



**Kikumu v Radar Limited (Civil Appeal E004 of 2024)  
[2026] KEHC 4353 (KLR) (19 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E004 OF 2024  
F WANGARI, J  
MARCH 19, 2026**

**BETWEEN**

**VINCENT KIKUMU ..... APPELLANT**

**AND**

**RADAR LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The background of the appeal is a claim filed in the Small Claims Court through a Statement of Claim dated 7<sup>th</sup> August 2023 where the Claimant averred that security service was rendered to the Respondent from 24<sup>th</sup> July 2014 to 12<sup>th</sup> September 2018, however, the Claimant terminated the contract due to non-payment with outstanding arrears of Kshs. 43,053.48.
2. The Claimant prayed for judgment in the sum of Kshs. 43,053.48/=, costs of the claim, interest at court rate, and any other remedy that the court deemed fit.
3. The Respondent entered appearance and filed a response to the statement of claim where he indicated that he owed the Claimant only a portion of the amount claimed in the Statement of Claim. The Respondent stated that he had been paying the Claimant for services rendered both through Mpesa and cash from 24<sup>th</sup> July 2014 to March 2018 when the Claimant removed the alarm from the Respondent's residence thus terminating the contract.
4. That as at 1<sup>st</sup> January 2018, the Respondent owed the Claimant Kshs. 2,971 but paid Kshs. 5,000 on 1<sup>st</sup> January 2018 and Kshs. 8,000 via Mpesa on 7<sup>th</sup> March 2018. The Respondent stated that he entered into the Radio Alarm System Agreement with the Claimant for a monthly charge of Kshs. 5,000 but when the contract was terminated, he had an outstanding balance for three months of Kshs. 15,000. That altogether, he owed the Claimant Kshs. 17,971.48.



5. This suit was heard in the Small Claims Court and Judgment delivered on 17<sup>th</sup> October 2023 where the court entered judgment for the claimant against the respondent for Kshs 43,053.48/-, with interest from date of judgment and costs of the suit.
6. Being dissatisfied, the Appellant appealed the judgment through the Memorandum of Appeal dated 15<sup>th</sup> December 2023 on the following grounds: -
  - i. That the learned Magistrate erred in law by rewriting the contract of the parties in finding that the Appellant was estopped from claiming that the monthly service payment was Kshs. 5,000/= instead of the claimed Kshs. 5,800/=.
  - ii. That the learned Magistrate erred in law in finding that the Respondent had discharged their burden of proof in claiming that the contract was terminated in July 2018 instead of March 2018.
  - iii. That the learned Magistrate erred in law by rewriting the contract of the parties in finding that the Respondent had properly terminated the contract when Clause 13 of the Agreement was not fully complied with.
  - iv. That the learned Magistrate erred in law in finding that the Respondent had discharged the burden of proof to the claim of Kshs. 43,053.48/=.
  - v. That the learned Magistrate erred in law in ignoring the Appellant's defence that he only owed the Respondent Kshs. 5,000/=.
7. The Appellant prayed that the appeal be allowed and judgment of the Small Claims Court be set aside, costs of the appeal be borne by the Respondent, and such other orders that the court deemed just and expedient. The appeal was canvassed by way of written submissions. The Appellant in their submissions argued that the Claimant did not comply with Order 4 Rule 1 (4) of the Civil Procedure Rules considering they were a body corporate as they did not present before court any minutes or resolution. The Appellant relied on the holding in *Gideon Mose Onchwati v Kenya Oil Co. Ltd & another* (2017) eKLR and submitted that the firm of Chomba and Mbugua Advocates lacked standing to file any document in court.
8. The Appellant contended that neither the purported demand letter dated 20<sup>th</sup> September 2018 nor an affidavit of service demonstrating service were presented in court. That the letter dated 31<sup>st</sup> August 2022 did not have a letter head and the Appellant was seeing the letter for the first time in court.
9. That invoice Nos. 01291, 02575, 04062, 05638, 07062, 08442, 09904, and 10242 were not produced in court during hearing, and that the Radio Alarm System Agreement dated 24<sup>th</sup> July 2014 show that the monthly charge was Kshs. 5,000 but no evidence was produced showing change of the monthly charge from Kshs. 5,000 to Kshs. 5,800. That further, no receipt of payment of the license fee of Kshs. 1,682 to CCK and a termination notice issued as per the contract were produced during hearing.
10. The Appellant submitted that parties are bound by terms of their contract and that the court cannot rewrite the contract for the parties as was held in *National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Ltd* [2002] 2 EA 503. The Appellant also argued that the burden of proving existence of the demand letter rested upon the Respondent pursuant to Sections 107 to 109 of the *Evidence Act* and that the demand notice produced neither bore the Appellant's acknowledgement of receipt nor proof of alternative service. To support the position, the Appellant cited the case of *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* (2013) eKLR.
11. The Respondent had not filed their submission by the time of writing the judgment herein.



## Analysis

12. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle v Associated Motor Boat Co.* (1968) E.A 123 as follows: -

“... Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”

13. I have considered the Record of Appeal dated 18<sup>th</sup> July 2024 and submissions by the Appellant. The issues for determination are: -

- a. Whether the trial court erred in its interpretation of the contract between the parties.
- b. Whether the Respondent proved the claim for Kshs. 43,053.48 on a balance of probabilities.
- c. Who should bear costs of the appeal.

14. On the first issue, the Appellant argued that the trial court rewrote the contract by finding that the monthly service charge was Kshs. 5,800 rather than Kshs. 5,000 as indicated in the Radio Alarm System Agreement. It is settled law that courts cannot rewrite contracts for parties. Parties are bound by the terms of their agreements unless coercion, fraud or undue influence is proved.

15. This principle was stated in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KECA 362 (KLR), where the Court of Appeal held that: -

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

16. However, the trial court found that although the agreement initially indicated a monthly charge of Kshs. 5,000, the Appellant had consistently paid Kshs. 5,800 without objection for several years prior to the dispute. The court therefore concluded that the Appellant was estopped from disputing the amount at that stage.

17. The doctrine of estoppel prevents a party from denying a state of affairs which they previously accepted or represented to be true. In *Serah Njeri Mwobi v John Kimani Njoroge* [2013] KECA 501 (KLR), the Court of Appeal held that: -

“The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person. See *Seascapes Limited v Development Finance Company of Kenya Limited*, Nai Civil Appeal No. 247 of 2002.

...

It therefore follows that where one party by his words or conduct, made to the other party a promise or assurance which was intended or affect the legal relations between them and to be acted on, the other party has taken his word and acted upon it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him but he must accept their legal relations subject to the qualification which he has himself introduced.”



18. In the present case, the trial court relied on the Appellant's own conduct of paying the higher monthly charge over a long period without objection. This court finds no error in that conclusion.
19. On the second issue, the Appellant also argued that the trial court erred in finding that the contract was terminated in July 2018 instead of March 2018.
20. From the record, the trial court relied on the Respondent's statement of account which indicated that billing stopped on 1<sup>st</sup> July 2018, and therefore inferred that the contractual relationship subsisted until that date. This was a factual finding based on documentary evidence. An appellate court should be slow to interfere with factual findings unless they are based on no evidence or a misapprehension of the evidence.
21. This principle was affirmed in *Mbogo v Shah* (1968) EA 93, where the court held that: -

“I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
22. Upon reviewing the evidence on record, this court finds that the trial court's finding was supported by the documentary record and cannot be faulted. The Appellant further argued that the Respondent failed to prove the claim for Kshs. 43,053.48. Under Sections 107 to 109 of the [Evidence Act](#), the burden of proof lies upon the person who alleges.
23. The Court of Appeal discussed the standard of proof in civil cases in *Miller v Minister of Pensions* (1947) 2 ALL ER 372 that: -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not: the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties ... are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”
24. The Small Claims Court carefully evaluated the statement of account, the payments made by the Appellant and the contractual obligations between the parties before reaching its conclusion that the Respondent had proved the claim.
25. This court has re-evaluated the evidence and is satisfied that the Respondent proved the outstanding balance.
26. On costs, the Respondent having not participated in the appeal, the Appellant will bear his own costs.

### **Determination**

27. Accordingly, this court makes the following orders:
  - a. The appeal is hereby dismissed.



- b. The judgment of the Small Claims Court delivered on 17<sup>th</sup> October 2023 awarding Kshs. 43,053.48 together with interest and costs is hereby upheld.
- c. The Appellant shall bear his own costs of this appeal.

**DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 19<sup>TH</sup> DAY OF MARCH, 2026**

.....

**HON. F. WANGARI**

**JUDGE OF THE HIGH COURT**

In the presence of: -

N/A by the Appellant

N/A by the Respondent

Ms. Gertrude, Court Assistant

NB: Typed and signed judgment released to the registry. Parties be notified.

