



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Safaricom Plc v Sayi & another (Civil Appeal E689 of 2021)  
[2024] KEHC 7644 (KLR) (Civ) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7644 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E689 OF 2021**

**DKN MAGARE, J**

**JUNE 25, 2024**

**BETWEEN**

**SAFARICOM PLC ..... APPELLANT**

**AND**

**JACKSON AMEYO SAYI ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMMED JAMES ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. M. N. Mutua - RM in Milimani  
Small Claims Court SCCC No. 293 of 2021, delivered on 20th September, 2021)*

**JUDGMENT**

1. This is an appeal from the Judgment and Decree of the SCCC No. 293 of 2021. The Appellant was the Respondent.
2. The Appellant raised the following grounds:-
  - a. The learned Adjudicator erred in law by relying on the unsubstantiated assertion that the 2<sup>nd</sup> Respondent plead guilty as the basis for entering judgment against the Appellant.
  - b. The learned Adjudicator erred in law by failing to place the sufficient burden of proof on the 1<sup>st</sup> Respondent.
  - c. The learned Adjudicator erred in fact by failing to consider that the 1<sup>st</sup> Respondent knew the 2<sup>nd</sup> Respondent.
  - d. The learned Adjudicator erred in fact by failing to take into consideration that the 1<sup>st</sup> Respondent sent money to the 2<sup>nd</sup> Respondent before the fraud was complete.



- e. The learned Adjudicator erred in fact by failing to consider the security protocols put in place by the Appellant.
  - f. The learned Adjudicator erred in fact by disregarding the nature and extent of M-pesa Customer Terms and Conditions.
  - g. The learned Adjudicator erred in fact by finding the Appellant's procedures deficient.
3. The claim relates to swapping and withdrawal of money.
  4. The 1<sup>st</sup> Respondent claimed that data was disclosed to third parties.

### **Analysis**

5. The duty of this court is not to re-evaluate facts. The only question is whether confidential information was released by the Appellant or Respondent. The facts established that the 2<sup>nd</sup> Respondent was arrested while attempting to withdraw from Co-operative Bank.
6. The information about Co-operative Bank account is not resident with the Appellant. There is no question that there was withdrawal of money. However, the question in law was the fault.
7. There can be no liability without fault. It was not shown that the Appellant released any information. Without that the case against the Appellant remains tenuous and must as a corollary be dismissed.
8. In the end the court finds the Appeal on the question of breach of terms and conditions. The breach of customer end details are not part of the duty of care owed by the Appellant.

### **Determination**

9. In the circumstances I make the following orders:-
  - a. The Appeal is allowed.
  - b. The Judgment of the Adjudicator given on 20/9/2021 is set aside. In lieu thereof the suit against the Appellant is dismissed.
  - c. The Appellant shall bear its own costs in the Small Claims Court.
  - d. The 1<sup>st</sup> Respondent shall refund the decretal sum together with interest from the respective dates of payment.
  - e. The Appellant shall have costs of Kshs. 35,000/= for the Appeal.
  - f. Judgment against the 2<sup>nd</sup> Respondent remains.
  - g. 30 days stay of execution.
  - h. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 25<sup>TH</sup> DAY OF JUNE, 2024.**

**JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:



Ms. Imparu for the Appellant

No appearance for the Respondents

Court Assistant – Jerusha

