



**Word of Life Center Church and Ministries (Suing through their Officials Namely;  
George O Akelo & Samuel E Asumwa) v Ecobank Kenya Limited (Civil Suit E258 of 2022)  
[2025] KEHC 1694 (KLR) (Commercial and Tax) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1694 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E258 OF 2022  
FG MUGAMBI, J  
FEBRUARY 7, 2025**

**BETWEEN**

**WORD OF LIFE CENTER CHURCH AND MINISTRIES ..... PLAINTIFF  
SUING THROUGH THEIR OFFICIALS NAMELY; GEORGE O AKELO &  
SAMUEL E ASUMWA**

**AND**

**ECO BANK KENYA LIMITED ..... DEFENDANT**

**JUDGMENT**

**Introduction and Background**

1. By a Plaint dated 8<sup>th</sup> July 2022 the plaintiffs filed this suit as officials of a religious and charitable organization duly registered under the *Societies Act* (Chapter 108 Laws of Kenya) as Word of Life Center Church and Ministries (“the Church”). The Church asserts that through its home church based in Canada, it regularly receives donations to support its various charitable and philanthropic activities in Kenya.
2. Sometime in the year 2015, the Church opened two Bank Accounts with the defendant (“the Bank”) being a dollar account Number 6XXXXXXX0541 and a Kenya Shillings account Number 6XXXXXXX1488, to effectively facilitate the above mandate. These accounts were opened following a special board resolution of the Church dated 15<sup>th</sup> June 2015. The resolution designated Daniel Munalo Bushebi (Bushebi), the Chairman, Samuel Eyinda Asumwa (Asumwa) the Secretary, and Elizabeth Nyambura Njoki (Njoki) the Treasurer as authorized signatories for transactions related to the accounts.



3. The resolution also stipulated that any two of the authorized signatories could conduct transactions on behalf of the Church, provided that the Bank was obligated to notify or alert the third signatory, who did not participate in the transaction(s), about the details of such transactions. The Church contends that the Bank breached this contractual agreement in 2019 by failing, refusing, or neglecting to inform Asumwa, about transactions carried out by one or both of the other co-signatories.
4. When Asumwa inquired why he was not being notified about the transactions, the Bank informed him that it had received a letter from the Church purportedly authorizing Bushebi to act alone or as an alternative, Njoki and Asumwa to transact but with Bushebi. The Church states that it requested the Bank to provide a copy of this letter, but the Bank refused to furnish the document.
5. The Church further asserts that, without its knowledge, permission, or authority, the Bank unilaterally and selectively introduced an online transaction service known as “omni.” The Bank inducted and trained only one official, Bushebi, who was made the sole administrator of the omni service, excluding the other signatories. The Church claims that the introduction of this omni service was part of a scheme orchestrated by the Bank’s employees and Bushebi. This scheme facilitated the transfer of substantial sums of money to accounts operated by the Bank’s employees and domiciled within the Bank, as well as to accounts belonging to Bushebi, to the detriment of the Church.
6. Upon discovering the suspicious diversion of its funds to individuals’ accounts without its authority or permission, the Church contends that it requested a statement of account from the Bank. In response, the Bank provided a forged statement intended to mislead it into believing that the account still held a substantial balance. The Church later obtained a genuine statement, which revealed the true financial status of the account, contradicting the forged document.
7. The Church states that it appointed an independent and qualified accountant to conduct a forensic audit of the accounts for the period from 2019 to 2021. However, the Bank refused to cooperate with the appointed accountant, hindering a comprehensive audit. Despite the Bank’s refusal and attempts to frustrate the process, the accountant managed to obtain certain documents, which revealed that unauthorized sums of money had been transferred to individual accounts, including accounts operated by senior officials of the Bank.
8. The Church claims that the Bank informed them it had launched internal investigations into the concerns regarding the loss of funds and assured them that a report would be provided. However, despite repeated requests, the Bank has yet to furnish the Church with the promised investigation report.
9. Consequently, the Church asserts that due to the Bank’s negligence, breach of trust, breach of contract, and fraudulent actions, it suffered a loss of Kshs.35,117,400/=. It holds the Bank fully liable for this loss and seeks judgment for the amount of Kshs.35,117,400/=:, along with general damages for negligence, breach of trust, and breach of contract, as well as interest and the costs of the suit.
10. The Bank responded to the suit by filing a Statement of Defence dated 7<sup>th</sup> September 2022. It confirmed that the Church’s resolution authorized the Chairman, Secretary, and Treasurer, either acting jointly or severally, to open and operate the aforementioned accounts with the Bank as signatories. The account mandate required any two of the officials to sign jointly. The Bank states that it conducted due diligence with the Registrar of Societies and obtained an independent report dated 26<sup>th</sup> June 2015, regarding the registered officials of the Church.
11. It further claims that on 3<sup>rd</sup> July 2015, the Church, through its appointed signatories, applied for access to the accounts via the omni platform. As part of the setup, Bushebi was designated as the authorizer, Asumwa as the supervisor, and Njoki as the inputter.



12. The Bank contends that this arrangement meant the account signing instructions remained as "two to sign," requiring all transactions to be initiated by Njoki and subsequently approved by both Bushebi and Asumwa. The Bank asserts that this set-up was properly approved, and internet banking rights were granted to the three officials accordingly.
13. It is the Bank's further position that on 22<sup>nd</sup> February 2019, the Church wrote to the Bank and requested for change of email addresses for two of the officials, Bushebi and Njoki and the Bank claims that the letter was signed by both signatories including Njoki. The Bank thus states that it is both untrue and disingenuous for Njoki to claim that she was neither aware nor involved with the omni platform.
14. The Bank states that on 1<sup>st</sup> March, 2019, the three Church officials wrote advising it of the decision to change the signing mandates for the accounts from either two to sign to Bushebi to sign alone. The letter was delivered by Njoki and confirmed by the Bank via mobile phone call with Bushebi through mobile number 0725XXXX68 on 1<sup>st</sup> March, 2019.
15. The Bank confirms that this change of mandates had the effect of making Bushebi a sole signatory both for the account and the omni platform. However, under the omni service, Njoki remained the person permitted to present omni applications for approval by Bushebi. Therefore, notwithstanding that Bushebi was the sole authorized signatory, he could not and did not have the rights to process and approve transactions via the omni platform without the input of Njoki.
16. The Bank argues that while Asumwa claims he was unaware of the change in signing mandates outlined in the letter dated 1<sup>st</sup> March 2019, he nonetheless signed the letter because he could not otherwise explain how his signature appeared on it. The Bank maintains that if he was being honest, Asumwa should have immediately informed the Bank that he was neither aware of the change in signing mandates nor had he approved the instructions in the letter.
17. It is the Bank's further position that on 31<sup>st</sup> March, 2021, the Church officials sent three resolutions all dated 30<sup>th</sup> March 2021 informing and requesting the Bank's action as follows:
  - a. The removal of Njoki as a signatory to the Church's accounts and inputter on the omni platform service as her engagement contract with the Church had lapsed.
  - b. Confirmation that Bushebi and Asumwa would remain as signatories of the Church's accounts
  - c. Confirmation that Bushebi would be the inputter and authorizer while Asumwa remained the supervisor on the omni platform service.
18. The Bank states that on 2<sup>nd</sup> July 2021, the Church Officials, wrote introducing a new signatory, Ms. Alice Chepkurui (Chepkurui), to replace Njoki. Chepkurui would be given full access to the omni platform as an initiator. Regarding the mandate to sign the accounts, Bushebi was mandated to sign alone while Chepkurui and Asumwa would be the other two alternate signatories. Either one of the two could sign with Bushebi.
19. The Bank adds that on 6<sup>th</sup> August, 2021 Bushebi and Asumwa requested the Bank in writing to remove Njoki's contact details (phone and email address) from all accounts, bank alerts and any bank platform related to the Church's accounts with the Bank. Further, they requested an amendment of Asumwa's phone number and email details.
20. On 31<sup>st</sup> August 2021, the Church wrote to the Bank requesting for release of SWIFT transaction statements for the period 1<sup>st</sup> January 2019 to 31<sup>st</sup> August 2021 for one of the Church's accounts, to be availed to Asumwa. The letter was signed by among others, Njoki who had allegedly resigned much



earlier from the Church. The Church also notified the Bank that Bushebi was no longer a signatory to the accounts.

21. Upon identifying discrepancies regarding the authorized signatories to the Church's accounts, the Bank suspended all account operations. Additionally, it received a complaint from one Brian Thomson (Thomson), who identified himself as the Director of the Home Church. Thomson alleged that certain Bank staff had conspired with the Church officials to misappropriate funds belonging to the Church.
22. The Bank asserts that the Church has not provided any letter or complaint concerning the account's operations that was either ignored or left unaddressed. It further states that, as acknowledged by the Church, the Bank treated the matter seriously by initiating investigations to uncover the truth behind the Church's complaints. The Bank therefore denies any breach of fiduciary duty, instead claiming that it was the Church officials who violated the trust placed in them by the Church.
23. The Bank contends that several calls and meetings were held between its officials and the Church's representatives, including officials from Canada, to address the issues surrounding the misappropriated funds. During these discussions, the Church accused the Bank of facilitating the misappropriation through its staff and demanded payment of Kshs. 33,000,000/=. The Bank, however, contends that if any funds were misappropriated from the accounts, it was done with the full knowledge and complicity of the Church officials, including Asumwa, whose signature appears on all the resolutions, letters, and instructions sent between 2019 and 2021.
24. The Bank further states that an analysis of the statement of accounts reveals that during the disputed period, Asumwa and George Akelo received significant sums of money from the account. It is therefore unlikely that the two officials who filed this suit were unaware of the activities taking place in the account, as they claim. The Bank maintains that the alleged theft of funds was an internal matter orchestrated by the Church officials, who were fully aware of the embezzlement but chose to remain silent until the Canadian donor or sponsor requested evidence of how the donated funds had been utilized.
25. The Bank claims that the current suit was filed as a last resort to shift blame to it yet during its internal investigations, Bushebi admitted to misappropriating the funds. It contends that it advised the Church to report the matter to the police, which the Church did. The police subsequently launched an investigation and obtained warrants on 30<sup>th</sup> March 2022, to examine the Bank's accounts. However, the Bank asserts that it is unaware of the outcome of those investigations.
26. The Bank asserts that the Church officials, in their statements, admitted they were aware of the changes made in 2019 when Asumwa raised concerns about not receiving updates on the account's operations. Despite this, the officials neither brought the issue to the Bank's attention nor sought to resolve it among themselves, based on the documents in the Bank's possession. The Bank finds it suspicious that the officials waited more than two years to raise the complaint and notes that it was officials from the Home Church in Canada, rather than the local Church officials, who travelled to Kenya specifically to lodge the complaint. The Bank suggests this delay and the involvement of the Canadian officials indicate an ulterior motive.
27. The Bank asserts that Bushebi could only have conducted transactions using the omni system with the assistance and cooperation of either Njoki or Asumwa, as all omni transactions required the involvement of at least two authorized signatories from the Church. It clarified that the omni platform is a self-service system where all transactions are initiated and authorized solely by the account holder or its designated signatories. The Bank emphasizes that its role was limited to setting up the platform for the customer and that it was not involved in the execution of transactions.



28. The Bank also points out that it is highly curious that the Church officials chose not to include Bushebi in the suit, despite being fully aware that he was the individual who misappropriated the funds in question. Instead, the Church has placed all the blame solely on the Bank. It suspects that the decision to exclude Bushebi from the suit is a deliberate and calculated attempt to suppress certain evidence and information he may possess about the Church's activities, which could potentially implicate other Church officials.
29. The Bank further argues that its contract was solely with the account holders and authorized signatories, not with the entire Church. It disputes Njoki's claim that she was not trained on or did not use the omni platform, asserting that her statement is untrue. Additionally, the Bank denies providing any forged bank statement. Instead, it points out that, as confirmed by the Church's own forensic experts, the alleged forgery of the bank statement was carried out by Bushebi. The Bank adds that even a cursory review of the forged statement for the period 1<sup>st</sup> July 2021, to 21<sup>st</sup> July 2021, reveals glaring discrepancies when compared to all other genuine statements issued by the Bank.
30. The Bank argues that the Church's claim of a loss amounting to Kshs.35,117,400/= is unsupported by any evidence. It points out that this figure is neither reflected in the Church's forensic auditor's report nor substantiated by proof of the account holding such funds or by a breakdown of the transactions allegedly responsible for the loss. The Bank contends that the suit appears to be an attempt by the Church officials to cover up their inability to account for the funds provided by their Canadian sponsors, particularly since the criminal case against Bushebi, who was reported to the police for the alleged theft, has made little progress. As a result, the Bank prays for the dismissal of the suit with costs.
31. When the matter came up for hearing, the Church called 4 witnesses; the Church officials that is Akello (PW 1), Asumwa (PW 2), Njoki (PW 3) and Lawrence Thothi, an Accountant (PW 4). The Church also relied on its List and Bundle of Documents dated 8<sup>th</sup> July 2022 (P Exhibit 1). The Bank called 1 witness, its Operations Manager, Industrial Area Branch, Ms. Joyce Mwangi (DW 1). She produced the List and Bundle of Documents dated 11<sup>th</sup> November 2022 (D Exhibit 1) and the Further Bundle dated 3<sup>rd</sup> March 2023(D Exhibit 2).
32. After the hearing, the parties were directed to file written submissions which are on record. Since the evidence and the testimonies mirror the positions of the parties I have already highlighted above, I will not rehash the same but make relevant references to them in my analysis and determination below.

### **Analysis and Determination**

33. The following issues arise for the court's determination:
  - i. Whether there was a fiduciary and contractual relationship between the parties and whether the Bank owed a duty of care to the Church;
  - ii. If a) is in the affirmative, whether the Bank was in breach of the duty of care and contract;
  - iii. Whether the Church suffered a loss resulting from the breach; and
  - iv. Whether the Church is entitled to the prayers sought in the suit.



**Whether there was a fiduciary and contractual relationship between the parties and whether the Bank owed a duty of care to the Church:**

34. The nature and extent of the duty of care owed by a Bank to its customer was espoused in the Encyclopedia of Banking Law C.21 Selangor United Rubber Estate Ltd V Cradock (No.3), [1968] 2 ALL ER 1073) as follows:

“A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to operations within its contracts with its customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with the customer. Thus, the duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer.”

35. The starting point for the existence of such duty is the contractual relationship between parties. Both parties agree that, at the relevant time, a bank-customer relationship existed between them. The Bank, through DW1, acknowledged this position and the fact that the Church held two accounts with the Bank. The Bank further acknowledges that it had a contractual obligation to exercise reasonable care and skill, as is customary in such relationships. The Bank further admits that it owed the Church a fiduciary duty of care, which required it to execute the Church's instructions with utmost confidence, honesty, and in the best interests of the Church.

36. The Bank also accepts its duty to deal fairly and loyally with the Church, to communicate necessary information, and to maintain accurate records of all transactions on the Church's account. The particular acknowledgements are further affirmed in submissions filed by the Bank.

37. Based on these admissions, I find that there was indeed a fiduciary and contractual relationship between the parties, and the Bank owed the Church a duty of care in managing its accounts.

**Whether the Bank was in breach of the duty of care and contract:**

38. The Church accuses the Bank of failing in its duty of care and breaching the contractual relationship in several ways. These include approving and allowing transactions on the Church's accounts without proper authority from the Church or its duly authorized signatories; failing to exercise reasonable care and skill in managing the Church's accounts; neglecting to verify with the Church or its authorized signatories regarding the purported changes in account management; failing to inform the Church about the introduction of the omni platform and conducting only partial training for one Church official; and failing to apply expertise, skill, and adequate safeguards to protect the Church's funds from unauthorized and impermissible transfers.

39. The Church further accuses the Bank of failing to provide the internal investigations report, which the Bank had promised to conduct and share. Additionally, the Church alleges that the Bank failed to fulfill its fundamental duty as a constructive trustee. The Church also accuses the Bank of fraud, claiming that it aided and abetted the alleged theft of its funds through its agents and employees. The Bank vehemently denies all the allegations of breach.

40. It is undisputed that when the Church applied to open the bank accounts on 15<sup>th</sup> June 2015, Bushebi, PW2, and PW3 were listed as signatories. The account mandate was set up as either of the three officials would sign jointly. In accordance with its duty, the Bank contacted the Registrar of Societies to verify their status as Church officials.



41. Subsequently, relying on a letter dated 1<sup>st</sup> March 2019 signed by Bushebi, the Bank effected changes to the signing mandate. The requirement changed from any two signatories to Bushebi signing alone, while PW2 and PW3 could only sign with him. The Bank acknowledges that this effectively made Bushebi the sole signatory. It presented the letter as evidence, claiming that PW3 delivered it to the Bank and was therefore aware of the resolution.
42. This letter raises several red flags. First, while it states that PW3 delivered it, there is no endorsement confirming the same unlike the case of MOO who signs on the face of it as the recipient of the letter. Moreover, no delivery book has been produced to prove that the letter was indeed delivered by PW3. The evidence by PW3 that she did not deliver the letter therefore remains uncontroverted.
43. Secondly, the Bank claims to have made a verification call to Bushebi to confirm the change in mandate, a claim that is unsubstantiated and one that raises serious concerns. Given that this was a corporate account originally requiring multiple signatories, the decision to alter it to a sole signatory should have prompted heightened scrutiny. The Bank had a duty to exercise due diligence, especially since such a significant change increased the risk of unauthorized control over the account. Instead of relying solely on Bushebi's confirmation, the Bank should have sought verification from the other signatories or, at the very least, from the Church itself through an official channel.
44. By failing to do so, the Bank neglected standard verification procedures and set in motion a series of other unauthorized activities and transactions on the Church accounts.
45. The Bank confirms that the change in signing mandate also applied to the omni platform effectively making Bushebi the sole approver of transactions. According to the Bank, while Bushebi had exclusive approval authority, PW3 was still required to input the transactions before he could authorize them.
46. I however find that the Church's assertion that PW2 and PW3 never operated the omni platform remained consistent and unshaken, even under cross-examination. While the Bank maintains that the omni platform required both an initiator and an authorizer to complete a transaction, the evidence on record indicates that the platform was operated solely by Bushebi. DW3 stated in her witness statement that "the internet banking rights were provided to the three officials". However, there are no records confirming that omni platform passwords were actually sent to all three signatories.
47. This lack of documentation strengthens PW2 and PW3's assertion that they never accessed or operated the platform as alleged. If they had, nothing would have been easier than for the Bank to produce evidence that their login credentials were issued alongside a list of transactions carried out by the two. This suggests either that someone within the Bank enabled Bushebi to have full access to the system as both initiator and authorizer or that the Bank allowed him to operate the platform without proper checks and verifications. This further raises concerns about the Bank's due diligence and its handling of corporate account security.
48. Regarding the queried statement of account, there is no dispute that the bank statement dated 16<sup>th</sup> August 2021 was a forgery. PW2 testified that it was forwarded to them by Bushebi, who had received it from MOO. However, while the Bank claims that Bushebi was responsible for the forgery, the email correspondences suggest otherwise. The evidence shows that the statement in fact originated from MOO, and was sent to Bushebi at 12:52 pm. Just 23 minutes later, at 1:15 pm, Bushebi forwarded the same statement to PW2 and other officials. There is no credible evidence to support the claim that Bushebi altered or forged the statement after receiving it from MOO.
49. Based on the evidence, I am satisfied that the bank statement was doctored by MOO solely to conceal the true financial position of the Church's account. This leads me to conclude that Bushebi and MOO were working together in facilitating the irregular diversion of funds from the account to Bushebi and



other third parties. The question therefore is whether the Bank should be held liable for the loss in place of MOO.

50. The former Court of Appeal for East Africa in *Muwonge V Attorney General of Uganda*, [1967] EA, 17 and the Supreme Court of Canada in *Bazley V Curry*, [1999] 2 SCR 534 reaffirmed the principle that an employer is vicariously liable for the actions of its employees if those actions occur within the course of employment and are sufficiently related to the duties authorized by the employer.
51. The testimony of DW1 confirms that MOO was a relationship manager for the account held by the Church. It is clear that he was acting within the ordinary course of business when he perpetuated the fraud. There is therefore no doubt that the Bank ought to be held vicariously liable for the infractions of its agent.
52. It is important to emphasize that when a customer opens an account with a bank, there is a reasonable expectation that the bank will apply its skill, expertise, and safeguards to ensure the safety of the customer's funds from unwarranted and unauthorized withdrawals. This principle was well articulated in *Equity Bank (Kenya) Limited V Don Ogalloh Riario & Abong Bildad Onyango*, [2019] KECA 317 (KLR). The Court observed that:

“Central to the issue of liability of the appellant Bank is the role and place of CBK Prudential Guidelines. The Prudential Guidelines place a duty on all licensed banks to make enquiries regarding the legitimacy of funds and transactions. The Guidelines require that a bank should make enquiries on a case by case basis for large, frequent or unusual transfers in relation to the parties and the nature of the transaction.”

53. In light of the foregoing, I find that the Bank failed to discharge its duty of care to the Church in the manner it maintained the Church's account and that the significant oversight by the Bank ultimately allowed the fraud to continue undetected.
54. My suspicion is further heightened by the fact that, despite conducting internal investigations into the incident, the Bank did not share the investigation report with the Church, even after multiple requests. Furthermore, the report has not been produced in court, raising further doubts about whether its findings were unfavorable to the Bank's case.

**Whether the Church suffered a loss resulting from the breach:**

55. From the evidence presented, it is clear that the Church's funds were irregularly and unlawfully diverted to third parties, resulting in a loss to the Church. In its plaint, the Church initially claimed a loss of Kshs.35,117,400/=. However, according to PW4's report, which the Church relies on to substantiate its claim, the loss attributable to the Bank amounts to Kshs.21,520,700/=. Consequently, I find that the proven loss suffered by the Church is Kshs.21,520,700/=.
56. The matter does not end here. Turning to the Church's officials, the testimony by PW3 and PW4 revealed that they were aware the account was being operated solely by Bushebi, despite knowing the account's mandate required joint operation. PW3 further testified that she was aware that only Bushebi was transacting through the omni platform, but she did not also report this to her superiors. Their inaction contributed to the irregularities and fraud and it is obvious that some of the losses could have been prevented or mitigated had they had raised their concerns timeously.
57. DW1 testified that during the period in question, PW1 and PW2 also received substantial sums from the Church's accounts into their personal accounts. This testimony was supported by the statements of account produced by the Bank. PW1 and PW2 were unable to provide a satisfactory explanation



for these transfers. They also did not inform the Church's donors of the transactions nor did they alert the Bank. The inevitable conclusion, therefore, is that there was a collective failure in safeguarding the account and that the Church must also bear some responsibility for the resulting losses.

**Whether the Church is entitled to the prayers sought in the suit:**

58. Having determined that the Church has proven a loss of Kshs.21,520,700/= and that it contributed to this loss, I find it appropriate to reduce the recoverable amount by 30%. Regarding general damages, while the Church did not propose a specific amount, I find that such damages are justified for the breach of the Bank's fiduciary duty. A sum of Kshs.500,000/= would be appropriate, in line with the precedent in *Family Bank Limited V Panda Co-operative Savings and Credit Society*, [2022] KEHC 1796 (KLR). Additionally, I find it reasonable to award interest on the reduced sum and general damages from the date of filing the suit, along with the costs of the suit, as these are warranted under the circumstances.

**Conclusion and Disposition**

59. Accordingly, I issue the following final and dispositive orders:

- a. Judgment be and is hereby entered for the plaintiffs against the defendant for the sum of Kshs.21,520,700/=, subject to a 30% reduction for contributory negligence;
- b. The plaintiffs are awarded the sum of Kshs.500,000/= as general damages;
- c. Interest shall accrue on (a) and (b) above at court rates from the date of filing suit until payment in full; and
- d. The plaintiffs are awarded half of the costs of the suit due to their contributory negligence.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025.**

**F. MUGAMBI**

**JUDGE**

