

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E318 OF 2019

MICHAEL WANJAU KIGUNDU.....CLAIMANT

-VERSUS-

AUTO EXPRESS LIMITED.....1ST RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 30th October, 2025)

JUDGMENT

1. The claimant filed a memorandum of claim dated 20.05.2019 through Makhandia & Makhandia Advocates. The Claimant prayed for judgment against the respondent for :

- a) One-month salary for days worked in January 2019.
- b) 12 months' maximum compensation at Kshs.207, 000.00 x 12 = Kshs.2, 484, 000.00.
- c) A refund of Kshs.200,000.00.
- d) Costs of the suit.

2. The claimant pleaded as follows:

- a) The respondent employed him as a Deputy Chief

Accountant on 15.04.2017. He worked until 29.01.2019 when he was summarily dismissed without notice and due process.

- b) He was accused about an audit report he had never seen alleging he had obtained the respondent's money. The respondent threatened that a police report would be made unless the claimant refunded the money. The claimant believed that by accepting responsibility and paying the alleged money would mean that the respondent allows him to continue in employment.
- c) The claimant accepted responsibility and made a proposal on repayments to the respondents. He states the proposal to refund was under duress. He was dismissed summarily on 29.01.2019 and another audit increased the claim by the respondent to Kshs. 1, 092,496.00 and a report to police was threatened. The claimant made another proposal to pay the claimant as alleged in the audit report but which he had never seen.
- d) He alleges the termination of employment was unfair in

breach of sections 43, 44, 45 of the Employment Act, 2007.

e) The respondent has used police to harass the claimant who has since paid Kshs.200,000.00 to the respondent.

3. The respondent filed the answer to memorandum of claim dated 08.07.2019 and through Mucheru Law LLP. The respondent prayed that the claimant's memorandum of claim be dismissed with costs and counterclaimed and prayed for orders:

a) The sum of Kshs. 1, 092, 496.00 with interest thereon until full payment.

b) Costs and interest incidental to the suit.

c) Any other relief or remedy that the Honourable Court may deem fit to grant.

4. The respondent pleaded as follows:

a) Admitted employing the claimant as pleaded for the claimant. He worked from 24.03.2017 to 29.01.2019 as the respondent's Deputy Chief Accountant.

b) He was dismissed for contravening procedures and policies of the company by misappropriating the respondent's monies.

c) The claimant was not a diligent and honest worker. Between December 2018 and January 2019 the claimant handled petty cash while the Regional Accountant was on leave. On 21.01.2019 he handed back the petty cash to the Regional Accountant. A short of Kshs.190,000.00 could not be explained by the claimant. A report was made to the Chief Finance Officer and the claimant admitted he had as well taken some petty cash from the respondent's Limuru Road Branch. A comprehensive audit showed that between December 2018 and January 2019 a sum of Kshs.1, 092, 496 was misappropriated by the claimant and which the respondent counterclaims.

5. The claimant testified to support his case and the respondent's witness (RW) was Kavita Ashok Shah. The Court has considered the material on record and returns as follows:

- a) The respondent employed the claimant and there was no dispute about the contract of service.
- b) The claimant by pleading and testimony confirmed that he took responsibility of the amounts now counterclaimed by

the respondent. The claimant had alleged duress and threats but no evidence has been provided. The Court finds that the claimant is liable to refund the respondent as counterclaimed. The evidence is that he signed taking responsibility. The allegations that he had not seen the audit reports is found a mere empty afterthought. The evidence is that he voluntarily took responsibility.

- c) The summary dismissal was not unfair. Section 44 of the Employment Act, 2007 allowed an employer to dismiss an employee with no notice or shorter notice than the contractual notice on account of gross misconduct. The Court finds that the claimant's conduct was gross and he confirmed that meetings were held on 28th and 29th January 2019 prior to the dismissal. The reasons for termination are found valid per section 43 and fair per section 45 of the Act and the procedure adopted for gross misconduct was not unfair.
- d) Thus, the claimant's suit is liable for dismissal and the respondent's counterclaim will succeed.

In conclusion judgment is hereby entered for the respondent against the claimant for:

- a) Dismissal of the memorandum of claim with costs.
- b) The claimant to pay the respondent Kshs.1,092,496,00 by 01.02.2026 failing interest to run thereon at Court rates until full payment.
- c) The claimant to pay costs of the counter-claim.

Signed, dated and delivered by video-link and in court at Nairobi this Thursday 30th October, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE