



**Homeland Itoya Events Limited & another v Ghazi & 2 others (Civil Appeal E074 of 2025) [2026] KEHC 5960 (KLR) (6 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 5960 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E074 OF 2025**

**A MABEYA, J**

**MAY 6, 2026**

**BETWEEN**

**HOMELAND ITOYA EVENTS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**CHRISTOPHER ODERO ATON ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NAFISA GHAZI ..... 1<sup>ST</sup> RESPONDENT**

**WAMWATILA WANAKWA MOSES ALIAS MUSA ..... 2<sup>ND</sup> RESPONDENT**

**SAMEERA M JHANDA T/A SANA EVENTS ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. G.C. Serem RM/ Adjudicator delivered on the 25/02/2025 in the Ksm SCCCase No. E474 of 2024, Homeland Itoya Events Limited & Anor v Nafisa Ghazi & 2 Others)*

**JUDGMENT**

1. The respondents filed a joint claim against the appellants seeking judgment in the sum of Kshs. 390,000/- plus costs of the suit with interest. The claim was for monies advanced to the respondents.
2. The appellants entered appearance denied the claim and sought the same to be dismissed with costs and counterclaimed for a sum of Kshs. 436,600/- plus costs of the suit.
3. The matter proceeded to trial and in its judgment, the trial court found in favour of the respondents. The trial court also found that the appellants had not proved their counterclaim and dismissed it. The judgment was the sum of Kshs. 390,000/- plus costs of the suit and interest from the date of filing suit till full payment.



4. Being dissatisfied with the said judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated 24/03/2025 and raised six (6) grounds of appeal as follows: -
- a. The learned trial adjudicator erred in law in failing to critically analyse the evidence presented before it in regard to the timeline within which the 7-day period allowed in the contract was to start running and thereby arriving at a wrong finding.
  - b. The learned trial adjudicator erred in law by overlooking the issue that the contract was between the 3<sup>rd</sup> claimant and the 1<sup>st</sup> respondent, the same is subject to privity of contract doctrine and should be dealt with personally by the parties unless and until they authorize a third party to deal with their obligations under the contract.
  - c. The learned trial adjudicator erred in law by failing to consider the defendant's counterclaim and misdirected herself to make a finding that the costs related to the mock set up, which was clearly as a result of an implied contract, was outside the agreement and an afterthought and that the 1<sup>st</sup> respondent should bear the costs of an activity demanded by the claimants, yet such costs incurred were totally separate from the terms and conditions as agreed by the parties in the contract.
  - d. The learned trial adjudicator erred in law by relying on the service of termination of the notice dated 26<sup>th</sup> September as an effective termination of contract, and thereby arriving at a wrong finding, yet the said notice of termination was issued by a 3<sup>rd</sup> party entirely not a party to the contract.
  - e. The learned trial adjudicator misdirected herself on the principles of law applicable in determining the claim.
  - f. In all circumstances in the case, the findings of the learned magistrate are insupportable in law or on the basis of the evidence adduced.
5. The parties agreed to dispose the appeal by way of written submissions. However, as at the time of writing this judgment, there were no submissions in the CTS. In any case, submissions are not evidence and 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. Before the trial court, the 1<sup>st</sup> respondent testified as Cw1. She adopted her witness statement dated 29/10/2024 as her evidence in chief and produced her documents as CExh1 – 17. She reiterated the details of her claim in her testimony and further stated that she wanted to be reimbursed the KShs. 390,000/- she had paid to the respondents. That she and the 2<sup>nd</sup> respondent had contracted the appellants to plan and set up for her wedding which was done through the 3<sup>rd</sup> respondent.
7. In cross-examination, she stated that the contract between her and the respondents was for her wedding. That she was issued with a quotation of KShs. 1,327,900/-. That she requested for a mock set up which was done on the 21/9/2024 in Nairobi at the offices of the 3<sup>rd</sup> Claimant upon her payment of a deposit of KShs. 390,000/-. That she was not satisfied with the mock set up and verbally expressed her concerns to the 3<sup>rd</sup> respondent and on the 26/9/2024 communicated her termination of the services to the 1<sup>st</sup> appellant. That the termination was sent to one Dylan through WhatsApp.



8. In re-examination, she testified that 50% of the total cost agreed for the wedding was due after the mock set up was carried out. That they did not pay the balance as they were not satisfied with the mock set up.
9. The 3<sup>rd</sup> respondent testified as Cw2. She adopted her witness statement dated 29/10/2024 as her evidence in chief. She reiterated and corroborated the testimony of Cw1 and stated that despite the cancellation of the Service Agreement between the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the 1<sup>st</sup> appellant in accordance with their contract, the appellants failed to refund the sums advanced and they were therefore in breach of the contract.
10. In cross-examination, she affirmed the 1<sup>st</sup> respondent's assertion that she did communicate the 1<sup>st</sup> respondent's termination of the contract to the 1<sup>st</sup> appellant's employee, Dylan, with whom they had been dealing with throughout the entire process.
11. The appellants called two witnesses in support of their case. Rw1, Dilan Patel who adopted his statement dated 29/11/2024 as his evidence in chief and produced the bundle of documents as RExh1-7 & 9. He admitted that the quotation issued to the respondents was from the 1<sup>st</sup> appellant addressed to Jaraa Events which is affiliated with the 3<sup>rd</sup> respondent. That a deposit of Kshs. 390,000/- was paid on the quote they issued. He admitted that the 3<sup>rd</sup> respondent forwarded to him a document on the termination of the agreement but when he tried to reach out to the 3<sup>rd</sup> respondent, the 3<sup>rd</sup> respondent failed to communicate effectively to him.
12. That they were not aware of the mock set up on the 21/9/2024. He admitted that the termination of the agreement was done at the right time but that they had incurred expenses as they had started preparing for the event.
13. In cross-examination, he admitted that he came to know the 1<sup>st</sup> and 2<sup>nd</sup> respondent when the 3<sup>rd</sup> respondent sent him their wedding invitation card. That following the mock set up, they sent out an updated quote on the 25/10/2024. He admitted that the event was terminated within 7 days. That the 3<sup>rd</sup> respondent was their main client and the Kshs. 390,000/- was paid by a stranger.
14. Nancy Atieno Aketch testified as Rw2. She adopted her witness statement dated 10/12/2024 as her evidence in chief and a WhatsApp response as RExh8. It was her testimony that she was waiting for the letter as she was an event coordinator. That according to their company policy, all communication was to be done in writing.
15. In cross-examination, she stated that the respondents were to pay 50% before the conclusion. That once they engage a client they do not push with so much communication. That there was a 7 days' notice of cancellation but that she did not receive any communication of the cancellation of the project.
16. That one Dylan was their contact with the 3<sup>rd</sup> respondent who communicated through the said Dylan. She admitted that the company received a sum of Kshs. 390,000/- from a DTB Bank account though they did not know the individual who paid the same.
17. In re-examination, she stated that they did not receive communication of cancellation through Dylan. That they did not conduct the mock set up but rather the same was done at the 3<sup>rd</sup> respondent's office in Nairobi.
18. This was the evidence presented before the trial court upon which the trial adjudicator made her decision.



19. I have considered the evidence tendered before the trial court. 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.”
20. 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. It is not enough for a party to plead in its grounds of appeal that the trial magistrate “erred in law” then proceed to set out issues of facts that they are aggrieved with.
21. A perusal of the Grounds of Appeal elucidated by the appellant reveals that they are all matters of fact. They invite this Court to consider the issues of facts which were proven or not proven before the trial court. These are matters that this court has no jurisdiction to entertain. This Court cannot re-look or second guess the trial court’s findings on evidence.
22. Further, this Court has similarly gone through the proceedings by the adjudicator and has not come upon any instance of whimsical exercise of discretion and the same has not been demonstrated by the appellants.
23. The upshot of the above is that the Court finds the appeal to be without merit and dismisses the same with costs.

It is so decreed.

**DATED AND DELIVERED AT KISUMU THIS 6<sup>TH</sup> DAY OF MAY, 2026.**

**A. MABEYA, FCI Arb**

**JUDGE**

