

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CIVIL APPEAL NO. E040 OF 2025**

**PETER OTIENO PETE ..... APPELLANT**

**- VERSUS -**

**URBAN DIGITAL SECURITY LTD ..... RESPONDENT**

(Being an appeal from the judgment and decree of **Hon. G.C. Serem**  
**RM/Adjudicator** delivered on the 21/1/2025 in the **Ksm SCCCase No. E1140 of**  
**2024, Urban Digital Security Ltd v Peter Otieno Pete)**

**J U D G M E N T**

1. The respondent filed a claim against the appellant seeking judgment in the sum of **Kshs. 27,000/-** being payment for services offered together with interest from the date of filing suit.
2. The appellant entered appearance and filed a response denying owing the sum claimed and prayed for the suit to be dismissed.
3. In its judgment, the trial court found that the respondent had proved its case on a balance of probabilities. The court proceeded to award the respondent judgment in the sum of **Kshs. 27,000/-** plus costs of the suit and interest at court rates.

4. Being dissatisfied with the said judgment/decreed, the appellant lodged this appeal vide the Memorandum of Appeal dated **18/02/2025** and raised seven (7) grounds of appeal as follows: -

- a) That the honourable adjudicator erred in law and in fact by finding that the respondent herein proved its case on a balance of probability and that there existed a valid contract between the parties herein.*
- b) That the honourable adjudicator erred in law and in fact by finding for the respondent in spite of flagrant lies on the face of the court by the supervisor who was called as a witness by the respondent.*
- c) That the Honourable adjudicator erred in law and in fact by not finding that the respondent is a liar especially when he produced witness statement which the witness himself discounted.*
- d) That the honourable adjudicator erred in fact and in law by finding that there was a contract between the parties where there was no proof as to the terms of the contract and that the verbal contract between the parties was never terminated.*
- e) That the honourable adjudicator erred in law and in fact by not finding that the appellant had rescinded the contract and terminated*

*the services of the respondent as a result of fundamental breach by the respondent.*

*f) That the honourable adjudicator erred in law and in fact by not taking the appellant's assertion/evidence into consideration that the respondent did not actually offer any security services during the period in question. This assertion was not challenged by the respondent.*

*g) That the honourable adjudicator erred in law and in fact by giving a verdict which was not supported by the evidence as adduced.*

5. The appeal was disposed of by way of submissions which I have considered. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See Selles & Anor vs. Associated Motor Boat Co Ltd & Others [1968] EA 123.
6. **Paul Benjamin Ongolo**, a director at the respondent's office in Kisumu testified as **Cw1**. He testified that the appellant had contracted the respondent to offer security services in different locations including a rental apartment at Manyatta opposite Aira. That the respondent offered one-night

guard at the rate of **Kshs. 9,000**. That they offered the services until the end of July but did not receive payment for the months of **May – July**.

7. In cross-examination, he told the court that the contract was verbal as they gave the appellant a contract which he did not sign and instead agreed to the terms. That the appellant did not terminate the contract due to absenteeism. That he constantly communicated with the appellant who was not responding to the communication. That they did not have an occurrence book for the site. That absenteeism was never an issue.
8. **Augustine Sakwa Wasonga** testified as **Cw2**. It was his testimony that when he entered the respondent company he could see the guards. In re-examination he testified that he read the contract between the appellant and the respondent.
9. The appellant testified as **Rw1**. He adopted his statement as his evidence in chief and further testified that he sent a message informing the respondent that the guard assigned to him was absent and thus he was stopping the contract.
10. In cross-examination, he stated that the respondent was seeking money it did not work for. That the last day the respondent's services were offered was on the **10/5/2024**.

11. In re-examination, he testified that he rescinded the contract via sms to the appellant on the **19/5/2024**.
12. **Rw2, Mark Obat Odongo** adopted his statement dated **5/12/2024** and stated that he was a builder and village elder from the Nyamasaria area. In cross-examination, it was his testimony that he had done caretaking for the appellant for 4 years. That there was initially a lady caretaker called Irene and a man and that he would go to supervise them.
13. That sometime the night guard failed to come so he guarded the appellant's property at night. That the respondent's guard had been accused by tenants of stealing in the premises. That from May – July, they did the work themselves.
14. I have considered the evidence tendered before the trial court and the submissions made before me. This being an appeal from the Small Claims Court, it is important to point out that **Section 38 of the Small Claims Court Act** provides for the jurisdiction of this Court in determining appeals from the Small Claims Court. It provides thus; -

1. ***A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.***

**2. An appeal from any decision or order referred to in subsection (1) shall be final.”**

15. It is clear from the foregoing that, jurisdiction of this Court from the Small Claims Court is only on matters of law and not factual issues.
16. Consequently, it is my view that none of the grounds of appeal pleaded by the appellant amounted to a point of law. Even if this court were to assume that the appellant was impugning the trial court’s exercise of discretion, there was no evidence that the trial court exercised its discretion whimsically. See **Mbogo v Shah [1968] EA 93** and **Hajar Services Limited v Peter Nyangi Mwita [2020] eKLR**.
17. Accordingly, it is my view that this court has no jurisdiction to entertain the appeal as pleaded. The same is found hereby struck out with costs.

It is so decreed.

**DATED** and **DELIVERED** at Kisumu this 25<sup>th</sup> day of **March, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**