

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E538 OF 2024

SANERGY LIMITED.....
.....CLAIMANT
VERSUS
BENSON KAMANDE MURIGI.....
RESPONDENT

JUDGMENT

Introduction

1. Before Court is the Claimant's Statement of Claim dated 17th July, 2024 wherein, the Claimant sued the Respondent alleging fraudulent misappropriation of client funds to a tune of Kshs.1,506,185/= in violation of his Employment obligation. Under the claim, the Claimant seeks the following reliefs:
 - a) A refund of the sum of Kshs.1,506,185/=-;
 - b) Interest
 - c) Costs of the suit
 - d) Any other relief or orders that the Honourable Court may deem fit and just to grant

2. The Respondent did not enter appearance or file a response to the Claim despite service. The Court directed that the matter proceeds undefended, and set a date for formal proof hearing.

3. The Claimant's case was heard on 23rd April, 2025 when the Claimant's witness Mr. Dennis Kariuki Muthoni (CW1), testified in support of the Claimant's case. He adopted his Witness Statement dated 24th June, 2024 and produced his list and bundle of documents dated 17th July, 2024 as Claimant's Exhibits Nos. 1-22.
4. The Claimant filed written submissions in support of its claim.

The Claimant's case

5. The Claimant avers that it employed the Respondent as its Assistant Manager on a consolidated salary of Kshs.150,348/= and that his duties included selling the Claimant's products within an assigned region in the Country, and to ensure payment for all sold products.
6. It is the Claimant's case that it terminated the Respondent's employment on 17th April, 2023 on grounds of gross misconduct for the reason that the Respondent fraudulently received payments with respect to the sales he made, and failed to remit the funds to the Claimant company as expected.
7. The Claimant further avers that between January to November 2022, the Respondent misappropriated funds received from customers for goods supplied to them, and also engaged in unauthorized and unprocedural activities by

reselling stock to unidentified individuals resulting in the loss and untraceability of products.

8. It avers that it conducted an internal audit, where it discovered the misappropriation to the tune of Kshs.1,506,185/= whose particulars are listed as follows:-

a) Mamaland Feeds: Misappropriation of Kshs.275,940/= being the value of collected products which the Respondent resold to unknown persons and failed to remit payments to the Claimant.

b) Hyper Kenya Ltd: Non-remittance of Kshs.140,000/= collected from the customer on 18th November, 2022 and 24th November, 2022

c) Grace Thande: Non-remittance of Kshs.27,300/= received from the customer between 6th and 27th February, 2023.

d) Glen Stores: Misappropriation of Kshs.1,071,000/= received directly from the customer and appropriated money for his own personal use.

e) Wakaba Farm: Misappropriation of Kshs.54,000/= received from the customer.

9. The Claimant avers that owing to the misappropriation as averred above, it suspended the Respondent from employment vide a letter dated 28th February, 2023 and subsequently thereafter, issued the Respondent with a Notice to Show Cause letter dated 28th February, 2023.

10. It is the Claimant's case that in the Notice to show cause letter, the Respondent admitted to taking the Claimant's funds and utilizing the same for his personal use. It avers that consequently, it invited the Respondent for a disciplinary hearing and that upon considering the representations, it summarily dismissed the Respondent vide a letter dated 17th April, 2023, and reported the incident of theft to the National Police service on 18th April, 2023 and was issued with an OB extract report.
11. The Claimant claims further that the Respondent had prior to his summary dismissal, written a further admission and plea to the Claimant vide an email of 6th April, 2023 for the repayment of the sums owed.
12. CW1 further testified that in response to the Notice to show cause letter, the Respondent admitted to receiving the funds claimed being a total of Kshs.1,506,185/=.
13. It is testimony that the Respondent promised to refund the money and even offered a payment plan by issuing post-dated cheques. The witness told court that the Cheques bounced and the amount remains outstanding to date.

14. It is the Claimant's case that it has suffered loss and damage on account of the Respondent's fraudulent actions, and seeks a refund of the Kshs.1,506,185/= from the Respondent.

15. The Claimant prays that its claim be allowed and it be awarded the reliefs it seeks under the claim.

The Claimant's Submissions

16. The Claimant submits that the present claim is founded on the Respondent's contract of service with the Claimant, and the misappropriation complained of occurred in the course of his employment. It is the Claimant's submission that this dispute is properly within the remit of this Court.

17. The Claimant further submits that this claim is not an ordinary commercial dispute or a simple debt recovery action, but arises directly from the Respondent's obligations as an employee entrusted with the duty to receive and account for the Claimant's funds in the course of his work. It is further submitted that the misappropriation of the funds constitutes a breach of the contract of service under the ambit of employment law, and falls within this court's jurisdiction.

18. On whether the Respondent, in the course of his employment misappropriated the Claimant's funds amounting to Kshs.1,506,185/=: the Claimant submits that

the Respondent diverted and appropriated to himself sums received from customers for goods duly supplied by the Claimant.

19. It is the Claimant's further submission that through an internal audit conducted by it during the period between January and November 2022, it was discovered that the Respondent had misappropriated a total of Kshs.1,506, 185/= . It submits that the audit traced customer orders, delivery notes, invoices, and payments, and established clear variances between what customers paid for and what was received by the Claimant in form of payments.
20. The Claimant submits that the Audit report further confirmed and detailed the discrepancies and shortfalls arising directly from sums received by the Respondent and never surrendered to the Claimant.
21. It is submitted that in each of these transactions, the Respondent personally received the sums and failed to account for them. It is the Claimant's submission that these facts were further corroborated by statements from the customers themselves, and the Respondent's own admissions during the disciplinary proceedings convened prior to his summary dismissal where the Respondent expressly acknowledged having taken the Claimant's funds for his personal use.

22. It is further submitted that the Respondent issued the Claimant with six post-dated cheques for Kshs.100,000/=each, with the first cheque being payable on 1st March 2023, as a token of his intention to refund part of the misappropriated sums, thereby confirming indebtedness to the Claimant.

23. It is the Claimant's submission that from the evidence presented, comprising the internal audit report, customer confirmations, the Respondent's own admissions, the post-dated cheques, and the police report, is overwhelming and uncontroverted, given the Respondent's failure to file any defence.

24. The Claimant submits that once it has been demonstrated that an employee misappropriated an employer's funds, the employer is entitled to restitution of the precise sums lost. The Claimant sought to rely in the Court of Appeal decision in ***Macharia Mwangi Maina & 87 others -vs- David son Mwangi Kagiri [2014] eKLR***, for the holding that a party should not be unjustly enriched at the expense of another and no person should benefit from his own wrong doing.

25. It is finally submitted that it is trite law that costs follow the event unless the court, for good reason orders otherwise. The Claimant submits that it is entitled to costs of this suit together with interest thereon at court rates from the date of judgment until payment in full as this will ensure that the Claimant is made whole, having been compelled to seek the intervention of this Honourable Court to vindicate its rights.

26. In summation, the Claimant urges the Court to grant the orders sought in the Claim.

Analysis and Determination

27. Upon careful consideration of the pleadings, the evidence adduced, the Claimant's witness testimony and the submissions by the Claimant, the following issues crystallize for determination:-

- i. Whether the suit as drawn and the prayers sought falls within the jurisdiction of this court
- ii. Whether the Claimant is entitled to the reliefs sought
- iii. Whether the Claimant deserves the costs of the suit.

Whether the suit as drawn and the prayers sought fall within the jurisdiction of this court

28. Section 12 of the Employment and Labour Relations Court Act, spells out this court's jurisdiction as follows:-

"The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:-

- i. disputes relating to or arising out of employment between an employer and an employee;***
- ii. disputes between an employer and a trade***

- union;***
- iii. disputes between an employers' organisation and a trade union's organisation;***
 - iv. disputes between trade unions;***
 - v. disputes between employer organisations;***
 - vi. disputes between an employers' organisation and a trade union;***
 - vii. disputes between a trade union and a member thereof;***
 - viii. disputes between an employer's organisation or a federation and a member thereof;***
 - ix. disputes concerning the registration and election of trade union officials; and***
 - x. disputes relating to the registration and enforcement of collective agreements."***

29. The Claimant's suit is against a former employee who is said to have embezzled funds paid and received by him from the Claimant's customers on account of his position as an Assistant Manager in the Claimant's sales team.

30. Section 19 of the Employment Act, 2007, provides for deductions from the employee's wages as follows: -

“(1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—

- (a) any amount due from the employee as a contribution to any provident fund or superannuation scheme or any other scheme approved by the Commissioner for Labour to which the employee has agreed to contribute;**
- (b) a reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee;**
- (c) an amount not exceeding one day’s wages in respect of each working day for the whole of which the employee, without leave or other lawful cause, absents himself from the premises of the employer or other place proper and appointed for the performance of his work;**
- (d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically or his being entrusted with the receipt, custody and payment of money**

(emphasis own);
(e).....”

31. The dispute herein arises out of employment between the Claimant (the employer) and the Respondent herein, being the employee. Further, the claim by the Claimant is to recover money lost on account of the Respondent/employee's dishonesty, and whose position in the service of the Claimant allowed him to receive and have custody of money paid by the Claimant's customers.

32. The dispute therefore, arises directly from the Respondent's obligations as an employee entrusted with the duty to receive and account for the Claimant's funds in the course of his work.

33. It then follows that the claim as correctly submitted by the Claimant, is founded on the Respondent's contract of service with the Claimant, and the misappropriation complained of occurred in the course of his employment, which then places the dispute properly within the jurisdiction of this Court.

34. I therefore, find and hold that this court has jurisdiction to hear and determine the Claimant's claim.

Whether the Claimant is entitled to the reliefs sought

35. The Claimant seeks to recover the sum of Kshs.1,506,185/= received by the Respondent as payments by the Claimant's

customers, which he is allegedly said to have put into personal use, interest thereon and costs of the suit.

36. The Claimant produced in evidence six (6) post-dated cheques issued by the Respondent towards repayment of the money, customer statements indicating that they paid for the Claimant's products through the Respondent, and an email by the Respondent to the officials of the Claimant apologizing for having let them down and confirming issuing the six (6) post-dated cheques. Also produced, is the Respondent's response to the show cause letter, wherein, the Respondent admitted using the Claimant's money for his own personal use and proceeding to indicate how much money he picked from each of the customers.

37. By his conduct the Respondent admitted the debt, and which debt is also properly documented. It is also safe to say that though the suit is not defended, and hence the debt is not disputed, the Claimant has by the myriad documentary evidence placed before this court, proved that the Respondent indeed, owes it the amount of the claim.

38. In the circumstances, I find and hold that the Claimant is entitled to recover the money owed to it by its former employee; the Respondent herein.

39. In whole, the Claimant's claim succeeds and orders granted as follows:-

- a) That the Respondent pays the Claimant the sum of Kshs.1,506,185/=.
- b) Costs of the suit shall be borne by the Respondent.

40. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16TH DAY OF OCTOBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Ms. Ondече present for the Claimant

N/A for the Respondent

Ms. Esther S- C/A