



REPUBLIC OF KENYA



KENYA LAW
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**Intermedia Development Consultants v Mutisya (Civil Suit E124 of 2019)
[2025] KEHC 9596 (KLR) (Civ) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 9596 (KLR)

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

**CIVIL
CIVIL SUIT E124 OF 2019
DO CHEPKWONY, J**

MAY 23, 2025

BETWEEN

INTERMEDIA DEVELOPMENT CONSULTANTS PLAINTIFF

AND

JOSEPH KIVUVA MUTISYA DEFENDANT

JUDGMENT

1. The Plaintiff, Intermedia Development Consultants, is a limited liability company engaged in consultancy services for various development and humanitarian agencies within Kenya and across the African continent. The Plaintiff instituted this suit against the Defendant, Joseph Kivuva Mutisya, seeking to recover funds allegedly misappropriated through fraudulent means.
2. It is the Plaintiff's case, as pleaded in the Complaint dated 7th May, 2019, that the Defendant was employed by the Plaintiff as an accountant with effect from 1st November, 2005, a position he held until 19th November, 2018, when he absconded duty without notice and was thereafter summarily dismissed through a letter dated 29th November, 2018.
3. It is further pleaded that between the years 2005 and 2016, the Defendant was believed to have diligently discharged his accounting duties under the direct supervision of the Plaintiff's then-Directors, Ms. Ruth Mwikali and Ms. Christine Kamau. These Directors, who exited the Company in 2013 and 2016 respectively, reportedly developed deep trust in the Defendant both in a professional and personal capacity and, as a token of their confidence in him, they facilitated the award of a 5% shareholding in the Plaintiff Company to the Defendant.
4. The Plaintiff contends that as an Accountant, the Defendant was entrusted with several critical financial responsibilities including maintaining the Company's books of accounts, managing cheque books, preparing invoices and payment vouchers, drawing cheques for payment, and handling petty



cash transactions. Additionally, the Defendant bore the responsibility of ensuring the Plaintiff's compliance with tax obligations by computing the taxes due and facilitating payment to the Kenya Revenue Authority (KRA). The Defendant also participated in overseeing payments including the settlement of invoices.

5. However, a key incident giving rise to the present suit occurred on 13th November, 2018, when the Defendant presented to the Plaintiff's Managing Director, Mr. John Fox, a payment voucher Numbered 181 for the sum of Kshs.336,400, together with a corresponding Cheque No. 004288 for the same amount. The Defendant represented that the payment was for withholding tax due to the Kenya Revenue Authority (KRA) and the cheque bore the notation "...K.....R.....A....." spaced out in such a way as to suggest payment to KRA. Relying on this representation, Mr. John Fox duly signed the cheque and returned it to the Defendant for processing.
6. The following day, 14th November, 2018, Mr. Ian Fox, who had recently been promoted to the position of Director and was also a signatory to the Plaintiff's bank accounts, received a verification call from CFC Stanbic Bank regarding a cheque for Kshs.336,400 made payable to an entity named "Nordic Inter Dev Consultants." As a precautionary measure, Mr. Ian Fox immediately instructed the bank to halt the processing of the cheque pending further investigation. Alarmed by the discrepancy after confirming with Mr. John Fox, Mr. Ian Fox reviewed the details of the cheque and noted that it was the same cheque presented by the Defendant the previous day, which had ostensibly been intended for payment to Kenya Revenue Authority. Upon contacting the Defendant for clarification, the Defendant denied any knowledge of the matter.
7. The Plaintiff's Directors subsequently visited the bank to obtain a copy of the cheque in question and upon close examination, it was revealed that the initial spacing between the letters "K.....R.....A....." had been tampered with and altered to read "Nordic Inter Dev Consultants" as the payee. A business name search conducted on 2nd April, 2019 established that the Defendant, Joseph Kivuva Mutisya, was in fact the proprietor and registered owner of the business trading under the name "Nordic Inter Dev Consultants."
8. Arising from the above revelations, the Plaintiff promptly suspended the Defendant from employment and proceeded to conduct a comprehensive and forensic search of the Defendant's office premises. During this search, it was found that the Defendant had deliberately and systematically deleted a substantial number of critical financial files from the Company's Accounting Computer System, thereby raising suspicions of an attempt to conceal evidence of financial impropriety.
9. Further physical search of the Defendant's office uncovered numerous Company stamps belonging to various entities, all believed to be associated with the Defendant. These entities included, but were not limited to: Philippe Gourdin Limited, Itech Office Supplies Limited, Unique Talent Consultants, Hermione Limited, Lapre Ventures, Toner World, Carthangle Business Limited, Totos Corner Enterprise Limited, Momella Enterprise Limited, Copen Hagen Services, In Express Business Services, Oxifresh Services, Skyzone Brains Enterprises, Copen Lawns Enterprises, Nordic Inter Dev Consultants, Nordic Builders, and Nordic Contractors. The Plaintiff contends that these entities were incorporated and operated by the Defendant primarily for the purpose of facilitating fraudulent transactions and misappropriation of the Plaintiff's funds.
10. As investigations progressed, it was established that Cheque Stub No. 004288 for the amount of Kshs.336,400/—which had initially indicated Kenya Revenue Authority as the intended payee for payment of withholding tax, had been fraudulently altered to reflect Nordic Inter Dev Consultants as the payee. In order to assess the full extent of the Defendant's actions, the Plaintiff obtained historical bank statements and cheque images dating back to the year 2012 where upon a detailed scrutiny, it



was uncovered that at least sixty (60) cheques had been issued between 2013 and 2018 with Nordic Inter Dev Consultants as the payee. These cheques cumulatively amounted to Kshs.43,090,597/= and in each case, the corresponding cheque stubs misleadingly indicated the payments as tax remittances to Kenya Revenue Authority, whereas they were, in fact, fraudulent payments diverted to a business entity owned and controlled by the Defendant.

11. In addition to the above, a comparative analysis of cheque images and corresponding payment vouchers for the period between 2013 and 2017 revealed further discrepancies. Specifically, there were numerous instances in which the monetary amounts reflected on the payment vouchers did not match the amounts indicated on the corresponding cheques and these inconsistencies accounted for an additional sum of Kshs.10,267,000/= lost through inflated and altered cheques. The Plaintiff avers that all of these cheques were prepared, processed, and handled by the Defendant in his capacity as the Plaintiff's Accountant, and that any payments arising therefrom were directly received by or funnelled through the Defendant. The Plaintiff therefore submits that the Defendant is personally and wholly liable for these irregularities and the resultant financial losses.
12. Further scrutiny of the Plaintiff's bank statements and payment vouchers from the earlier period of 2007 to 2012 unearthed yet more instances of suspected fraudulent conduct. Several payment vouchers were found bearing the signatures of the Defendant and a former Director, Ms. Christine Kamau. Upon being presented with the vouchers for verification, Ms. Kamau acknowledged that the signatures resembled hers but unequivocally denied ever signing the said documents. Consequently, the Plaintiff submitted the impugned vouchers for expert analysis and a report issued by a certified handwriting and document examination expert concluded that the said signatures had been digitally manipulated and were not authentic. Additionally, the Plaintiff established that substantial payments, totalling Kshs.12,086,453/= as indicated in the vouchers, had been made under the pretext of consultancy services, which were allegedly not rendered to the Company, thereby affirming the Plaintiff's position that these payments were fraudulent and unauthorized.
13. In light of the foregoing factual and evidentiary findings, the Plaintiff prays for Judgment against the Defendant and seeks the following reliefs:-
 - a. Judgment for the sum of Kshs.66,171,100.00 or such amount as may be proved as having been embezzled, misappropriated and or stolen from the Plaintiff by or through the facilitation of the Defendant.
 - b. General damages for loss of damages arising from the Defendants exposure of the Plaintiff to the risk of being labelled as tax non-compliant.
 - c. In the alternative to prayer no. (a) restitutionary damages for unjust enrichment for any amounts found to have been stolen by the Defendant from the Plaintiff.
 - d. An order that as part of the recovery of any amounts awarded, apportion thereof be recovered by way of forfeiture of the share holding held by the defendant in the Plaintiff Company;
 - e. Costs of the suit; and,
 - f. Interest on (a), (b) and (c) at court rates until payment in full.
14. In response to the allegations raised in the Plaintiff's claim, the Defendant filed a Statement of Defence dated 12th June, 2019. He categorically denied all accusations of fraud, embezzlement, misappropriation, or misconduct, and asserted that at all material times during his employment, he served the Plaintiff diligently and faithfully, subject to the direct supervision and control of the Plaintiff's directors, namely Ruth Mwikali Nzioki, Christine Kamau, and John Fox, the latter being



the Managing Director. The Defendant contends that all his work-related activities, including financial and administrative operations, were carried out with the full knowledge, participation, and prior approval of the aforementioned Directors.

15. The Defendant further averred that contrary to the Plaintiff's claim that he was merely awarded shares, he in fact became a legitimate shareholder of the Plaintiff Company. He clarified that in or about the year 2011, he lawfully acquired 5,715 shares through a bona fide purchase, thereby attaining a 5% shareholding in the Plaintiff Company. Consequently, he assumed the role of a partner and shareholder, actively participating in the affairs of the business until his services were unilaterally terminated in mid-October, 2018.
16. The Defendant maintained that all payments made from the Plaintiff's accounts, including bank and petty cash disbursements, were strictly subject to the approval and authorization of the Company's Directors. On the other hand, the Defendant's responsibilities were, at all times, limited to preparing payment vouchers, indicating the payee, the purpose of the payment, the date, and the sum to be paid. Upon preparing the vouchers and attaching the requisite supporting documentation, he would present the same together with the company cheque book to the directors for verification and approval. Only upon the Directors' satisfaction would they proceed to sign the cheques.
17. Once signed, the cheques were returned to the Defendant for the sole purpose of dispatch to the named payee. Thereafter, upon presentation of the cheques to the relevant bank, the bank (CFC Stanbic Bank) would initiate an independent confirmation process, which included contacting the Plaintiff's Directors or their office for telephonic verification before releasing the funds. The Defendant, therefore, emphasized that the entire payment process involved multiple layers of oversight, and was essentially a collective undertaking among the Company's Senior Management. Accordingly, he denied any individual culpability for payments made during his tenure.
18. The Defendant denied ever being a signatory to any of the Plaintiff's bank accounts, nor did he ever sign any Company cheques. With regard to the allegations concerning payments made to Nordic Inter Dev Consultants, the Defendant asserted that the said payments were legitimate, authorized by the Plaintiff's Directors, and made in exchange for consultancy services rendered by the said Company. The Defendant emphasized that Nordic Inter Dev Consultants is a separate legal entity, duly incorporated as a limited liability company, with a distinct legal personality under the law. He contended that if the Plaintiff had any grievances regarding the services or payments made to that entity, the appropriate course of action would have been to pursue legal redress against the Company itself.
19. The Defendant further discredited the Plaintiff's claims that the cheques made to Nordic Inter Dev Consultants were initially drawn in favour of the Kenya Revenue Authority. He clarified that payments to Kenya Revenue Authority were never effected through ordinary company cheques but rather through electronic bank transfers. Additionally, the Defendant averred that the correct payee designation for tax-related payments was either "Collector of Income Tax" or "Collector of Domestic Taxes," and not "KRA" as alleged. He maintained that the Plaintiff had never, during his tenure, issued cheques addressed to "KRA" in the manner claimed.
20. In response to the specific allegations regarding Cheque No. 004288 in the sum of Kshs.336,400/-, the Defendant stated that the Plaintiff failed to produce the original or any authenticated copy of the said cheque leaf or stub. Consequently, he submitted that the allegations of forgery or alteration in relation thereto are baseless, speculative, and amount to hearsay. The Defendant contended that the purported notice to show cause, suspension, and disciplinary actions instituted by the Plaintiff's Directors were not only malicious and unfounded but were calculated to tarnish his reputation and force him out of employment under false pretenses.



21. He further asserted that the instant suit is statutorily barred, having been instituted more than ten (10) years after the alleged acts of misconduct, at a time when the relevant financial records had long been closed. The Defendant argued that the Plaintiff's claim is tainted with malice and has been brought in bad faith, with the primary objective of defaming and destroying his professional reputation. The Defendant further stated that the allegations now raised by the Plaintiff are not novel. He noted that a similar complaint was previously lodged by the Plaintiff before the Banking Fraud Investigations Department (BFID) in December, 2008 but following a comprehensive investigation, the Banking Fraud Investigations Department (BFID) found the complaint unsubstantiated and devoid of merit, and the matter was closed without further action.
22. In response to the Plaintiff's claims regarding penalties arising from alleged tax non-compliance, the Defendant emphasized that the statutory obligation to ensure tax compliance, make accurate declarations, and remit dues to the Kenya Revenue Authority rested squarely with the Plaintiff's directors. He further alleged that during his employment, the Plaintiff's Directors engaged in various acts of tax evasion and routinely made false declarations to tax authorities. Lastly, the Defendant vehemently denied all allegations that he participated in or orchestrated any fraudulent scheme, embezzlement, forgery, or misappropriation of the Plaintiff's funds, and categorically rejected the claim that he was responsible for any loss in the amount of Kshs.66,171,100/= or any part thereof.
23. In response to the averments made in the Statement of Defence, the Plaintiff filed a Reply thereto dated 7th October, 2019. The Plaintiff categorically denied the insinuation that its directors or supervisors had, at any point, condoned the alleged embezzlement or misappropriation of company funds by the Defendant. The Plaintiff indeed clarified that while it is true that the Defendant's actions were subject to oversight by certain Directors, any such concurrence or approval was strictly premised on the belief that the payments were genuine and in furtherance of the Plaintiff's legitimate operations. The Plaintiff contends that any approval extended to the Defendant was obtained under false pretenses, and where such approval was fraudulently procured, or the payment subsequently diverted, the Defendant cannot claim shelter under it.
24. The Plaintiff further averred that while the practice was for the bank to verify cheques through a phone call to the Plaintiff's office line, the Defendant, being the custodian of the said office line and also the holder of the cheque books, effectively controlled both the cheques and the verification process. The Plaintiff emphasized that such verification calls by the bank did not involve a substantive review of the payee named in the cheque. Over time, a presumption developed that the payee named in the cheque remained unchanged from the name appearing on the payment voucher, and this presumption was exploited by the Defendant.
25. The Plaintiff asserted that following the discovery of the fraudulent scheme, it launched an internal audit and consulted its bankers to determine whether their employees may have colluded with the Defendant. The investigations, however, revealed that the bank's verification protocol did not extend to confirming the named payee. Consequently, the absence of such verification cannot serve as a shield against the Defendant's liability. Moreover, the Plaintiff vehemently denied ever authorizing payments to a company known as Nordic Inter Dev Consultants. It maintained that any such payments were not only unauthorized but also fraudulent. Handwriting analysis confirmed that cheques initially drawn in favour of the Kenya Revenue Authority (KRA) had been altered, with the payee changed to Nordic Inter Dev Consultants. The Plaintiff further submitted that this action, being rooted in deceit, suspended the operation of the *Limitation of Actions Act*, as the Defendant fraudulently concealed material facts. Accordingly, time did not begin to run against the Plaintiff until the fraud was discovered.



The Hearing

26. The matter was eventually certified as ready for hearing, whereupon the Plaintiff called four (4) witnesses to substantiate its claim, while the Defendant led evidence through three (3) witnesses. The Plaintiff's first witness, Mr. John Fox, a Director of the Plaintiff Company, testified as PW1 on 24th October, 2022. In his evidence-in-chief, PW1 adopted his two filed witness statements and the bundle of documents accompanying the Plaintiff's pleadings. He testified that the suit against the Defendant arose after he uncovered what appeared to be systematic embezzlement of the Plaintiff's funds perpetrated by the Defendant over an extended period.
27. PW1 explained that the Plaintiff's core business involved offering consultative and professional services in the humanitarian and development sectors, frequently in response to tenders floated by governmental bodies and large institutions. The Plaintiff's Directors, including himself, were the ones actively engaged in the tendering process, while the Defendant, an employee in the capacity of an accountant, was not involved in the preparation, submission, or negotiation of consultancy contracts. According to PW1, the Defendant's role was strictly administrative and financial, and he played no part in business development or project execution.
28. Referring to the Defendant's employment contract, PW1 testified that the Defendant was initially employed at a monthly salary of Kshs.35,000.00, which was later revised to Kshs.56,000.00 and at no time was the Defendant appointed a Director or granted signatory authority over the Company's bank accounts.
29. PW1 further elaborated on the Defendant's responsibilities, which included preparing payment vouchers specifying the name of the payee, the purpose of the payment, the amount, and the mode of disbursement, whether by cash or cheque. Despite not being a signatory to the company's bank accounts, the Defendant was responsible for preparing cheques for the Director's signature, which he would accompany with corresponding vouchers and documentary support.
30. Of particular relevance, PW1 highlighted a pattern in which the Defendant prepared numerous payment vouchers ostensibly directed to the Kenya Revenue Authority (KRA), and drew corresponding cheques purportedly payable to the same entity. However, the manner in which "KRA" was written on the cheques, typically with large spacing and punctuation (e.g., "K. R. A."), allowed for easy alteration. That the Defendant having access to the cheque book, would later manipulate the payee's name to read "Nordic Inter Dev Consultants," a Company that was eventually discovered to be registered under the Defendant's own name. According to PW1, he signed the cheques on the faith of the supporting documentation prepared by the Defendant and under the assumption that the cheques were genuinely in favour of KRA, only to later discover the deceptive alterations.
31. PW1 recounted the moment the fraud came to light. He testified that one of the Plaintiff's Directors, Mr. Ian Fox, received a call from the bank to verify a cheque purportedly issued in favour of Nordic Inter Dev Consultants. This triggered alarm, as no such payments had ever been authorized. The Plaintiff immediately halted the transaction and launched a thorough internal inquiry where upon during the investigation, it became evident that several cheques previously believed to have been issued to KRA had, in fact, been altered post-signature.
32. PW1 explained the Defendant's modus operandi: the letter "K" in "KRA" would be reworked into an "I" and a "C" to spell the final letters of "Nordic"; the "R" was carried forward to spell "Inter"; and the "A" was morphed to form part of the word "Consultants." According to PW1, this creative forgery resulted in a seamless transformation of "KRA" into "Nordic Inter Dev Consultants" on the face of the cheque. PW1 further asserted that in no uncertain terms, that he had never, and would never, have



- signed a cheque in favour of Nordic Inter Dev Consultants had he known the true payee. He stressed that the Plaintiff's Directors had placed trust in the Defendant to prepare documentation faithfully and had no reason at the time to suspect fraudulent manipulation of the cheques.
33. However, upon discovering the aforementioned forgeries and financial irregularities, PW1 testified that the Plaintiff immediately took disciplinary action against the Defendant. The Defendant was suspended from employment for a period of one week and issued with a formal show cause letter, setting out the specific allegations of misconduct and affording him an opportunity to respond. However, the Defendant failed and/or neglected to respond to the said letter, and he did not offer any explanation or defence in relation to the serious financial discrepancies raised. In consequence, the Plaintiff was left with no option but to summarily dismiss the Defendant from employment on grounds of gross misconduct, fraud, and breach of fiduciary duty.
 34. Following the Defendant's dismissal, a detailed reconciliation of the Plaintiff's accounts was undertaken. This forensic accounting exercise revealed that the Defendant had fraudulently embezzled a staggering sum of Kshs.43,900,597.00, under the false and deceptive pretext of making statutory remittances to the Kenya Revenue Authority (KRA). PW1 elaborated that, during the material time, it was common practice for the bank to make a verification call prior to processing high-value cheques. However, as the Defendant was the designated custodian of the Plaintiff's company mobile phone, he would routinely receive these calls from the bank and then physically present the phone to PW1, merely stating that the bank was calling to verify "some" payments. Trusting the Defendant and relying on the supporting payment vouchers and cheque stubs, PW1 would then approve the transactions without independently confirming the payee indicated on the cheque.
 35. PW1 expressed deep regret that, in hindsight, he had unknowingly signed cheques made payable to Nordic Inter Dev Consultants, a Company which the Plaintiff had no contractual or commercial relationship with, whatsoever. He further clarified that the only instances where the Defendant had ever performed work beyond his official accounting duties were two isolated occasions where data analysis services were required. In both cases, the Defendant was personally compensated for his additional services. PW1 informed the Court that the Plaintiff was only able to locate cheque stubs for the year, 2018 while the remaining stubs were in the possession of the Defendant, and despite numerous efforts, the Plaintiff was unable to recover them.
 36. PW1 further testified that beyond the fraud relating to the purported KRA payments, the Plaintiff also uncovered substantial anomalies and irregularities involving cheques ostensibly drawn for utility expenses. These included discrepancies between the amounts recorded in the payment vouchers and the actual amounts withdrawn from the Company's Bank Accounts. As an illustrative example, PW1 pointed to Cheque No. 004009, originally issued in the amount of Kshs.9,400.00, prepared by the Defendant for payment of water and internet bills. The corresponding voucher accurately reflected this sum. However, after the cheque was signed and returned to the Defendant for banking, it was altered by inserting the letters "t" and "y" after the word "nine," thereby fraudulently inflating the amount to ninety thousand four hundred (Kshs.90,400.00).
 37. According to PW1, this cheque, like many others, had been made payable to Samuel Savantia, a former employee of the Plaintiff whose role included cashing out Company cheques and delivering the withdrawn funds to the Defendant, and who was then expected to disburse them to service providers. After conducting a comprehensive audit and reconciliation, it became evident that the total sum misappropriated through such inflationary alterations amounted to Kshs.10,267,000.00. PW1 further clarified that the 5% shareholding currently held by the Defendant in the Plaintiff Company was not acquired through purchase or investment. Rather, those shares were gratuitously transferred to him by the Plaintiff prior to the discovery of his fraudulent activities.



38. During cross-examination, PW1 unequivocally stated that the Plaintiff's claim is fundamentally predicated on allegations of forgery, fraud, and unauthorized alterations of Company Cheques. He acknowledged that he personally signed the disputed cheques but reiterated that his signatures were affixed based on representations made by the Defendant and that the documents were later altered without his knowledge or consent. He confirmed that the allegedly altered cheques were submitted to a forensic document examiner for analysis, and that a report was prepared and filed in Court.
39. However, PW1 conceded that the conclusions of the forensic report did not support the Plaintiff's assertions as the examiner found no visible evidence of alteration, nor any indication that the word "KRA" had originally appeared on the altered cheques. PW1 maintained that the bank followed a basic verification process before honouring payments, which involved calling him for verbal confirmation. Nevertheless, he contended that this process was inadequate as it did not entail verification of the cheque's payee name. When asked whether the Plaintiff had initiated any legal or administrative action against the bank for its possible negligence or complicity, PW1 admitted that no such steps had been taken. Although at some point the bank had indicated that an internal investigation to determine whether any of its employees were complicit in the fraud was underway, PW1 testified that he did not follow up with the bank to ascertain the outcome of its inquiry.
40. PW1 reiterated that the crux of the Plaintiff's case lies in the inconsistency between the cheques and their supporting payment vouchers and stubs. These documents, he stated, originally indicated KRA as the payee, but were subsequently altered to reflect the Defendant's Company, Nordic Inter Dev Consultants. He lamented that the document examiner had failed to recognize what he perceived as clear evidence that the letter "K" in "KRA" had been deliberately manipulated to appear as "IC," thereby forming part of the fraudulent payee's name. He further admitted that he had questioned the Defendant on the unusual spacing between the letters in "K. R. A.," but acknowledged that no documentary evidence had been produced in Court to support this assertion.
41. On the issue of banking records, PW1 confirmed that the bank statements presented by the Plaintiff originated from Stanbic Bank, but the statements themselves bore no explicit mark or certification from the bank to confirm their authenticity. He also stated that while the Plaintiff regularly made tax payments, he could not confirm whether such payments were directed specifically to the KRA or to the Commissioner of Income Tax. PW1 conceded that he was unable to provide any prior records demonstrating that the Plaintiff had successfully remitted taxes to KRA. Nevertheless, he insisted that all payments to Nordic Inter Dev Consultants were first presented as tax payments to KRA, before the cheques were surreptitiously altered. However, he admitted that no legal action had been taken against Nordic Inter Dev Consultants in an effort to recover the alleged misappropriated funds.
42. In conclusion, PW1 testified that the Plaintiff's total claim against the Defendant amounts to Kshs.66,171,100.00, broken down as follows:-
- a. Kshs.43,090,507.00, which was allegedly fraudulently paid to Nordic Inter Dev Consultants under false pretenses;
 - b. Kshs.10,267,000.00, arising from inflated utility cheques; and,
 - c. Kshs.12,086,455.00, representing additional sums lost through unauthorized alterations of originally lower-valued cheques.
43. PW1 conceded that there was no direct evidence linking the Defendant to the physical act of altering the figure on the cheques. However, he maintained that, as the custodian of the cheque books and the individual responsible for preparing and presenting the cheques for signature, the Defendant was in a unique position of trust and control and one which he grossly abused. PW1 further acknowledged that



- all employees, including the Defendant, who rendered services beyond their contractual obligations, such as consultative work, were duly compensated for their efforts. However, he could not state with certainty whether the Plaintiff had ever undertaken consultancy work for his wife in the United Kingdom. He did confirm that the Defendant had, at some point, provided services to his wife in the United Kingdom, although the nature and scope of those services remained unspecified.
44. Upon re-examination, PW1 reaffirmed that the cheques issued in favour of Nordic Inter Dev Consultants bore a representation on their corresponding cheque stubs indicating that the payments were for remittance of tax to the Kenya Revenue Authority (KRA). He emphasized that the description of the payments on the stubs was not contradicted or invalidated by the forensic document examiner. Instead, the examiner's analysis was limited to confirming that the handwriting on the disputed cheques originated from the same author and that no visible alterations had been detected on the face of the cheques themselves.
 45. PW1 further testified that the bank had formally authenticated the bank statements presented in court by issuing a certificate of authenticity. He explained that the delay in detecting the Defendant's fraudulent activities was largely due to his (PW1) own lack of technical knowledge in accounting. As a non-accountant, he was unable to distinguish between valid tax payments and irregular disbursements, and had therefore heavily relied on the Defendant, who held the position of a Company Accountant for professional guidance and execution of financial duties.
 46. He clarified that Nordic Inter Dev Consultants is not a limited liability company but is merely a registered business name, and that its sole proprietor is the Defendant. As such, it is his view that there was no legal necessity to sue the business name separately, given that liability rests with the Defendant in his personal capacity.
 47. PW1 reiterated that the Plaintiff suffered significant financial losses due to the Defendant's fraudulent conduct. Specifically, the sum of Kshs.43,090,507.00 which was fraudulently paid to Nordic Inter Dev Consultants under the guise of tax remittances. Additionally, the Plaintiff incurred a further loss of Kshs.10,267,000.00 as a result of systematic cheque tampering, whereby the Defendant inflated the amounts on previously authorized cheques. PW1 gave an illustrative example of a cheque initially signed by the Plaintiff's director for Kshs.9,800.00, intended for utility expenses, would be unlawfully altered by the Defendant to read Kshs.90,800.00. Once the inflated amount was cashed, the entire sum would be delivered back to the Defendant, who would then misappropriate the surplus funds. This scheme, according to PW1, was consistent and deliberate, forming part of the Defendant's broader pattern of embezzlement.
 48. The Plaintiff's second witness, Alice Okwan, testified as PW2. She informed the court that she is employed by Stanbic Bank in the capacity of Assets Custodian. PW2 confirmed unequivocally that the bank statements submitted to the Plaintiff, and subsequently tendered in court, were genuine, and had been duly issued and verified by the bank in accordance with standard banking protocols.
 49. Under cross-examination, PW2 clarified that while she was not the official branch manager at the material time, she was the officer-in-charge of the branch operations when the Plaintiff requested for the bank statements. It was in that capacity that she reviewed, signed, and issued the statements. She acknowledged that at the time of the request, the Plaintiff had not specified the purpose for which the statements were being sought. However, she later came to understand that the Plaintiff was conducting internal investigations into a suspected case of fraud.
 50. Although PW2 was not in a position to detail the internal cheque clearance process undertaken by the bank once a cheque is deposited, she stated with certainty that upon receipt, the cheques are stored securely in the bank's records archive. These cheques remain accessible and can be retrieved upon



request by the account holder. She confirmed that the copies of the cheques presented before the court were faithful reproductions of the original cheques issued by the Plaintiff and retained by the bank.

51. Upon re-examination, PW2 reaffirmed that she had received formal authorization from Stanbic Bank to appear in court and give evidence on its behalf. She emphasized that her authority to testify and to tender the authenticated bank statements had not been challenged by any party during the proceedings.
52. Mr. Jan Fox, a Director of the Plaintiff Company, testified as PW3. He stated that he initially joined the Plaintiff organization in 2013 in the capacity of a consultant and was later promoted to the position of Director in 2017. He elaborated that the Plaintiff is an internationally recognized consultancy firm that specializes in monitoring, evaluation, capacity building, and training, primarily servicing United Nations agencies, government institutions, and international non-governmental organizations. PW3 emphasized that the Plaintiff's consultancy assignments are executed exclusively by directors and external experts with the requisite professional qualifications. He noted that the Defendant, who lacked the necessary educational and professional background, was never involved in the consultancy aspect of the business.
53. PW3 further testified that he is one of the authorized signatories to the Plaintiff's bank accounts and on 14th November, 2018, he received a telephone call from the Plaintiff's bank requesting him to verify a cheque transaction in the amount of Kshs.336,400.00. Initially, the bank did not disclose the name of the payee but upon further inquiry, he was informed that the payee was an entity named Nordic Inter Dev Consultants, a name unfamiliar to him. Alarmed, he instructed the bank to halt the processing of the cheque pending further clarification from PW1, the Plaintiff's Managing Director.
54. Upon consulting PW1, PW3 learned that PW1 had indeed signed a cheque for the same amount earlier that day, but the intended payee was the Kenya Revenue Authority (KRA) for payment of withholding tax. Concerned by this discrepancy, PW3 immediately attempted to contact the Defendant to seek clarification on how a cheque originally intended for KRA had been redirected to Nordic Inter Dev Consultants. The Defendant failed to provide a satisfactory explanation, claiming he was unaware of the entity in question, and abruptly terminated the call. Subsequently, the Defendant suggested that the alteration was a "mistake" and inquired whom PW3 had spoken to at the bank.
55. PW3 testified that upon examining the cheque in question, he found that there was no dispute that it had been prepared by the Defendant. Furthermore, both the accompanying invoice and the corresponding cheque stub clearly indicated that the payment was intended for KRA as withholding tax for consultancy services. In his view, PW3 believed that this evidence firmly supported the conclusion that the redirection of the cheque to Nordic Inter Dev Consultants was fraudulent.
56. PW3 stated that this incident marked the first occasion he had encountered a payment made to Nordic Inter Dev Consultants. In response, the Plaintiff issued a Notice to Show Cause to the Defendant, requiring him to explain the suspicious alteration of the payee. However, the Defendant failed to respond to the notice and did not appear before the disciplinary committee on the date scheduled for the hearing. As a result of his failure to account for the discrepancies and his non-attendance before the Disciplinary Committee, the Defendant was summarily dismissed from his employment.
57. Following this, concerned by the emerging patterns of financial misconduct, the Plaintiff Directors launched a comprehensive internal audit aimed at verifying all payments previously made to KRA. PW3 personally requested the bank to supply copies of all cheques issued during the Defendant's tenure. Upon review of the cheques, he discovered that multiple cheques had been made payable to Nordic Inter Dev Consultants, despite the fact that their corresponding payment vouchers and cheque stubs explicitly indicated that the funds were to be remitted to KRA. After reviewing all available documentation, PW3 testified that there was not a single document authorizing or justifying any



payment to Nordic Inter Dev Consultants. He concluded that the payments were unauthorized and constituted fraudulent misappropriation of funds by the Defendant.

58. PW3's investigations further revealed additional financial irregularities, including instances where cheque amounts had been inflated beyond the figures approved in the accompanying payment vouchers. He explained that the Defendant had been entrusted with the preparation of cheques and vouchers for utility payments to be made to legitimate service providers. The cheques were typically made payable to Samuel Savatia, the Plaintiff's long-serving messenger who had been employed by the Company since 1998. PW3 explained the process by stating that the Defendant would prepare the voucher and a matching cheque, which Sammy would collect, cash, and return to the Defendant, who was then responsible for settling the utility bills.
59. PW3 noted that there had been no record of inflated cheques or suspicious cash handling prior to the Defendant's employment and assumption of financial duties. However, after the Defendant assumed the role of voucher and cheque preparation, numerous cheque transactions were found to have been manipulated, either by inflating the payable amounts or by altering the names of payees.
60. He added that the Plaintiff Company gave the Defendant an opportunity to provide documentation or explanations justifying the payments made to Nordic Inter Dev Consultants and any other suspicious disbursements. However, the Defendant failed to produce any such justification and did not deny having received the funds.
61. During cross-examination, PW3 reaffirmed that the Plaintiff's internal policy did not permit employees, including the Defendant, to undertake consultancy work. Such assignments were strictly reserved for directors and professionally qualified external consultants. He confirmed that the verification call on 14th November, 2018 was the first and only call he had ever received from the bank regarding cheque authorization.
62. He stated that after being informed of the suspicious cheque, he personally visited the bank to discuss the issue with the branch manager, not PW2. Upon informing the bank that the Plaintiff was investigating suspected fraud, the bank indicated that they would assist by supplying relevant documentation. PW3 explained that the Defendant was primarily responsible for preparing payment vouchers and cheques, which he would then present to PW1 for signature. PW1, relying on the Defendant's professional representation, would approve the cheques without requiring additional supporting documentation.
63. However, unknown to PW1 and other signatories, the Defendant would subsequently alter the cheques, either by changing the payee's name or increasing the amount payable, thus enabling him to misappropriate company funds. PW3 stated that he was unaware of whether the bank had mechanisms to verify cheque payments made by Samuel Savatia. Nonetheless, he had actively participated in the internal audit process which ultimately uncovered the full extent of the fraudulent financial losses attributable to the Defendant's actions. He emphasized that none of the inflated payments, nor those directed to Nordic Inter Dev Consultants, were backed by any documentation or proper authorization, making them unequivocally fraudulent and unlawful.
64. Upon re-examination, PW3 clarified that the Plaintiff's total claim of Kshs.66 million was derived from the cumulative total of all forged and altered cheques, as well as unauthorized payments made during the Defendant's tenure. He stated that the fraud was evident from the supporting documents, particularly where the vouchers and cheque stubs indicated that the payee was KRA, only for the corresponding cheques to reflect Nordic Inter Dev Consultants as the actual payee. While the exact method by which the payments were rerouted may not be immediately apparent, the pattern of



inconsistencies and documentary manipulation presented a compelling and clear case of systematic fraud.

65. He concluded by stating that, as the registered proprietor of Nordic Inter Dev Consultants, the Defendant was the ultimate beneficiary of the misappropriated funds, despite being unable to produce any documentation suggesting that the Plaintiff had authorized such payments to his business. As such, all evidence pointed to the Defendant's deliberate and calculated involvement in the fraudulent scheme.
66. The Plaintiff called Samuel Benard Savatia, who testified as PW4. He adopted his witness statement as his evidence-in-chief. According to PW4, he had been in the Plaintiff's employment as an Office Messenger and Bank Agent since the year 1998, a period spanning over two decades. As part of his official duties, cheques issued by the Plaintiff Company would routinely be drawn in his name as the payee. Upon receipt of such cheques, he was under explicit instructions to present the cheques for encashment at the bank and thereafter return the full cash amount to the Plaintiff's office. He clarified that although the cheques bore his name, he had no role whatsoever in their preparation, nor was he privy to the process by which the cheque amounts were determined or how the proceeds were ultimately utilized.
67. Between the years 2013 and 2017, it was consistently the Defendant, who at the time was serving as the Plaintiff's accountant, who personally handed over the cheques to PW4 for encashment. PW4 testified that without exception, after withdrawing the money from the bank, he would deliver the entire sum to the Defendant, in accordance with the instructions received.
68. During cross-examination, PW4 candidly testified that he was not in a position to determine whether the amounts indicated in the cheques were consistent with those recorded in the corresponding payment vouchers, as he was never allowed access to those vouchers. He explained that his role was limited and purely procedural as he was not tasked with or equipped to verify accounting records. He further testified that before the Defendant took over this responsibility, he had previously received similar instructions from one Ruth Mwikali, who had performed the same role as the Defendant with respect to voucher and cheque preparation.
69. PW4 further explained that upon arrival at the bank, he would hand over the cheque to the cashier. Being a registered bank agent, the bank staff would count the funds and issue the full cash amount to him unless the amount triggered a verification threshold, the precise limit of which he could not recall. PW4 testified that he was aware that a portion of the funds he encashed were intended for the payment of utility bills, and that he would return the funds to the Defendant, who would then instruct him on which specific payments to make to service providers.
70. However, with time, he became increasingly suspicious that the Defendant was manipulating or altering cheques, a concern he formed based on irregularities he began to notice. That said, he clarified that he was not in a position to distinguish between genuine and altered cheques, as such determinations fell outside the scope of his responsibilities.
71. Upon re-examination, PW4 reaffirmed that it was the Defendant who consistently issued instructions regarding which bills to pay, and that he would usually attach the relevant utility bills or invoices to facilitate the process. The Defendant would specify both the identity of the service provider and the exact amount to be paid, following which PW4 would execute the payment. PW4's evidence marked the conclusion of the Plaintiff's case.
72. In defence, the Defendant called three witnesses, beginning with himself, and he testified as DW1. He adopted his witness statement dated 17th June, 2019 as his evidence-in-chief. In addition, he produced



and relied on two bundles of documents, one dated 19th October, 2019, and a further bundle filed on 19th January, 2022, in support of his defence.

73. DW1 testified that he was employed by the Plaintiff Company until 2018, and that he was also a shareholder, having purchased shares from PW1, the Plaintiff's Managing Director. As part of his responsibilities, he was tasked with managing various internal administrative and statutory functions, including calculating and submitting employee contributions for NHIF, NSSF, and PAYE to the relevant government agencies. He also indicated that his role occasionally involved resolving domestic disputes between the Plaintiff's Managing Director's wife and their domestic workers.
74. In his accounting capacity, DW1 testified that he would receive invoices from the Plaintiff's suppliers, consultants, and other creditors. Upon receipt of the same, he would prepare the corresponding payment vouchers and cheques, which he would then submit to PW1 or another available director for approval and signature. According to his testimony, once the first director verified and was satisfied with the documentation, the documents would be passed to a second Director, who would then authorize and sign the cheques.
75. DW1 further stated that once the cheques were signed, they would be handed directly to the designated payee. When such cheques were presented to the bank, the bank would, as a matter of protocol, contact a Director for verification, to confirm both the payee's identity and the cheque amount before processing the transaction. DW1 emphasized that he was not a signatory to the Plaintiff's bank account, nor did he have any role in authorizing or verifying payments with the bank.
76. Regarding cash transactions, he testified that it was the Plaintiff's messenger, PW4, who was responsible for presenting cheques at the bank, withdrawing the funds, and subsequently disbursing the payments to the appropriate third parties, typically utility service providers, based on instructions issued by the accounting office. Addressing the issue of payments to the Kenya Revenue Authority (KRA), DW1 asserted that statutory payments were, in later years, made through RTGS transfers via the KRA's Online Portal. Before the digital system was implemented, he testified that such payments were made by issuing cheques drawn in favour of the Commissioner of Domestic Taxes and denied that any cheque written to KRA, as alleged by the Plaintiff, had been banked or even issued.
77. As for the cheques drawn in favour of Nordic Inter Dev Consultants, DW1 acknowledged that he was indeed a shareholder in that Plaintiff Company. He contended that both he and other shareholders were engaged in consultancy work and that it was standard practice for them to receive payments through other company accounts. He specifically described himself as a finance consultant, and stated that his fees were legitimately paid through Nordic Inter Dev Consultants for the consultation works he offered the Plaintiff. DW1 also alleged that other directors and shareholders of the Plaintiff Company similarly offered consultancy services through their own Companies, and received payment accordingly.
78. He further claimed that the Plaintiff's bank sent monthly statements to its directors and that these statements included comprehensive summaries of all transactions. According to him, the directors regularly reviewed cash flow records, yet no anomalies or irregularities were ever flagged. He also maintained that the Plaintiff's external auditors reviewed the company's accounts annually, and at no point were any adverse findings made against him. He categorically denied allegations that he had deleted or tampered with any financial records or data within the Plaintiff's system.
79. DW1 further submitted that although he acknowledged that Nordic Inter Dev Consultants was his Company, the present suit was instituted against him in his personal capacity, not against the company. He claimed that investigations conducted by the Directorate of Criminal Investigations (DCI) revealed that there were no alterations on the cheques paid to Nordic Inter Dev Consultants and as regards



- the inflated cheque amounts and suspicious invoices presented by the Plaintiff, DW1 denied preparing some of the documents in question and contended that all payments made were properly approved by the Plaintiff's directors and disbursed by the Plaintiff's messenger.
80. During cross-examination, the Defendant testified that he had purchased a five percent (5%) shareholding in the Plaintiff company. However, he stated that he left the supporting documentation pertaining to this acquisition at the Plaintiff's office when his employment with the company came to an end. He further admitted that he occasionally performed personal services for the Plaintiff's director and his family, for which he was subsequently compensated. He clarified that although he was a shareholder, he never held a Directorship position in the Company, and his formal relationship with the Plaintiff was governed by an employment contract that clearly delineated his responsibilities as an accountant.
 81. When confronted with records from the Business Registration Service (BRS) indicating that Nordic Inter Dev Consultants was registered only as a business name, the Defendant conceded that the entity was not a Limited Liability Company. He admitted that he had never filed any documentation to demonstrate that Nordic Inter Dev Consultants operated as a registered Company with separate legal personality.
 82. Upon being shown a payment voucher in the amount of Kshs.336,400, which was allegedly drawn in favour of the Kenya Revenue Authority (KRA), the Defendant denied having prepared either the voucher or the corresponding cheque. However, he acknowledged that the cheque number matched the one indicated on the voucher. He further admitted that both the voucher and the cheque were submitted to the Directorate of Criminal Investigations (DCI), and following the forensic analysis, that he was indeed the individual who prepared those documents.
 83. The Defendant also conceded that it was within his scope of duties to prepare cheques for the Plaintiff, and when asked whether the Plaintiff acknowledged any of the payments made to Nordic Inter Dev Consultants, he failed to produce any supporting documentation, citing that the relevant records, such as vouchers, invoices, and letters of instruction, were stored at the Plaintiff's office, to which he no longer had access. As a result, he was unable to provide any proof of legitimate instructions from the Plaintiff or authentic invoices that justified payments made to Nordic Inter Dev Consultants.
 84. The Defendant further asserted that his departure from the Plaintiff's employment was voluntary, and occasioned by the fact that he was a shareholder in the Company. He categorically denied having ever received a letter to show cause or a summary dismissal letter, allegedly sent via email, claiming that he only became aware of those documents a year later, upon reviewing the pleadings filed in this case.
 85. He reaffirmed that it was his duty to prepare cheques for the Plaintiff, but when questioned regarding cheques alleged to have been inflated or altered, he denied authoring or tampering with them. He reiterated that the documentation evidencing the relationship between Nordic Inter Dev Consultants and the Plaintiff was stored on his office computer and among his personal accessories, all of which were left in the Plaintiff's premises. He contended that although the Plaintiff had conducted a search of his former office, they failed or refused to produce any of the said documents.
 86. He also admitted that there was a time when he was paid separately for consultancy services rendered to the Plaintiff. Notably, those payments were not made to Nordic Inter Dev Consultants, but rather deposited directly into his personal savings account, a fact he did not dispute.
 87. During re-examination, the Defendant further testified that he had undertaken consultancy work for the Plaintiff and its Managing Director in Somalia, specifically in Kismayu, and that some of the payments he received were in respect of that work. Regarding payments deposited into his personal



account, the Defendant explained that this was a deliberate decision to avoid incurring transfer charges, and therefore he advised that the funds be sent directly to him.

88. In addressing the cheques made out to Nordic Inter Dev Consultants, the Defendant maintained that none of those cheques bore the name “Kenya Revenue Authority” or “KRA”. With respect to the altered and inflated cheques, he categorically denied any affiliation with the service providers who ultimately benefited from the funds. He contended the payee in the allegedly inflated cheques included a former employee of the Plaintiff, who had no personal or professional connection to him.
89. The Defendant’s second witness, Mr. Emmanuel Kuria Kenga (DW2), testified that he is a Forensic Document Examiner with over thirty (30) years of professional experience in the field. He stated that he was instructed to conduct a forensic analysis of documents relevant to the present case and subsequently compiled a forensic report dated 14th October, 2022, which he formally produced and adopted in support of the Defendant’s case. The primary objective of his examination was to analyze and compare the signatures and handwriting appearing on various invoices and cheques. Based on his expert findings, DW2 concluded that the signatures and handwritings on either the invoices or the cheques were authored by the same individual, and there was no evidence of forgery or fraudulent tampering in the documents he examined.
90. During cross-examination, DW2 clarified that his forensic analysis led to the conclusion that the Defendant, Mr. Joseph Kivuva Mutisya, was indeed the author of the Plaintiff’s cheques, including those issued to Nordic Inter Dev Consultants. He further testified that the signatures on the cheques matched that of one John Fox, based on a specimen signature provided for comparison. However, DW2 conceded that he did not conduct a conclusive examination on the signatures appearing on the invoices, and therefore could not affirmatively state whether or not they were authored by the Defendant. He also admitted that he did not examine the cheques issued to Nordic Inter Dev Consultants for possible alterations, as that was outside the scope of his instructions.
91. On re-examination, DW2 emphasized that, by virtue of his extensive professional experience and training, he possesses the requisite expertise to identify alterations or additions in handwriting and signatures. He affirmed that he would have been able to determine whether any of the cheques were altered. However, he reiterated that he was not requested or instructed to undertake such an examination in this case.
92. The Defendant’s third witness, No. 235221 Chief Inspector of Police (CIP) Benard Cheruiyot (DW3), also gave testimony and informed the Court that he is a trained and experienced Forensic Document Examiner, currently based at the National Forensic Laboratory, and has served in that capacity for over ten (10) years. He testified that he was assigned to examine documents in connection with the present dispute. And pursuant to a formal request by the Banking Fraud Investigation Unit, he prepared a forensic report dated 8th February, 2022, which he produced and adopted as part of his evidence-in-chief.
93. DW3 testified that after carefully examining the documents, he concluded that the cheques in question were authored and prepared by the same person, and that there was no evidence of any alterations on the face of the cheques. He further noted that the word “K.R.A.” did not appear on any of the cheques examined. In addition, he was instructed to determine whether the signatures on the cheques matched those on the corresponding vouchers. He confirmed that the signatures on both sets of documents were consistent and executed by the same individual, and there was no evidence of forgery.
94. During cross-examination, DW3 testified that he examined the relevant cheque book, with particular focus on Cheque No. 004219, where the cheque stub indicated that the intended payee was “K.R.A.”. Upon analyzing the handwriting on both the cheque stub and the cheque itself, he concluded that



the Defendant, Mr. Joseph Kivuva Mutisya, was the author of the stub entry. Nevertheless, DW3 emphasized that his mandate did not extend to assessing the discrepancy between the name of the payee as written in the cheque stub and the actual cheque presented to the bank for payment. He reaffirmed, however, that there was no evidence of physical alterations on the cheques themselves.

95. Following the conclusion of oral testimony, the Court directed both parties to file written submissions in support of their respective positions. As reflected on the record, the Plaintiff filed its submissions dated the 16th December, 2024, while the Defendant filed his submissions which are dated the 26th May, 2025. The Court has carefully considered and reviewed both sets of submissions. However, given that they largely reiterate the evidentiary material already summarized above, the Court shall not reproduce them verbatim herein but will highlight and reference relevant arguments and positions in the course of its analysis and final determination.

Analysis and Determination

96. Having considered the pleadings, the evidence adduced by both parties, the rival submissions of counsel, and the applicable legal principles, this Court is now tasked with determining whether the Plaintiff has proved its case against the Defendant on a balance of probabilities, as required by Section 107 of the *Evidence Act*, Cap 80 Laws of Kenya to warrant the granting of the prayers sought in the Plaintiff.
97. The gravamen of the Plaintiff's case is that the Defendant, while serving as the Plaintiff's accountant, fraudulently manipulated cheque payments, diverted funds to companies allegedly associated with him, and engaged in forgery and digital alteration of vouchers and documents with the aim of unjust enrichment. On the other hand, the Defendant categorically denies these allegations, asserting that at all material times, he acted under the direct supervision of the Plaintiff's directors and had no mandate to authorize, sign, or process payments independently of the Directors' authority.
98. In the case of *Central Bank of Kenya Ltd –vs- Trust Bank Ltd & 4 Others*, NAI Civil Appeal No. 215 of 1996(UR), in considering the standard of proof required where fraud is alleged, the Court of Appeal stated thus:-
- “The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary Civil Case.”
99. Above all, the Blacks Dictionary describes ‘fraud’ as follows:-
- “Fraud consists on some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury....As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.”
100. Additionally, under Order 2 Rule 10 of the Civil Procedure Rules, it is proposed that allegations of fraud must be pleaded with specificity, giving particulars including the acts complained of, the dates, the actors, and how the alleged fraud was perpetrated.



101. Therefore, it is a well-established principle of law that allegations of fraud must be pleaded with specificity and proven with cogent evidence. Fraudulent misrepresentation, in particular, is defined by The black Laws Dictionary above, to imply a false representation made knowingly, or without belief in its truth, or recklessly without caring whether it be true or false and made with the intention of inducing another party to act upon it, thereby causing loss or detriment.
102. In the English case of *Derry –vs- Peek* (1889) 14 App Cas 337, the House of Lords clarified that a representation is fraudulent where it is made knowingly intended for another party to act on it for its detriment, without belief in its truth, or recklessly as to whether it is true or false.
103. The principle has been domesticated in Kenya and consistently followed, including in the case of *Vernon A. Onditi –vs- National Bank of Kenya Ltd & 2 Others* [2016] eKLR, where the Court stated that fraud must be specifically pleaded and proven to a standard above the ordinary balance of probabilities.
104. The statutory framework in Kenya reaffirms this position. Section 107 of the *Evidence Act*, Cap 80 Laws of Kenya, places the burden of proof on ‘he who alleges’ while Section 109 of the same Act further requires that the proof must be as to the existence of facts.
105. When fraud is alleged in civil proceedings, the evidentiary threshold is higher than a mere balance of probabilities, though not as high as beyond reasonable doubt, a principle affirmed in the case of *Kinyanjui Kamau –vs- George Kamau* [2015] eKLR, where the Court of Appeal held that:-

“...It is well established that allegations of fraud must be pleaded with particularity and proved with cogent evidence, and that the standard of proof is higher than a balance of probabilities although not as high as beyond reasonable doubt.”
106. In the present case, in Paragraph 42 of the *Plaint*, the Plaintiff alleged that on diverse dates between 2012 and 2018, the Defendant fraudulently misrepresented to the Plaintiff’s directors that various cheques drawn in favour of “K.R.A” were for tax remittances to the Kenya Revenue Authority, knowing well that the cheques would ultimately be altered and redirected to Nordic Inter Dev Consultants, a business allegedly owned or controlled by the Defendant. It is alleged that through this scheme, the Defendant fraudulently diverted a cumulative sum of Kshs.43,090,597.00. Further claims were made that between 2013 and 2017, the Defendant embezzled an additional Kshs.10,267,000.00 by inflating petty cash cheques, and between 2007 and 2012, misappropriated Kshs.12,086,453.00 by replacing original payment vouchers with forged ones which were not signed by any Director or the signature thereof was superimposed.
107. With respect to the claim for fraudulent misappropriation of Kshs.43,090,597.00 allegedly redirected to Nordic Inter Dev Consultants, the crux of the Plaintiff’s case lies in the contention that the Defendant fraudulently altered cheques after they had already been duly signed by the Plaintiff’s Directors. The Plaintiff asserted that while acting in his capacity as the Company’s Accountant, the Defendant initially prepared the cheques with “K.R.A.” indicated as the intended payee for tax remittance purposes, but subsequently altered the cheques to reflect Nordic Inter Dev Consultants, a business name allegedly associated with the Defendant as the beneficiary.
108. Furthermore, the Plaintiff emphasized that the Defendant did not dispute having received the funds and thus insisted that the sum of Kshs.43,090,597.00 was fraudulently siphoned from the company through this redirection. However, upon a thorough examination of the documentary evidence, including cheque images, payment vouchers, and related supporting documentation, the Court observes that all the disputed cheques bear the signature of the Plaintiff’s authorized director, Mr. John



Fox. This fact was not only acknowledged by the parties but was also substantiated by expert testimony from two independent forensic document examiners being DW2 Mr. Emmanuel Karisa Jenga and DW3 Chief Inspector Benard Cheruiyot. Both experts independently examined the contested cheques using specimen signatures and handwriting analysis, and each concluded that the signatures on the cheques were genuine with no signs of forgery or tampering noted, and that although the Defendant authored or prepared the cheques in his accounting role or capacity, he did not sign or execute the payments himself.

109. In his defence and written submissions, the Defendant maintained that the payments made to Nordic Inter Dev Consultants were legitimate and arose from consultancy services allegedly rendered to the Plaintiff. From the Court's analysis, it is evident that for a claim of fraud to succeed, there must be clear and convincing evidence of a deliberate and deceptive act undertaken with the intention of causing harm or loss to another party. In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. In the present instance, the Plaintiff failed to provide a critical piece of evidence, namely, a copy of the original cheques purportedly made out to "K.R.A." prior to their alleged alteration. Instead, the Plaintiff relied heavily on cheque stubs and invoices to support the contention that the payments were originally intended for the tax authority. However, this circumstantial evidence does not displace the clear findings of the forensic experts, who confirmed that there were no alterations on the physical cheques themselves.
110. Moreover, testimony by PW1 revealed that, as a matter of standard banking procedure, the Plaintiff's bank would typically verify each cheque by calling the authorized signatory Directors before honouring any payment. The Defendant neither had authority to sign nor the ability to execute bank transactions independently. The entire financial authorization process, including the verification of cheque details and final approval, remained squarely within the exclusive domain and control of the Plaintiff's Directors.
111. Thus, the Plaintiff has not discharged the legal burden required to establish the claim of fraud against the Defendant on a balance of probabilities. The absence of an original draft cheque payable to "K.R.A.", contrasting with the final version payable to Nordic Inter Dev Consultants, is a critical evidentiary gap without which the Court cannot reasonably reject the forensic evidence which confirms the authenticity of the cheques as drawn and signed. Thus, the Plaintiff's claim for fraudulent misappropriation under this head is, regrettably, unsubstantiated.
112. Turning to the second allegation, that the Defendant fraudulently inflated petty cash cheques to his own benefit, the Court once again finds a dearth of credible evidence. No direct evidence has been adduced to establish that it was the Defendant who altered the figures on the cheques or manipulated the amounts stated in the accompanying payment vouchers.
113. It was claimed that between 2013 and 2017, the Defendant amended amounts on already signed cheques, thereby withdrawing more funds than initially approved and pocketing the surplus. The Plaintiff relied on discrepancies between some voucher amounts and the final amounts encashed, suggesting manipulation. PW4, the Plaintiff's office messenger and bank agent, testified that he was often directed by the Defendant to cash cheques at the bank and return the funds to him. Yet, crucially, he did not testify that he personally handed over the total inflated amounts or that he was aware of any overdrawn amounts being pocketed by the Defendant. He offered no records to substantiate the claim that the cash amounts he handed over to the Defendant after cashing out, was the inflated amounts which exceeded what the vouchers stipulated.
114. In absence of corroborative evidence showing that the Defendant indeed altered the cheque amounts or that he misappropriated the excess, this allegation remains speculative. As the Court of Appeal



- stated in the case of *Central Bank of Kenya –vs- Trust Bank Ltd & Others* [1996] eKLR, mere suspicion cannot found a claim of fraud. Thus, the standard of proof demands more than conjecture or assumption; it requires a clear, persuasive linkage between the Defendant’s actions and the alleged loss.
115. In the absence of such affirmative evidence, the Court cannot simply infer, based on the fact that higher amounts than initially reflected in the vouchers were withdrawn from the Plaintiff’s Bank Account and paid over the counter to PW4, that the Defendant misappropriated the excess amounts. The mere fact that the Defendant was responsible for overseeing cash transactions within the Company is not sufficient, on its own, to prove fraudulent conduct. To conclude otherwise would amount to drawing inferences based purely on suspicion and circumstantial irregularities, without the support of cogent evidence, and would fall short of the legal threshold required to prove fraud, even in civil proceedings.
116. Although it may appear, in hindsight, that the Plaintiff’s directors authorized certain payments that were questionable or perhaps unwarranted, the fundamental legal question remains: Was there credible, compelling evidence demonstrating that the Defendant conspired with third parties to misappropriate funds for his personal gain, and did so without the knowledge or complicity of the company’s Directors?
117. The Plaintiff’s case relies heavily on inference rather than direct evidence. It is argued that because the Defendant was linked to certain entities that received payments from the Plaintiff, and because of the existence of inconsistencies in the vouchers and cheque records during the Defendant’s tenure as accountant, he must have orchestrated a scheme to defraud the Company. However, inference alone, no matter how suspicious the circumstances may appear, cannot take the place of tangible evidence, especially where the allegations involve fraudulent misappropriation of significant sums.
118. No financial records or transaction trails were produced to demonstrate that, after withdrawing the allegedly inflated amounts, PW4 handed the full sums to the Defendant, who then returned only a portion to be used for paying service providers in respect of the relevant utility bills. This absence of a verifiable link between the withdrawn funds and the alleged misappropriation by the Defendant critically undermines the Plaintiff’s case. The allegation remains speculative and is unsupported by any admissible or corroborative evidence. While the standard of proof in civil proceedings is generally based on a balance of probabilities, it is well established that in cases where fraud is alleged, the evidentiary burden is notably higher. The courts require not only persuasive but also precise and credible evidence to meet this elevated threshold. In the present matter, the Plaintiff has failed to satisfy this burden.
119. A fundamental tenet of corporate governance is that the Directors of a Company are its guiding mind and will. Where Directors have, over an extended period, personally authorized payments, such as those in question in this case spanning from 2007 to 2018, they are presumed to have exercised due care and oversight. The responsibility for reviewing and approving financial disbursements ultimately rests with them as it is the duty of Company Directors to undertake regular financial reviews, verify audit reports, scrutinize payment vouchers, and question any anomalies. The Plaintiff’s Directors had both the authority and the obligation to monitor the Company’s financial affairs hence their failure to detect what they now characterize as fraudulent conduct over a period of more than ten years reflects a significant breakdown in the Plaintiff’s internal controls, rather than the actions of a single rogue employee.
120. As emphasized in *Central Bank of Kenya –vs- Trust Bank Ltd & Others* [1996] eKLR, courts must be cautious not to infer fraud unless supported by unequivocal evidence:-

“Allegations of fraud must be strictly proved. The standard of proof is higher than a balance of probabilities and such proof must be more than mere suspicion.”



121. This principle applies squarely in the present case. Fraud cannot be presumed merely because the Plaintiff is now dissatisfied with payments it previously approved or because the Defendant had an administrative role in their processing. Ultimately, the Court cannot impose liability on the Defendant based on conjecture, retrospective suspicion, or alleged improprieties in financial management unless these are substantiated by clear, consistent, and corroborated evidence. No proof has been provided to show that the Defendant acted without the Directors' knowledge, misled them, or exceeded his authority in a manner that would support a finding of fraud. The Plaintiff must therefore accept the consequences of its own internal governance failures and cannot shift blame without meeting the required standard of legal proof.

Disposition

122. In light of the foregoing analysis, I find that the Plaintiff has failed to establish, to the requisite standard, that the Defendant fraudulently misappropriated or embezzled funds from the Plaintiff. The payments complained of were made with the express approval and signature of the Plaintiff's directors, who had the ultimate authority and responsibility for the Company's finances.

123. No sufficient evidence has been laid before this Court to demonstrate that the Defendant colluded with third parties or manipulated the financial processes of the Company for personal gain. While the Defendant may have prepared cheques, payment vouchers, or documents in his role as an accountant, the final authorization lay with the Directors.

124. Accordingly, I find no merit in the Plaintiff's suit. The same is hereby dismissed in its entirety.

125. Each party shall bear its own costs, noting that while the Plaintiff's concerns were genuine, they stemmed more from managerial oversight lapses rather than fraud on the part of the Defendant.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF MAY , 2025.

D. O. CHEPKWONY

JUDGE

