

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**HCCA E677 OF 2024**

**SECURITY GROUP (KENYA) LIMITED.....**  
**APPELLANT**

**VERSUS**

**LAND MARK HOLDINGS LIMITED.....**  
**RESPONDENT**

**JUDGMENT**

1. This is an appeal that emanated from a decision of the trial Court which dismissed the Appellant's Claim and entered judgement on the respondent's counter claim. The brief history of this matter is that the Appellant which is a company offering security services entered into a contract with the Respondent to provide security services. The contract was duly signed by both parties and adopted as evidence. The Appellant provided statements and other documents to prove that the Respondent did not make adequate payments for the services rendered and this was not properly challenged. The following shall form the basis of my decision;
  
2. There was a duly signed contractual agreement between the two parties. The Appellant was supposed to provide adequate

security to the properties of the Respondent but it appears that this was not the case. Several thefts occurred at the premises that might have made operations of the Respondent difficult because its machines and assets were stolen. Three investigations reports dated the 20th day of December 2014, 19th march, 2014 and 21<sup>st</sup> January 2016 clearly indicate that the people who were involved in the crime are either the Appellant's employees or enjoyed close proximity with the real thieves. In fact, one of the Appellant's employees who was a guard was charged in Makadara Law Court. This is contrary to the services sought by the Respondent and totally against the duty bestowed upon the Appellant by the Contract. Needless to say, the thefts significantly affected the operations of the Respondent who incurred losses. The Appellant cannot therefore claim that it offered excellent security services yet its own employees participated in theft. Failure to provide adequate security bars the Appellant from demanding payments from the Respondent because the respondent did not get the services, the security to operate business. It would be unfair for the Appellant to deviate from its contractual obligations in one hand and in the other hand seek orders from this court to compel the Respondent to obey the contract- this would be unfair and I agree with the trial court. The Appellant made

the working environment of the respondent difficult hence his obligation to fulfill the contract

- 3.** The contract clearly gave conditions on what should happen when theft occurs in the site. It is not a duty of any court to rewrite a contract duly signed by parties who chose their level of discourse. Clause 2(c) of the standard condition captures what should happen when theft occurs in mandatory terms and that is that the Appellant shall be liable to pay the respondent Ksh 50000 inclusive of all costs or expenses. This cannot be varied by the Court. The contract provided that in case of any incident of theft, the respondent was supposed to obtain a police abstract and notify the appellant- this was not necessary under the circumstances in the case because the appellant reported the matter to police and even got its guard charged in Court. Why would the respondent be expected to make another report? The communication between the parties clearly indicated that they all knew about the thefts and there was no need of a formal notification of the incidences
- 4.** The conclusion is that the appellant breached the contract by failing to provide the services as enunciated by the contract and so it cannot seek payments for services not rendered properly to safeguard the operation of the contract. The Appellant has simply come to this court with unclean hands.

The loss incurred by the respondent is way above the required amount in the contract and it can only seek the balance from the insurance which was not a party to the suit.

5. Having established that the appellant breached the contract prompting losses in the part of the respondent, this Court shall be inclined to grant the respondent exemplary damages. The product of my analysis above is that the Lower court decision in dismissing the Claim is upheld, the Respondent is awarded damages of Ksh 50,000 and exemplary damages of Ksh 100,000.

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 16<sup>TH</sup>  
DAY OF FEBRUARY 2026.**

**HON L P KASSAN**

**JUDGE**

**In the presence of;  
Oyado for Appellant  
Tale holding brief Dachi for Respondent  
Carol - Court Assistant**