



**Mangrove Lodge Limited v Solar Innovation Limited (Civil Appeal
178 of 2021) [2024] KEHC 10287 (KLR) (22 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 10287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 178 OF 2021**

**F WANGARI, J
APRIL 22, 2024**

BETWEEN

MANGROVE LODGE LIMITED APPELLANT

AND

SOLAR INNOVATION LIMITED RESPONDENT

JUDGMENT

1. This is an appeal lodged by Mangrove Lodge Limited, the Appellant herein who is appealing against the decision made in Mombasa Chief Magistrate’s Court Civil Case No.277 of 2010 delivered on 15th September, 2021.
2. In that suit, the Appellant had sued the Respondent, Solar Innovation Limited for breach of contract. The Appellant’s claim was for Kshs. 1,800,000/- which was an amount paid by the Appellant for the supply and installation of various solar hot water systems and solar electricity equipment by the defendant.
3. The trial court upon evaluation of evidence trial reached a conclusion that the Appellant had failed to prove his case on a balance of probabilities and dismissed the claim.
4. Aggrieved by the decision reached by the trial court, the Appellant preferred this appeal and raised the following grounds namely: -
 - a. That the learned magistrate erred in law and in fact by finding that the plaintiff’s witness was a stranger to the suit.
 - b. That the learned magistrate erred in law and in fact by finding that the plaintiff’s witness did not introduce himself to the court
 - c. That the learned magistrate erred in law and in fact by finding that the plaintiff’s witness Mr. Kinisu did not record a statement to the court.



- d. That the learned magistrate erred in law and in fact by finding that the appellant's claim was not prosecuted at all.
 - e. That the learned magistrate erred in law and in fact by failing to take into account the overwhelming evidence adduced in support to the claim and further the submissions by the appellant were not considered by the court.
 - f. That the learned magistrate erred in law and in fact by finding that the respondent had not proved his claim notwithstanding the defence that the respondent had paid the appellant's claim.
 - g. That the learned trial magistrate erred in law and in fact by finding that the plaintiff's witness did not introduce himself to the court.
 - h. That the learned magistrate erred in law and in fact by failing to find that the respondent indeed owed the appellant the amount of money as pleaded in the plaint.
5. The Respondent has opposed this appeal through written submissions done through counsel. Parties had been directed to file submissions and they had. The Appellant submits that the trial magistrate failed to exercise his discretion judiciously.
 6. The Respondent on his part submits that the appellant had failed to prove its case at the trial court as per law required and the instant appeal should be dismissed.
 7. I have keenly gone through the evidence tendered before the trial court and in particular the evidence tendered by the Appellant's witness.
 8. The evidence and documents showed that the said Mr. Kinisu never filed a written witness statement as required by law and he was never substituted as a witness. He was at pains to explain the import of documents that the appellant had filed at the magistrate's court.
 9. Whereas it is true that where a party fails to adduce evidence, its pleadings remain mere allegations is correct, this proposition is not a statement of general application to be applied blindly and without due regard to the facts and circumstances of the facts at hand. The peculiar facts of each case must be considered. The burden of proof lay on the appellant to prove its case. This it failed to do as the witness who took the stand at the Magistrate's court was a complete stranger to the proceedings.
 10. In *Gitobu Imanyara & 2 others v Attorney General* {2016} eKLR, the Court of Appeal stated:

“It is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of Law, or that the amount awarded was so extremely high or so very low as to make it, in the Judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”
 11. Further as indicated in the case of *Ephantus Mwangi & Another v Duncan Mwangi, Civil Appeal Number 77 of 1982* {1982-1988} 1 KAR 278 (Potter, Kneller and Hancox, JJA on 5th July 1983):

“It is with great reluctance that the Court of Appeal contradicts a finding of fact by the trial Judge, who has seen and heard and observed the witnesses.” In addition, in a first appeal the Court is obliged to reconsider the evidence, assess it and make appropriate conclusions



about it, remembering that it has not seen or heard the witnesses and making due allowances for this. (See *Selle v Associated Motor Boat Company Ltd* {1968} EA 123, 126; *Williamson Diamonds Ltd v Brown* {1970} EA 1, 12, 16).

12. This Court finds no reason to disturb the trial Court's decision. In the result I have not found any merit in the appellant's appeal against the Learned Magistrate's finding. Accordingly, this appeal fails and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY OF APRIL, 2024.

F. WANGARI

JUDGE

In the presence of;

N/A by the Appellant

Okumu Advocate for the Respondent

