



REPUBLIC OF KENYA



KENYA LAW
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**Shisoka v Kariuki BS Holdings Limited (Commercial Case
626 of 2007) [2024] KEHC 5953 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL CASE 626 OF 2007**

GL NZIOKA, J

MAY 6, 2024

BETWEEN

ELSEPHAN INGALULA SHISOKA PLAINTIFF

AND

KARIUKI BS HOLDINGS LIMITED DEFENDANT

JUDGMENT

1. The plaintiff commenced the suit herein vide a plaint dated 26th November 2007 and amended on 26th February 2015, seeking for judgment against the defendant for: -
 - a. An order directing the defendants to make a full and total disclosure of earnings of the business Tausi Cake & Candy Shop and banking made from May 2003 to the date of closure of business or determination of this case.
 - b. For declaration that the defendant's action not to pay over 50% of the net earnings on profit of the partnership business Tausi Cake & Candy Shop to the plaintiff was in breach of the partnership custom and provisions and was an illegality.
 - c. For an order directing the defendant to pay over to the plaintiff 50% of such established net earnings or profits of the business and the returns from the sale or transfer or lease of the business plus accrued interest thereon being dividends accrued, due and outstanding calculated in the total sum of Kshs. 17,089,944/-
 - d. An order for the defendant to pay interest on the above sum at court rates from the time of filing of this case to full payment.
2. The plaintiff's case is that, on or about 25th September 1997, he entered into a partnership business with the defendant under the name and style of; Tausi Cake & Candy Shop. That the defendant's directors are; Charles Kariuki, Bhupendra Shah, and Sanju Shah.



3. That the partnership business commenced in the month of May, 2003 and his responsibility was to oversee the day to day operations of the business including; ensuring supplies were sourced, monies collected, overheads paid, and the net daily earnings handed over to Mr. Kariuki for banking.
4. He avers that he handed over to the partner directors' the net daily and monthly earnings for banking ranging between Kshs. 179,949 and Kshs 922,827.
5. That, before the business opened its doors, he was requested by the business partners and he agreed to be a signatory to the business bank accounts. However, the partners dealt with banking business and the funds in their own style and without his knowledge.
6. That, on 5th August 2010, the defendant's directors using a gang of thugs forcefully locked him out of the business and commenced running the business exclusively and despite an order of injunction issued by the court to restrain them, they disobeyed the order and were held in contempt of the order and punished.
7. He avers that his ouster was a bid to ensure that he did not access records of the business to support his case and thus denying him a right to information on the accounts. That as a result he has relied on copies of accounts, schedules and register of business assets he prepared when running the business.
8. Further, in a bid to frustrate him, the defendant through its directors purported to sell, transfer or lease the business to a third party without disclosing to him the amount of sale or lease of the business.
9. That furthermore, the defendant has never disclosed the business total yearly earnings and payments of dividends for the years; 2003 to 2010, and have ignored his numerous verbal and written requests for disclosure. That the defendants have instead engaged in the conduct of arrogance and evasiveness.
10. The plaintiff tabulates at paragraph 12 of the amended plaint, the profits made by the business between in the years of; 2003 to 2010 totalling; Kshs. 47,186,086. He avers that taking into account the income tax at 30% remitted to the Kenya Revenue Authority (KRA), then the net profit is Kshs. 33,030,260. That he is entitled to 50% thereof being; Kshs. 16,515,130.
11. Further, that the net value of the business's assets as at the year 2010 was Kshs. 1,149,629, and therefore upon sale he is entitled to 50% therefore being Kshs. 574,814. As a result, he seeks for orders as herein pleaded.
12. However, the defendant denied liability and filed a counter claim vide a statement of defence and counterclaim dated; 29th April 2008 and amended on 29th September 2008 and further re-amended on, 29th May 2015.
13. The defendant denied the plaintiff's averment that the parties were equal partners in the business as strictly defined under the Partnership Act and averred that the plaintiff was a salaried employee working as the overall manager of the defendant's various business entities and was included in the registration of the partnership his capacity as a manager.
14. That no monthly earnings were handed over to the defendant, and if they were, which is denied, the plaintiff did so as its employee.
15. Further, the plaintiff has failed to explain why he is seeking for "dividends" in a partnership and more so five (5) years after the registration of the purported partnership and without specifying the exact amount yet he has given figures of the money he used to make for the defendant. The defendant argued that it has no duty to make any disclosures to him.



16. The defendant avers that it is the plaintiff who owes the defendant money which he received from the business and vide its counterclaim, prays for judgment against the plaintiff for:
 - a. Kshs. 14,129,301.60
 - b. Costs and interest.
17. The defendant case is that, the plaintiff was employed in the year 1997 and elevated to a rank of a manager on 1st May 2003 earning a monthly salary of Kshs. 15,000.
18. That, during the period of 1st September 2001 and 30th April 2003, the plaintiff was working as a supervisor, but he deliberately refused to account for sales and expenses of the business and net cash sales for renovation of the premises estimated at Kshs. 800,000.
19. Further, between 19th May, 2006 and 21st May, 2006 while working as a manager, he failed to remit net cash sales amounting to Kshs. 89,564. Furthermore, he has not accounted for night shift sales; from 17th January, 2005 to the date of filing of the counter claim, being a period of twenty-six (26) months at average net sales of; Kshs. 65,254 per month, totalling Kshs. 1,696,60. That, he only remitted the net cash sales for one (1) month between 17th January 2005 and 17th February 2005.
20. The defendant pleaded that on without prejudice basis, in the year 2006, the plaintiff withdrew Kshs. 649,757 from the business without the defendant's knowledge and appropriated it to himself. Moreover, he failed to remit sales of Kshs. 29,560 as tabulated under paragraph 7(c) of the counter claim.
21. That the defendant later realized that the plaintiff had been opening and operating the shop at night without its authority thus gaining a profit at its expense. As a result, the defendant is claiming the following dues:
 - a. Kshs. 4,920,000, being night shift sales between 18th February 2005 to date of claim at an average net sale of Kshs. 120,000 per month;
 - b. Kshs. 1,872,790, being costs of raw materials used during the night sales between 18th February 2005 to 17th June 2008 That the cost account for 70% of the sales as net sales account for 30%;
 - c. Kshs. 1,116,840 being the cost of electricity and water used during night operation for forty-one (41) months at a cost of Kshs. 6,200 for water and Kshs. 13,000 for electricity; and
 - d. Kshs. 3,754,096.06 being the rent for forty-one (41) months which the plaintiff operated the night shifts without authority of the defendant.
22. That, the plaintiff rushed to court when he learnt of intentions to summarily dismiss him and despite demand and notice of intention to sue, the plaintiff has refused to pay as such the defendant prays that the orders sought for in the counterclaim be granted.
23. However, the plaintiff filed a reply to defence and defence to counterclaim dated; 15th May 2008 and reiterated his averments in the plaint. He described the defendant monetary demand as imaginary and without basis and argued that the defendant never demanded for payment from himself before filing the suit.
24. The case proceeded to full hearing wherein the plaintiff adopted and relied on his witness statement dated, 17th March 2016 which reiterate the averments in the plaint verbatim.



25. In cross-examination, the plaintiff stated that, the partnership business was registered in the year 2007 but on further cross examination he stated it was registered in the year 1997. He confirmed that he filed the suit against the defendant in the year 2007.
26. He further conceded that he was employed in the year 1993 as a supervisor in the defendant's different company before joining the partnership and he received and was still receiving a salary.
27. He maintained that he contributed capital to the business but the documents in proof thereof are held by the defendant. He further maintained that he was never paid dividends for 10 years. He conceded that he operated the business at night for only one (1) month.
28. He reiterated that the business commenced in the year 2003 but conceded that it had, "up and downs" as evidenced by the letter dated 24th November, 2005. Further, there are no audited accounts of the business and he doesn't know the liabilities of the company. That Mr Kariuki was the company accountant.
29. In re-examination he stated that the parties were running Tausi Cake and Candy Shop and that the business could not run without injection of capital.
30. That, he has supplied records of accounts but the defendants have not provided any other records in challenge thereof. That his co-partners had the responsibility to ascertain the liabilities of the business and explain how they utilized income from the business. Further he has availed a document that allowed other partners to run the accounts.
31. The defendant's case was supported by evidence of two (2) witnesses. Sanju Shah, its director, who adopted and relied on his witness statement dated; 28th October 2016 and averred that he knew the plaintiff since 1990, when he was employed as a waiter at one of their establishments and then promoted to a headwaiter, supervisor and finally a manager within a short period of time.
32. That the defendant opened another business known as; Tausi Cake and the plaintiff was given an opportunity to manage it and therefore he managed two entities and was paid a salary for both.
33. He reiterated that the plaintiff started operations at night without the company's knowledge using raw materials for dayshift and employed people to work at night.
34. Further, he did not remit nor account for sales as well other expenses like rent, insurance and raw materials and neither did he account for sales from the shop within the company, where bread, sodas and cakes were sold. Further, the plaintiff has never been a signatory to any bank account or signed any legal agreement with the company.
35. In cross-examination, Mr. Shah was referred to page 6 of plaintiff's documents showing returns of the business of the Tausi Cake and Candy Shop dated 6th September, 2007 and which indicate both the plaintiff and defendant as proprietors.
36. The witness confirmed that Mr. Kariuki was in charge of the business and that, the plaintiff remitted all the money to him and he banked at Prime Bank Ltd where the bank account was held. He further confirmed a special resolution dated; 29th August 2003 for opening a bank account does not indicate the entity it relates to.
37. He conceded that the defendant has not supplied any accounts to show how the business was performing. He stated that the business closed down ten (10) years ago and that the directors did not receive dividends as the business was not making any profit.



38. In re-examination, the witness stated that Mr Kariuki was the managing director whereas the plaintiff supervised the day to day running of the business. That the plaintiff also worked at the defendant's Masters Bakers. Further, the plaintiff is indicated as a partner cum proprietor in the returns on the advice of the bank but the plaintiff did not inject any capital in the business.
39. The defendant's second witness, was its other director; Bhupendra Shah, who adopted and relied on his witness statement dated, 25th January 2016 and the accompanying documents. He led evidence similar to that of his co-director Sanju Shah save to add that, the plaintiff did not attend any meetings of the board of directors nor was he involved in any business negotiations.
40. In cross-examination, he stated that no audited accounts had been filed. Further, that the business closed at 8:30 pm and never operated at night.
41. In re-examination, the witness stated that the plaintiff had admitted operating the business at night.
42. At the conclusion of the case, the plaintiff's filed submissions dated, 30th November 2020 and identified four (4) issues for determination as follows:
- a. What was the nature of the plaintiff and defendant's engagement?
 - b. Is the plaintiff entitled to prayers as sought in the amended plaint?
 - i. Should the defendants be compelled to make full and total disclosure of the total earnings of the business enterprise Tausi Cake & Candy Shop and the banking made from the month of May 2003 to date of closure of the business;
 - ii. Is the plaintiff entitled to the calculated dividends in the total sum of Kshs 17,089,944 together with interest being established net earnings or profits and the returns from the sale or transfer of the business?
 - c. Is the defendant's defence and counterclaim justified in fact law and substance?
 - d. Who should bear the cost of this suit?
43. On the first issue, the plaintiff submitted that, there was a verbal agreement between him and defendant's directors to join forces to form, operate and run a cake and candy shop. That the verbal agreement crystalized when they jointly registered a business trading as Tausi Cake and Candy Shop.
44. The plaintiff cited the provisions of, section 3 (1) of the Partnership Act (Cap 29) of the Laws of Kenya, (repealed) (herein "the Act") which defines a partnership as "the relation which subsists between persons carrying on a business in common with a view of profit".
45. He further, relied on the business dictionary which defines a partnership as:
- "A type of business organization in which two or more individuals pool money, skill and other resources, share profits and loss in accordance to a partnership agreement. In absence of such agreement, a partnership is assumed to exist where the participants to in an enterprise agree to share the associated risks and rewards proportionately".
46. Further reliance was placed on "Principles of the Law of Partnership (10th Edition, London, Butter Works, 1975)" by E.R Hardy Ivamy where a partnership is defined as "the relation which subsists between persons carrying on a business in common with a view for profit".
47. The plaintiff argued that, persons can form a partnership either orally or in writing and relied on the case of; Mworira & Another vs Kiambati [1988] KLR 665 where the Court of Appeal stated that, in



many cases partners establish their business by an oral agreement. That, in a verbal agreement a person has to establish the existence of the partnership by proving material items either by their conduct, and/or the mode they dealt with each other and with other people.

48. He argued that, the letters from the Registrar of Companies dated; 19th April 2006 and 6th September 2007 are sufficient evidence to confirm there was a partnership relationship between the parties herein.

49. On whether the defendant should be compelled to make a full and total disclosure of earnings of the business from May 2003 to date, the plaintiff relied on section 7 of the Act that provides every partner is an agent of the firm. He further relied on section 28(a) of the Act which states that:

“The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules—

- a. all the partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses whether of capital or otherwise sustained by the firm;
- b. the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—
 - i. in the ordinary and proper conduct of the business of the firm;
 - ii. or in or about anything necessarily done for the preservation of the business or property of the firm;

50. He further cited section 49 of the Act which states that the rules of equity and common law applicable to partnership in England shall apply to partnership in Kenya and further relied on section 24 of the English Partnership Act 1890.

51. He relied on an extract in; Lindley and Banks of Partnership (19th Edition) at page 672, paragraph 19 which states as follows: -

“The rule of equality embodied in the above section will, in the absence of any contrary agreement, always be applied when determining partners’ shares in the firm’s fixed capital, income or trading profits and capital or assets surpluses, i.e. amount by which the market value of the partnership assets exceeds their acquisition or book value”.

52. The plaintiff reiterated that he requested for disclosure of total earnings and sharing of dividends but the defendant did not comply and that during cross examination of the defence witnesses on the same, they evaded the question shifting the responsibility to Mr Kariuki who did not testify.

53. The plaintiff urged the court to compel the defendant to disclose the earnings of the subject business and cited the case of; MWK & 2 Others versus RKK [2018] eKLR, where the court held that, the distribution of net capital or value of partnership shall be shared equally between the partners.

54. He submitted on his claim of dividends in the sum of Kshs. 17,089,944 plus interest and returns from the sale or transfer of business, that he has availed raw records of the net profits of the business from 2004 to 2008 in the sum of Kshs. 28,780,732 and invited the court consider the same, and compute profitability and dividends due to him.



55. On whether the defence and counterclaim are justified, the plaintiff submitted that, a counterclaim must be meritorious in fact, law, and substance, however the counterclaim herein is a fishing expedition.
56. That, the defendant controlled all the monies deposited in the account but failed to submit accounts to show that the company was making losses. Further, the defendant failed to adduce any evidence to prove the plaintiff was working at night.
57. Finally, the plaintiff submitted that, he was entitled to costs of the suit and cited section 27 of the *Civil Procedure Act* (Cap 21) Laws of Kenya, which states that: -
- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:
- Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
- (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.
58. The defendant in response filed submissions dated 27th January, 2021 and submitted that the plaintiff has failed to produce evidence to prove injection of capital in the subject business.
59. Further, no partnership deed or agreement has been produced to define over-reaching goals, levels of give and take, areas and lines of responsibility, lines of authority and succession, how success is evaluated and distributed and a variety of other factors negotiated, in a nutshell, how rights, duties and responsibilities were to be shared and enforceable by civil law. Reliance was placed on the case of; J K Kinoti v G J Kibanga [2013] eKLR.
60. That the plaintiff is relying on the certificate in his hands to swindle the defendant and rushed to file the case within six (6) years of statutory limitation. That, although registration of the partnership is conceded, it was for operation purposes and as a result of misdirection of the defendant by its advocate although done in good faith and trust. Further, there is no evidence of partnership meetings and/or minutes or resolution to support allegation of oral partnership.
61. That, it is not understandable why the plaintiff has taken ten (10) years to make the claim for dividends. Further, the claim is based on audited and unsubstantiated accounts.
62. Further, it is wrong for the plaintiff to seek profit without evidence of his capital contribution to the business. The case of; MWK & 2 Others v R K K [2018] eKLR was relied on.
63. The defendant reiterated that, the plaintiff did not deny operating the business at night without the consent of the defendant and nor did he specifically traverse the same and therefore he admitted the same.
64. In additionally, the plaintiff did not controvert the loss as pleaded by the defendant as his reply to defence and counterclaim was a mere denial. Consequently, the defendant is entitled to the amounts sought together with loss suffered as per the documents. Reliance was placed on the case of; Raghbir Singh Chatte v National Bank of Kenya Limited [1996] eKLR.



65. Finally, that the plaintiff has admitted to receiving a salary which gives impetus to the defence case that he was an employee, or at the very best salaried partner.
66. At the conclusion of the case and in considering the evidence adduced and the submissions tendered, I find that, the following issues arise for determination:
- a. Whether the plaintiff entered into a partnership relation with the defendant.
 - b. If so, when did the partnership business commence?
 - c. What was the responsibility of the plaintiff in the business.
 - d. Was the plaintiff a signatory to the defendant's bank account?
 - e. Has the total earning of the business and or dividend for the year 2003 to 2010 been proved?
 - f. Has the sum of Kshs. 47,186.080 stated to be profits of the company for the year 2003 to 2010 been proved?
 - g. Similarly has the figure of Kshs. 1,149,629 alleged to be the value of the assets of the defendant company been proved?
 - h. Should the orders sought in the respective claims be granted.
67. As regard the plaintiff's case, he has relied on documents filed in court on 19th August, 2009 dated 20th September, 2008 to prove and/or support his case. I shall now consider those documents.
68. As regard the existence of the partnership, the plaintiff has produced two search certificates from the Registrar of Companies dated 19th April, 2006 and 6th September, 2007 which stated as follows: -
- “Tausi Cake Candy shop was registered on 25th September 1997 and the proprietors are Kariuki B.S Holdings Ltd and Elsephan Ingalula shisoka.”
69. The plaintiff's evidence is that they were equal partners in the business. The defendant on its part denies that the plaintiff was a partner in the subject business and argue he was a manager of Tausi Cake and Candy Shop.
70. However in cross-examination, the defendant witness Sanju Shah conceded to the two search certificates from the Registrar of Companies which show the plaintiff was a proprietor of the subject business but maintains that no partnership agreement was produced to prove that he was a partner in the business. That he was a proprietor purely for operation purposes.
71. In considering the subject issue, I note that the documents produced herein clearly indicates that the plaintiff was not just a mere employee of Tausi Cake and Candy Shop but a proprietor thereof. In that case, it is immaterial the reason of his appointment as a proprietor and I find and hold he was a proprietor in the subject business.
72. The next question relates to the date when the business started to operate. According to the plaintiff (as stated in his statement filed in court), the business commenced in the month of May 2003. However, there is no document to prove the same. The only document indicative of the same, is a special resolution dated 29th August 2003 passed to authorize the opening of a bank account.
73. But even then, the resolution in question does not refer to Tausi Cake and Candy Shop. It simply states that it was passed to authorise opening of a bank account for “the above enterprise”. Furthermore, that resolution is not supported by any minutes of the meeting where the resolution was passed.



74. I therefore find and hold that, the plaintiff has not proved that, the business herein commenced in the month of May 2003.
75. The third issue relates to what the plaintiff's responsibility was in relation to the management of the business. He stated that, he was in charge of overseeing the day to day running of the business which involved procurement of supplies, collection of daily dues, payment of overheads, and hand over of net profits to Mr. Kariuki, a director in the defendant's company.
76. The defendant's witnesses Bhupendra Shah and Sanju Shah gave corroborative evidence that the plaintiff was a manager of the business.
77. From the aforesaid, it is evidence that the plaintiff was a manager over seeing the daily operations of the business as conceded by himself and indeed earned a salary for it.
78. The other issue is whether plaintiff was a signatory to the bank account. In that respect the special resolution sent to the bank for opening of the account states as follows: -
- “It is also agreed that Messrs Bhupendra Shah, Sarju Shah and Charles Kariuki be and are hereby authorized to sign on behalf of the enterprise such forms of documents that, the Bank may require from time to time”.
- Pursuant to the afore documents produced, there is no evidence to that effect that the plaintiff was a signatory to the account.
79. I shall deal with the next two other issues together; being whether the plaintiff has proved the sums indicated as profits made by the business and/or the value of the assets of the company and which he claims herein. The plaintiff has tabulated the respective sums of Kshs. 47,186,086 and Kshs. 1,149,629 at paragraph 12 and 13 of the amended plaint dated 26th February 2015.
80. It suffices to note that claims are special damages claims which the law require to be specifically pleaded and strictly proved. In my opinion the claims are pleaded but the question that arise is whether the same have been specially proved.
81. In analysing the documents produced by the plaintiff, I note they are mainly letters written by the plaintiff, one in reference is dated letter is dated 22nd March 2007, addressed to the defendant seeking for financial statements of accounts for the years 2003, 2004 and 2005.
82. The other two letters are dated; 25th May, 2007 and 6th June 2007, written by the plaintiff to the defendant to the effect that he had not been paid any dividends nor given access to the business statements of accounts. That he had been kept in the dark as to the finances despite being a co-partner.
83. The other letters dated 22nd July 2007, is a demand letters from the plaintiff's advocate the response thereto dated 6th August 2007 wherein the defendant denied the plaintiff was a shareholder in the subject business hence not entitled to any dividends or any other benefits howsoever.
84. The last document is entitled “Tausi Candy Shop Trading profit and Loss Analysis” for 2004, 2005, 2006 and 2007. The same runs from pages 20 to 30 of the plaintiff's bundle of documents. A perusal therefore reveals several issues: -
- a. The documents covers the years 2004 to 2007, yet the claim at paragraph 12 referred to herein covers the years 2003 to 2010.
 - b. The maker of the said profit and loss analysis is not disclosed and neither was the maker called to give evidence or produce it in evidence.



- c. It suffices to note that the profit and loss analysis produced is generally done by an accountant or a person with accounting skills. The plaintiff testified that, he was a manager of the business, and that begs the question whether he had the competence and skill to prepare the subject document.
 - d. Further the raw data used to generate the alleged profit and loss analysis was not availed or explained as to where it is.
 - e. In the same vein the Register of Assets produced at pages 26 to 30 has not been substantiated or supported by any tangible evidence other than listing the same.
85. I note from the plaintiff's submission dated; 30th November, 2020 that, he submitted heavily on how a partnership is formed and the rights of respective partners therein as it relates to profit and losses of the business.
86. However, at paragraph 13 of the submission the plaintiff concedes that no information was availed to the court as to the "financial health" of the business; and at paragraph 14 thereof states that, the defendant's witnesses were "not forth right in and elected to conceal material information from the court", therefore, they should be compelled to disclose total earning and give him dividends.
87. Further at paragraph 16 the plaintiff pleads that despite requests as well as orders from the court, the defendant wilfully declined to avail the audited statements of Tausi Cake and Candy shop and that the profit/loss analysis produced was based on raw records held by the plaintiff which reveal profits of Kshs. 28,780,732
88. The defendant has attacked the plaintiff's evidence and submissions and argues that, the accounts relied on by the plaintiff are not audited or substantiated and neither did he produce any evidence of financial contribution to the partnership.
89. Pursuant to the aforesaid, it is a fact and finding of the court that there are no documents produced to support the profits allegedly made by the business in the years of 2003 to 2010 and/or amount stated as the value of assets is as pleaded. As such both claims are not proved.
90. Be that as it were, I hold and find, evidence having proved the plaintiff was a proprietor or partner in the business, he is entitled to all information relating to the operations of the business and therefore prayer (a) of the plaint is allowed subject to proof as to when the business commenced and ceased trading.
91. However, prayer (b) can only be allowed if there is evidence that the business made a profit that could be used to pay dividends. Consequently prayers (c) and (d) cannot be granted as there is no evidence to support profit, loss and net profit made by the business. I allow prayer (i) of the amended plaint herein and dismiss prayers (ii) (iii) and (iv).
92. As regards the counter claim, I have considered the documents that were produced by the defendant and I note that they comprise the following documents:
- a. Internal memo dated 2nd July 2001 addressed to the plaintiff requiring him to remit cash sales for dates mentioned therein amounting to Kshs. 649,950.
 - b. Letters dated 18th September, 21st May and 2nd July all of 2007 which are basically communication between the parties in relation to business operations, cash sales, amount remitted and/or request for supply of documents.
 - c. A document in relation to dales not accounted for during the period of much to December 2006 as tabulated in the letter dated 21st May 2007.



- d. Salary and petty cash vouchers showing the amount of money paid to the plaintiff as salary or salary advance and or arrears of salary
 - e. Cash sales remittance and shortages issued vide an internal memo which also deals with unremitted cash sales.
 - f. A letter dated 18th September 2007 in relation to night shift sales and related expenses.
93. It is noteworthy that, although there is a document listed as meetings of 14th September 2006 it was not included in the bundle. Furthermore, all the documents referred to above from the defendant company were signed by C. K. Kariuki who did not testify.
94. The defendant's claim herein is for a sum of Kshs. 14,129,306.80 plus cost and interest. It is clear that the said sum is not supported by audited accounts nor the documents produced by the defendant. I therefore find that in the same vein, where the plaintiff failed to prove his claim as stated herein, the defendant has not proved its claim in the counterclaim. In the given circumstances the prayers sought cannot be granted and I dismiss it accordingly.
95. Finally, as none of the parties has fully won their case, I direct each party meet its own claim.
96. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 6TH DAY OF MAY, 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Omamo H/B for Mr. Namada for the plaintiff

N/A for the defendant

Ms. Ogutu: Court Assistant

