Resource Officer **Fredrick Mashuke** as its first witness. The witness told the trial court that the Respondent rendered security services to the Appellant vide a contract that was executed by the parties on 14<sup>th</sup> January, 2016 (CExh1), whereby the Appellant was required to pay Ksh.11,000/- per security guard.
16. The witness explained that the Respondent initially provided one security guard but enhanced the number over time. That due to non-payment by the Appellant for the security services, the Respondent terminated the agreement. As at the time of termination, the amount payable per guard was Ksh.12,300/-.

17. The Respondent’s witness told the trial court that at the time of termination of the agreement, the amount due and owing from the Appellant for the security services that the Respondent had provided was Ksh.393,600/-, made up as follows:

<u>Invoice No.</u>	<u>Amount</u>	<u>Date</u>
30431	Ksh.123,000/-	31 <sup>st</sup> August, 2022.
30798	Ksh.135,300/-	30 <sup>th</sup> September, 2022.
31187	Ksh.135,300/-	31 <sup>st</sup> October, 2022.

18. The Respondent’s witness stated that a statement (CExh2) was prepared and forwarded to the Appellant together with a demand letter (CExh3) but the same was not paid.

19. The Respondent called **Joseph Ochieng Osuri** as its second witness. The witness adopted the contents of his statement dated 25<sup>th</sup> June, 2024 in which he stated that he worked as the Respondent’s supervisor and that between 2019 and 2022, the Respondent provided the Appellant with six security guards who provided security services at the Appellant’s three premises within Kisumu – two each at the

Appellant's yard next to Tivoli Centre, at the Respondent's yard in Kibuye and at the Respondent's residence in Milimani.

20. Upon cross examination, the witness told the court that the cheques dated 16<sup>th</sup> July, 2022 and 12<sup>th</sup> August, 2022 that were issued by the Appellant were for were for services rendered by the Respondent in June, 2022 and July, 2022 respectively.

21. **Nancy Akinyi Oyugi** testified as the Respondent's third witness and told the trial court that she was one of the guards that was deployed by the Respondent to guard the Appellant's Milimani residence during daytime between the year 2021 and 2022. She stated that her colleague from the Respondent company provided the security services at the residence at night.

22. The Appellant called its Operations Manager **Ali Marwa** as its witness. The witness adopted the contents of his statement that was recorded on 18<sup>th</sup> June, 2024 as his evidence in chief.

23. The witness stated in his statement that the Appellant retained the security services of the Respondent from 30<sup>th</sup> June, 2022 to 30<sup>th</sup> September, 2022 pursuant to an agreement that was entered between the parties, which was terminated by the Appellant in September, 2022.

24. The witness stated in his statement that the Appellant made full and prompt payments for the services that were rendered

in July and August, 2022 to the tune of Ksh.98,400/- vide cheques dated 16<sup>th</sup> July, 2022 and 12<sup>th</sup> August, 2022 respectively (REx1 and RExh2 respectively).

25. On being cross examined, the witness told the trial court that he was employed by the Appellant in January, 2014 and that a verbal contract between the parties was entered into in 2016 and was later formalized in writing in 2022.

26. In the trial court's judgement, the learned Adjudicator discerned the issue for determination, which was whether the Respondent was owed by the Appellant the sum of money that it claimed.

27. In reaching its determination, the trial court rendered itself as follows:

***“8. The court, will start with the issue of when the agreement was terminated to be able to determine the period in which the respondent herein needed to pay. Firstly, the court states that it was agreed by both parties that there was an agreement herein that was in force at the time. So when was it terminated. The court states that the claimant herein testified that the agreement herein was terminated on the 30.10.2022 and CW2 and CW3 who were the actual security guards herein stated that they had stopped working on the 30.10.2022. The respondent herein states that the agreement herein was terminated on***

***the 30.9.2022, there was nothing to support the fact that it was terminated. Further the respondent herein received the invoice from October and there was nothing that they did to dispute the same. If service was not offered then the same would have been disputed. The court hence finds that the claimant has proved that the same was terminated on the 30.10.2022. Hence the claimant was valid in praying for the sums of August 2022 - October 2022.***

***9. Having stated the above the court states that the claimant herein proved the invoice 30431, 30798 and 31107 totaling to a sum of Ksh.391, 600/-. The respondent herein produced two cheques one for the 16.7.22 which he stated that was an advance payment for July and 12.8.22 being an advance payment of August. The court states that firstly the claimant was not pleading for the payment for July so the court will not dwell on the same. On the payment they stated that was for August the court states that the invoice herein was for the 31.8.22 and the respondent herein could not have made payment before the invoice was issued herein. The respondent did not move the court to evidence the same and is hereby not proved.***

***10. In the upshot***

***a. The claimant is awarded judgement in the sum of Ksh.393,600/- plus interest from the date of judgement till full payment.***

***b. The claimant is equally awarded costs of the suit.  
c. The respondent herein has 30 days stay of execution.”***

28. The appeal herein proceeded by way of written submissions.

29. Having considered the grounds of appeal, the record of the trial court and the submissions by the parties, the issues that emerge for determination are as follows:

- a. Whether the trial court erred in law on the standard for proving the case.
- b. Whether the learned Adjudicator erred in law regarding the number of guards supplied.
- c. Whether reliance on invoices amounted to a legal misdirection.
- d. Whether the finding on the date of termination constituted an error of law.
- e. Whether the learned Adjudicator failed to consider pleadings, evidence, or submissions.
- f. Whether the award was arbitrary, injudicious or unreasonable in law.

30. The first issue for determination is whether the trial court erred in law on the standard for proving the case. I have carefully considered the Appellant's first cluster of grounds, all of which revolve around the allegation that the learned adjudicator erred in law by awarding the sum of Ksh.393,600/= without what the Appellant terms "credible evidence."

31. It is contended that the learned Adjudicator violated the principle that special damages must be specifically pleaded and strictly proved and that she instead "plucked figures from the air." This complaint, while framed as one of law, rests substantially on the adequacy and weight of evidence. Moreover, the claim was one for a debt said to have been incurred pursuant to an agreement and is therefore not one for recovery of special damages.

32. Because appeals from the Small Claims Court lie only on matters of law under *Section 38* of the *Small Claims Court Act*, the Appellant must demonstrate not merely that the learned Adjudicator's factual conclusions were wrong or unconvincing, but that the Adjudicator applied an incorrect legal standard, misconstrued the law or took into account irrelevant legal considerations.

33. The starting point is a recognition of the statutory environment in which Small Claims Courts operate. *Section 29*

of the *Small Claims Court Act* expressly provides that the Small Claims Court “*shall not be bound by the strict rules of evidence,*” and may “*adopt such procedures as may be expedient for the attainment of justice.*”

34. The implications of this provision are far-reaching. It does not eliminate the requirement that a party must prove its claim, rather, it means that the court is entitled to admit and rely on evidence such as invoices, statements of account, correspondence and oral testimony without the formalities or documentary strictness required in the ordinary civil courts.

35. The Respondent pleaded, in my view with precision, that the outstanding sum for security services rendered during August, September, and October 2022 was Ksh.393,600/=. In support of this, it produced Invoice No. 30431 for Ksh.123,000/= due on 31<sup>st</sup> August, 2022; Invoice No. 30798 for Ksh.135,300/= due on 30<sup>th</sup> September, 2022; and Invoice No. 31187 for Ksh.135,300/= due on 31<sup>st</sup> October, 2022.

36. The Respondent further exhibited a statement of account and a demand letter reflecting the same figures. These are documents that courts routinely accept as *prima facie* evidence of contractual indebtedness where the opposing party neither produces counter-documents nor rebuts the content with cogent explanation.

37. The Appellant, during cross-examination, conceded that the only payments made related to earlier months (June and July, 2022) and produced no evidence of payment, part-payment, dispute or rejection of the impugned invoices.
38. In her judgement, the learned Adjudicator analyzed these documents and the witnesses' testimonies. She observed that invoices for the three months in issue had been rendered and not disputed; that the Appellant had not provided documentation showing payment for those invoices; and that the Respondent's witnesses testified credibly about the sums due upon termination.
39. Moreover, the learned Adjudicator examined the only documentary evidence available and found that it substantiated the pleaded sum. The Appellant's contention that the Adjudicator "plucked figures from the air" is therefore inconsistent with the record and mischaracterizes the evidentiary basis of the award.
40. An Appellate court may interfere with a trial court's finding only if the trial court misdirected itself on the applicable law. Here, the trial court expressly grounded its findings on the documentary evidence and the oral testimonies. The learned Adjudicator did not ignore the legal requirement of proof, rather, she applied it within the flexible evidentiary regime permitted by *Section 29* of the *Small Claims Court Act*.

41. Consequently, there is no error of law exhibited by the Appellant. The Appellant's complaint is therefore in respect of the trial court's factual assessment, which is a matter outside this Court's jurisdiction on appeal from the Small Claims Court.

42. The second issue for determination is whether the learned Adjudicator erred in law regarding the number of guards supplied. On this, the Appellant further argues that the Adjudicator erred in finding that eleven guards were supplied, whereas the witness statements indicated that six guards were deployed. The Appellant contends that this inconsistency renders the judgment legally unsound.

43. However, the judgment itself makes clear that the Adjudicator's decision did not depend on the number of guards deployed. Her analysis and award were grounded on the invoices rendered and the absence of any payment or dispute regarding them. The reference to the number of guards was not a central component of the reasoning that led to the award.

44. Whether six or eleven guards were deployed is a factual issue. Appeals confined to matters of law cannot convert disagreements on factual assessment into legal errors. To constitute an error of law, the Appellant must show that the

Adjudicator misapplied legal principles when assessing this factual issue, or that the finding was so unreasonable as to be legally perverse. The Appellant has not met that threshold.

45. The Respondent's witnesses testified credibly on the deployment across three premises. On the other hand, the Appellant provided no deployment details contradicting this. The learned Adjudicator was therefore entitled to accept the Respondent's version. No error of law arises on this ground.

46. The third issue for determination is whether reliance on invoices amounted to a legal misdirection by the trial court. The Appellant argues that the learned Adjudicator erred by relying on invoices, asserting that invoices cannot constitute a binding contractual basis for payment.

47. In my most respectful view, this submission fundamentally misconceives the purpose for which the learned Adjudicator relied on the invoices. The Adjudicator did not treat the invoices as proof of the contract itself. That contract was already established by the evidence as the same was produced and further evidence of its existence was the earlier payments made by the Appellant pursuant to the same contractual arrangement.

48. What the learned Adjudicator did was to use the invoices as proof of performance and the corresponding amounts claimed,

which is entirely permissible under the relaxed evidentiary regime provided for in *Section 29* of the *Small Claims Court Act*.

49. The Appellant neither denied receiving the invoices nor provided competing financial records or reconciliation statements. Its witness failed to confront the October invoice and failed to explain why, if services had ceased in September, the October invoice was not rejected. No legal error arises from that approach.

50. The fourth issue for me to address is whether the finding on the date of termination constituted an error of law. The Appellant faults the learned Adjudicator for finding that the contractual relationship was terminated at the end of October, 2022. Again, this is a factual issue. The Adjudicator weighed the available evidence, which included testimony from the Respondent's three witnesses that services continued until 30<sup>th</sup> October, 2022, against the Appellant's bare assertion that termination occurred on 30<sup>th</sup> September, 2022.

51. Notably, the learned Adjudicator also considered that the Appellant received and did not dispute the October, 2022 invoice. Importantly, the Appellant produced no documentary proof of September termination.

52. The learned Adjudicator's conclusion that the contract terminated in October, 2022 was therefore based on evidence on the record. It was a plausible and reasoned finding. It is to be recalled that an appellate court should not interfere with the findings of a trial court merely because it might have reached a different factual conclusion. No such error of law is demonstrated here.

53. The fifth issue for determination is whether the learned Adjudicator failed to consider pleadings, evidence and/or submissions. From her judgement, the learned Adjudicator identified the key issue, which is whether the amounts claimed were owed and summarized the parties' competing positions, evaluated the evidence and gave reasons for accepting the Respondent's version. In my view, her reasoning shows engagement with the substantive issues.

54. A court is not required to recite every submission or authority verbatim. It is sufficient if the judgment demonstrates that the essential issues raised by the parties were addressed. The learned Adjudicator did so. The brevity of the judgment is consistent with the nature and mandate of the Small Claims Court. Accordingly, this complaint does not reveal an error of law.

55. The last issue for determination is whether the award or reliefs that the learned Arbitrator issued in her judgement

were arbitrary, injudicious or unreasonable in law. The Appellant contends that the award was arbitrary and excessive. This submission collapses once it is recognized that the award corresponds exactly to the three invoices whose authenticity and content were not disproved.

56. A judgement cannot be arbitrary if it faithfully corresponds to pleaded sums, supported by documents and grounded in credible testimony, all evaluated within the evidentiary framework permitted by *Section 29* of the *Small Claims Court Act*. The Appellant has not shown that the Adjudicator applied wrong legal principles in reaching her determination and granting the reliefs. The dispute turns solely on factual matters, and no error of law has been demonstrated.

57. Being of the foregoing persuasions, the result that I reach, bearing in mind the appellate restrictions under *Section 38* of the *Small Claims Court Act*, is that the Appellant has not demonstrated any error of law in the present appeal. The appeal therefore lacks merit and is hereby dismissed. The judgment and decree of the Small Claims Court dated 15<sup>th</sup> August, 2024 are hereby affirmed. Costs of the appeal shall be borne by the Appellant, which I assess at Ksh.20,000/-.

58. This file is hereby closed.

DELIVERED (virtually), DATED & SIGNED this 4<sup>th</sup> day of December, 2025.

**JOE M. OMIDO**

**JUDGE**

FOR APPELLANT: **Mr. Siwolo.**

FOR RESPONDENT: **Mr. Anyumba.**

COURT ASSISTANTS: **Mr. Juma & Mr. Ngoge.**

**Mr. Siwolo:** I pray for 30 days stay of execution to process payment.

**Mr. Anyumba:** No objection.

**Court:** There shall be stay of execution for 30 days.

**JOE M. OMIDO**

**JUDGE**