



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**Civil Suit 892 of 1998**

**SANSORA INVESTMENTS LIMITED ..... PLAINTIFF  
VERSUS  
BERNARD MAKORI ..... DEFENDANT**

**JUDGMENT**

At the material time in 1995 and 1996, the Plaintiff owned and operated the “Bata Shop” along Kimathi Street in Nairobi. It hired the Defendant as its Manager to operate the said shop. As Manager, it was the Defendant’s duty to receive money from customers on account of sales, and to deposit the same promptly in the Plaintiff’s bank account.

The Plaintiff found that on diverse dates between 1st July, 1995 and 30th September, 1996, the Defendant received sale proceeds amounting to Kshs.1,060,611.25 on behalf of the Plaintiff but failed to bank the same or deliver it to the Plaintiff. The Plaintiff demanded payment, and upon the Defendant’s refusal to pay, brought this action for recovery of the aforesaid amount.

Although duly served, the Defendant chose not to attend the hearing. However, he did file a defence in which he merely denied everything, except the fact that he was indeed the Plaintiff’s Manager at the aforesaid shop at the relevant time.

At the hearing, which proceeded in the absence of the defendant, the Plaintiff’s only witness, Mr Benjamin Kimutai Yator, testified that he was the Plaintiff’s Internal Auditor/Accountant at the material time, and was familiar with this case. He testified that the Defendant was the Plaintiff’s Manager at the Bata Shop on Kimathi Street, and was overall in charge of managing the shop, including sales collection and banking.

In the course of his duties as internal auditor of the company, he found, in the years 1995 – 1996, that there was a shortfall of Kshs.1,060,611.25 between the amounts received at the shop, and the amounts actually banked. To substantiate the shortfall, the witness produced two bundles of documents – Daily Sales Summaries (including NRC Cash Receipts) (P Exhibit 1) and bundle of banking slips together with bank statements (P Exhibit 2). The sales summaries indicate receipts of Kshs.14,553,981.25 while the actual amount deposited is Kshs.13,493,370/= leaving a balance of Kshs.1,060,611.25. These documents, P Exhibit 1 and P Exhibit 2 were actually prepared and signed by the Defendant.

It is, therefore, very clear to me, and the Plaintiff has established on a balance of probability, that indeed the Defendant received, on behalf of the Plaintiff, the said sum of Kshs.1,060,611.25 and failed to account and pay for it, and converted to his own use, and that he is liable to the Plaintiff in that amount.

Accordingly, I enter Judgment for the Plaintiff against the Defendant for Kshs.1,060,611.25 together with costs and interest at court rates.

Dated and delivered at Nairobi this 15th day of November, 2005.

**ALNASHIR VISRAM**

**JUDGE**