



REPUBLIC OF KENYA



Ekanyarit Atoo Enterprises Limited v KCB Bank Kenya Limited (Civil Case E002 of 2022) [2026] KEHC 777 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEHC 777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CIVIL CASE E002 OF 2022
PJO OTIENO, J
JANUARY 22, 2026**

BETWEEN

EKANYARIT ATOO ENTERPRISES LIMITED PLAINTIFF

AND

KCB BANK KENYA LIMITED DEFENDANT

JUDGMENT

The Case as Pleaded

1. By way of a plaint dated 11th June 2021 and filed in court on 11th May 2022, the Plaintiff moved this Court for the following reliefs against the Defendant:
 - a. General damages for breach of fiduciary duty;
 - b. General damages for breach of duty of confidentiality;
 - c. General damages for breach of the duty of care;
 - d. Special damages of Kshs. 5,564,275.85;
 - e. Aggravated damages;
 - f. Costs of the suit; and
 - g. Any other or further orders that this Honourable Court may deem fit and just to grant.
2. The plaint describes the Plaintiff as a limited liability company engaged in the business of construction, whereas the Defendant is described as a limited liability company engaged in banking business.
3. The Plaintiff narrates the genesis of the present suit to be that it opened Bank Account No. 1107XXX with the Defendant's Lodwar Branch in 2003 adding that on 27th April 2016, it entered into a contract for the construction of the Lodwar-Moi Stadium with the County Government of Turkana, for a



contract sum of Kshs. 34,000,000/-, and that the monies were to be paid through its Bank Account No. 1107XXX held with the Defendant. It continues and states that the first payment of Kshs. 11,268,831/- was credited into its account on 27th September 2016; the second payment of Kshs. 12,629,600/- was credited on 15th December 2016; and the third payment of Kshs. 5,564,275/- was credited into the Plaintiff's account on 20th May 2019.

4. It claims that on 29th May 2019, a conflict arose between its Director, Mr. Mohamed Nur, and the Principal Accountant of the Ministry of Land, Energy & Urban Areas Management, Turkana County, Mr. Peter Longole Apua (hereinafter the "County Official"), following the Plaintiff's refusal to allocate a percentage of the Kshs. 5,564,275/- credited into its account to the said officer.
5. On the day the dispute arose, the County Official presented a letter dated 27th May 2019, referenced TCG/F&P/Vol3/264, addressed to the Plaintiff's Directors, with the subject "Intention to reverse the Plaintiff's payment on the premise that the documents presented by the Plaintiff to process its payment were not original and that the said documents are allegedly forged.
6. The Plaintiff asserts that this led to its filing of Civil Suit No. 6 of 2019 on 11th June 2019 against the County Official, seeking a temporary injunction against the reversal of the sum of Kshs. 5,564,275/-. Among the orders granted by the Court was that the status quo as at the date of the order be maintained. That suit notwithstanding, the reversal was effected and it took a decision of the court in a different file to enter a judgment in plaintiff's favor for the sum.
7. The Plaintiff further states that at that time the reversal was sought, its account balance stood at Kshs. 9,878,583/-, well above the amounts declared by the Court for maintenance of the status quo. Yet, when it sought to transact a sum of Kshs. 2,000,000/-, the Bank declined the transaction. The Plaintiff asserts that the bank's action of declining the transaction constituted a breach by the Defendant of its duty of care as well as the fiduciary duty. The particulars of the breaches were pleaded to include: reversing payments already credited into its account; Interfering with its account without consent; failing to issue notice or notify the Plaintiff of the interference; freezing its account and denying access to funds which were not subject of Civil Suit No. 6 of 2019; and failing to execute the Plaintiff's instructions by not honouring the RTGS presented on 12th June 2019.
8. The Plaintiff further avers that the Defendant breached its duty of confidentiality by interfering with the Plaintiff's account based on instructions from a third party. The Plaintiff regards the Defendant's actions as malicious.

Defense Case

9. By way of a Statement of Defense dated 1st July 2022 and filed in Court on 4th July 2022, the Defendant admitted that the Plaintiff maintained Bank Account No. 1107XXX, and that the account was credited with Kshs. 5,564,275.85 via an inward SWIFT remittance from the County Government of Turkana. The Defendant, however, denied knowledge of any contract between the Plaintiff and the Turkana County Government, as it was not privy to the said contract. It averred that the reversal of the funds from the Plaintiff's account was made pursuant to instructions issued by the County Official, who alleged that the documents presented to process the payments were fraudulently obtained. The Defendant further contends that the Plaintiff was made aware of the reversal through a letter dated 27th May 2019 sent by the County Official.
10. The Defendant asserts that it acted in good faith, in the best interests of both the Plaintiff and the drawer, and in the protection of public funds when reversing the said amount from the Plaintiff's account. It therefore denies that the Plaintiff suffered a loss of its rightful funds or that it is entitled to the sum of Kshs. 5,564,275.85, which was reversed to the County Government of Turkana.



11. The Defendant further contends that it was not aware of Civil Suit No. 6 of 2019, as it was not a party to that suit. It also explains that the reason the transaction referred to in the plaint was declined was because the Plaintiff presented an RTGS request to withdraw an amount exceeding the available balance in the account.

The Evidence

12. Mohamed Nur Ismail testified as the sole Plaintiff witness (PW1). He adopted his witness statement dated 11th June 2021, which mirrors the assertions made in the plaint. He further produced a bundle of documents which included: copies of account statements from 2007; a copy of the contract dated 27th April 2016 for the proposed construction of the Lodwar-Moi Stadium; a copy of Local Service Order No. 101XXX; a copy of the Certificate of Practical Completion; a copy of the Certificate of Making Good Defects; copies of payment vouchers dated 07.09.2016, 01.03.2018, 15.12.2018, and 15.04.2019, approved on 03.04.2019; a copy of Peter Longole Apua's letter dated 27.05.2019 (notification for stoppage or reversal); copies of advocate's letters dated 31.05.2019 and 03.06.2019; the plaint and application filed on 11.06.2019 together with the court order of the same date; an affidavit of service dated 14.07.2019; a bank statement dated 01.05.2019; Peter Longole Apua's request to reverse Kshs. 5,564,275.85 dated 03.06.2019 and his response dated 15.07.2019; and a copy of the RTGS and cheque for transportation of ballast, collectively marked PEXH 1.
13. On cross-examination, PW1 stated that although the letter from the Principal Accountant, Turkana County, demanded that he submit documents entitling him to payment, he did not comply, as the County Government already possessed the contract, the Local Service Order, and the Certificate of Practical Completion. He further stated that he did not report the alleged demand for a kickback by the County Official to the police. PW1 clarified that he had sued the County Government of Turkana in Civil Suit No. 6 of 2019, seeking a sum of Kshs. 7,684,396/-, which includes the special damages claimed in the present suit, and that the said suit was still pending at the lower court.
14. He further clarified that, although the Defendant was not a party to Civil Suit No. 6 of 2019, there was no court order freezing his account. He added that after experiencing ill-treatment at the Defendant's Lodwar Branch, he lodged a complaint in the suggestion box, but he did not retain a copy.
15. On re-examination, PW1 stated that his payment from the County Government was to be cleared by the Ministry of Finance, and that he was denied an audience by the manager at KCB, which prompted him to seek a court order to maintain the status quo, an order which the Defendant declined to receive. He added that he had not received the funds reversed by the accountant.
16. When questioned by the Court, PW1 stated that he had obtained a favorable judgment from the lower court and was attempting to enforce that judgment by way of mandamus, which the County Government had yet to honor.
17. Lawrence M. Nzioka testified as the sole Defendant witness (DW1). He introduced himself as the Manager, Service Quality, KCB Lodwar Branch. He further adopted the statement of Christine Lane dated 26th July 2022, which reiterates the contents of the Statement of Defense. DW1 also produced the following documents: a letter dated 27th May 2019 addressed to the Plaintiff and received by the Defendant on 28th May 2019 (DEXH 1); a letter dated 3rd June 2019 addressed to the Defendant requesting the reversal of funds (DEXH 2); and the Plaintiff's account statement for the period 1st May 2019 to 28th June 2019 (DEXH 3).
18. Regarding PW1's allegation that he had presented an RTGS request which was declined, DW1 stated that this allegation was untrue. He explained that the bank statement did not reflect any transaction



initiated and declined, and further, that in the event of a declined transaction, charges would have been levied. He referred the Court to the bank statements of 01.05.2019 and 29.06.2019, noting that on 13.06.2019, the Plaintiff successfully transferred Kshs. 800,000/- from its account.

19. On cross-examination, DW1 confirmed that the Defendant withdrew funds from the Plaintiff's account pursuant to instructions from the County Official in the letter dated 27.05.2019. He further admitted that the Defendant did not notify the Plaintiff of its intention to reverse the funds, nor did it seek a response from the Plaintiff before acting. Regarding the court order directing maintenance of the status quo of the Plaintiff's account, DW1 stated that although he was shown an affidavit of service for the same, the Defendant was never served with the order.
20. DW1 was referred to pages 79 and 80 of the document bundles, which captured an application for funds transfer with a receipt stamp, showing that the Plaintiff had applied for an RTGS transfer that was not reflected in the bank statement. In response, he stated that once an application is received, it is the bank's responsibility to process it, and in this instance, the bank failed to effect the transfer.
21. On re-examination, DW1 stated that the funds transfer application was submitted on 13th June 2019, and that on the same day, a transfer of Kshs. 800,000/- was successfully effected. He further clarified that the request to transfer Kshs. 2,000,000/- was not processed; although the application had been acknowledged by the bank, it was not received for execution.
22. When questioned by the Court, DW1 explained that the stamp on a request for bank transfer merely indicates receipt of the application. He further stated that Central Bank of Kenya (CBK) guidelines require that any bank transfer exceeding Kshs. 1,000,000/- must be supported by appropriate documentation; in the absence of such, the bank would not acknowledge the application. DW1 also noted that when a bank debits a customer's account (absent a clear error in crediting), the customer must be consulted before the debit is effected.

Plaintiff's Submissions

23. The Plaintiff's submissions identify five issues for determination by the Court. The first issue is whether Lawrence Nzioka is a credible witness and whether his testimony is admissible. On this issue, the Plaintiff submits that, according to information received from the Defendant, DW1 testified on behalf of Ms. Christine Lane, who had since left the Defendant's employment. It is argued that DW1 was not an employee of the Defendant's Lodwar Branch at the time the cause of action arose. The Plaintiff further contends that his evidence constitutes hearsay and is inadmissible under section 63 of the *Evidence Act*, and ought to be expunged from the record.
24. The second issue is whether the Defendant breached the bank-customer relationship, fiduciary duty, and duty of confidentiality owed to the Plaintiff as its customer. The Plaintiff cites *Equity Bank Limited v Robert Chesang (2016) KEHC 2558 (KLR)*, for the proposition that a bank is under a contractual duty to diligently handle a customer's account, ensuring that funds deposited are available when required, and that any deviation from this obligation without justifiable reason should be communicated to the customer in advance. The Plaintiff further relies on *Co-operative Bank of Kenya v Biwott (Civil Appeal No. 18 of 2019 [2022] KEHC)* to buttress the proposition that the bank-customer relationship is contractual in nature and imposes a duty on the bank to exercise reasonable care and skill in its dealings with the customer.
25. The Plaintiff contends that, in the present case, the Defendant did not act in its best interest, despite the Plaintiff having been a customer since 2003. Specifically, the Defendant reversed funds in the Plaintiff's account without consent, acting solely on allegations of forgery from a third party. The Plaintiff further asserts that, even without being informed by the Defendant, it took steps to clarify and explain the



intentions of the County Official and urged the Defendant not to breach its duty. The Plaintiff argues that the Defendant placed the interests of a third party above those of its own customer, thereby breaching its fiduciary duty.

26. The Plaintiff also submits that the Defendant breached its duty of care by failing to conduct reasonable due diligence before acting on a third party's claims. It further contends that by disregarding a court order restraining the reversal of the funds, the Defendant acted in breach of its contractual obligations and in malice. In addition, the Plaintiff argues that the Defendant breached its duty of confidentiality by engaging a third-party regarding matters of the Plaintiff's account and acting upon such instructions without the Plaintiff's knowledge or consent.
27. The third issue concerns the appropriate quantum of damages. In support of the proposition that a bank is liable to pay the customer damages for breach of its contractual duty, the Plaintiff refers to *Equity Bank of Kenya & another v Robert Chesang (supra)* and *Otieno Omuga & Ouma Advocates v CFC Stanbic Bank Limited (2015) eKLR*. The Plaintiff proposes that, as at 12th June 2019, its account balance stood at Kshs. 9,878,583/-, which it seeks as general damages.
28. The fourth issue is whether the Court should award aggravated damages. The Plaintiff submits that the totality of the Defendant's conduct was oppressive, malicious, and in bad faith, citing the above cases for the proposition that the conduct of the Defendant may constitute an aggravating factor in assessing damages. The Plaintiff contends that it suffered financial loss, reputational damage, and business disruption, and prays for aggravated damages of Kshs. 2,000,000/-.

Defendant's Submissions

29. The Defendant identifies four issues for determination by the Court. The first is whether the Plaintiff is entitled to special damages of Kshs. 5,564,275.85. The Defendant submits that the Plaintiff had previously filed *Lodwar CMCC Civil Case No. 6 of 2019, Ekanyarit Atoo v The County Government of Turkana & another*, seeking, inter alia, the sum of Kshs. 7,684,396, which PW1 confirmed included the Kshs. 5,564,275.85 claimed in the present suit. That lower court suit concluded in the Plaintiff's favour and is pending execution by mandamus. The Defendant contends that granting the same relief in this suit would amount to double compensation and unjust enrichment.
30. It further argues that filing two suits over substantially the same relief constitutes an abuse of the court process, citing *Gitau & 635 others v Principal Secretary, Ministry of Lands, Public Works, Housing & Urban Development, State Development for Housing & Urban Development & 5 others; National Land Commission (Interested Party) [2023] KEELC 16004 (KLR)*, where it was held that multiple suits intended to secure collateral advantage are an abuse of process and should not be condoned.
31. The Defendant also refers to *Co-operative Bank of Kenya Limited & another v Giwells Limited & another [2025] KEHC 9161 (KLR)*, where the Court held:

“It must be remembered that the payment made in the Respondent's account was in respect of works done in favour of Ministry of Defence, the Appellant was merely a conduit for the funds, to wit, they were to be received. It was neither a party or participant in the tendering process as between the Respondent and Ministry of Defence. In the end, the Appellant's role as a financial institution was limited to acting fiducially and exercise utmost care with the Respondent funds, received on account. Therefore, no obligation could be placed upon it to make good on the funds even it was in breach of its breach of fiduciary duty and or duty of care on the premise of a banker – customer contractual relationship with Respondent. The funds merely reverted back to the payer, to wit, the Respondent can demand for payment



for work done from the payer. Therefore, the order and award by the trial Court on the same must be faulted and set aside.”

32. The second issue is whether the Plaintiff was denied access to undisputed funds of Kshs. 4,314,307/-. The Defendant conceded that as at 12th June 2019, the balance on the Plaintiff’s account was Kshs. 9,578,583.78, in addition to the disputed sum of Kshs. 5,564,275.85. It contends that the Plaintiff’s RTGS request for Kshs. 2,000,000/- was neither declined nor processed, as the Plaintiff’s account statement did not show any debit, corresponding credit, or bank charges which would normally accompany a declined transaction.
33. The Defendant further submits that the bank’s stamp on the funds transfer form dated 13th June 2019 merely acknowledged receipt of the application; it was not a processing stamp, and therefore the transaction could not have been executed through the bank’s system.
34. The third issue is whether the Defendant received the court order issued on 11th June 2019. The Defendant submits that the Plaintiff’s own affidavit confirms that the Lodwar Branch declined service on 11th June 2019, as it was after ordinary working hours. On 12th June 2019, the Plaintiff’s advocate was advised to serve the Bank’s Legal Department in Eldoret, yet no evidence was tendered to show that such service was in fact effected.
35. The fourth issue is whether the Plaintiff is entitled to general damages. The Defendant contends that a bank-customer relationship is contractual, and as a rule, general damages are not awarded for breach of contract, citing Co-operative Bank of Kenya Limited & another v Giwells Limited (supra). It further submits that PW1 confirmed that the County Official requested supporting documents, which the Plaintiff failed to provide. This lack of response, the Defendant argues, justified the reversal of funds.
36. In support, it refers to George Nganga Mbua t/a Mbugua Nganga & Co. Advocates v Co-operative Bank of Kenya (Petition E003 of 2023) [2025] KEHC 3144 (KLR), where the Court held:

“The bank requested the Petitioner to provide a signed engagement letter, which it failed to do. The Petitioner bore the burden of proving the legitimacy of the funds. The failure to provide this key document, without any reasonable explanation, left the Respondent unable to fully verify the authenticity of the transaction. There was nothing onerous for the Petitioner to provide a copy of the signed engagement letter, which would have allowed for a more informed decision. Consequently, I find the Respondent’s decision to reverse the funds, after a reasonable request for supporting documentation, was a proportionate response to ensure compliance with POCAMLA.”

Issues for Determination

37. Having considered the pleadings, the evidence adduced, and the submissions of the parties, this Court identifies the following issues for determination:
 - a. Whether the evidence of DW1 is admissible;
 - b. Whether the reversal of Kshs. 5,564,275.85 by the Defendant constituted a breach of the bank-customer relationship, and, if so, what reliefs ought to be granted; and
 - c. Whether the Plaintiff is entitled to a refund of the reversed amount of Kshs. 5,564,275.85.



Analysis And Determination

38. The facts that are not in dispute are as follows: there existed a bank-customer relationship between the Plaintiff and the Defendant; a sum of Kshs. 5,564,275.85 was credited into the Plaintiff's account held with the Defendant; and, at the request of the County Official referred to above, the Defendant reversed the said funds to the account of the County Government of Turkana without informing the Plaintiff. It is also undisputed that the Plaintiff subsequently sued the County Government of Turkana, seeking, among other reliefs, the amount that was reversed, and that it obtained judgment in its favor, which awaits execution.

Whether the evidence of DW1 is admissible

39. From the witness statements filed by the Defendant, it is apparent that the Defendant initially intended to call Christine Lane as a witness. However, during the hearing and in the presence of counsel for the Plaintiff, the Defendant informed the Court that it was unable to trace the said witness, who had since left its employment, and accordingly sought leave to substitute her. The Court allowed the substitution, and Lawrence Nzioka was called as the substitute witness. Notwithstanding the substitution, the said Lawrence Nzioka purported to adopt the witness statement of Christine Lane as his evidence-in-chief, despite not being the maker thereof.
40. The law is settled that a witness statement may only be adopted by its maker, and a witness cannot lawfully adopt the statement of another person as his evidence-in-chief. This position is anchored in section 63 of the *Evidence Act* (Cap. 80, Laws of Kenya) which provides that oral evidence must, in all cases, be direct, that is to say, the witness must testify to facts which he personally saw, heard, or perceived. Any evidence tendered through another person's statement, where the maker is not called to testify, constitutes hearsay and is inadmissible unless it falls within a statutory exception, none of which applies to witness statements prepared for purposes of litigation.
41. Further, sections 33 and 35 of the *Evidence Act* provide limited exceptions to the hearsay rule, including statements made by persons who are deceased or cannot be found. However, these provisions do not permit a substitute witness to adopt a personal witness statement prepared for trial, as such statements are not business records nor contemporaneous documents made in the ordinary course of business, but are instead intended to be tested through cross-examination of their maker.
42. This position has been affirmed by the Court of Appeal in *Vishva Stones Supplies Company Limited v RSR Stone (2006) Limited* (Civil Appeal (Application) E308 of 2020) [2024] KECA 978 (KLR), where the Court held that a witness statement only becomes evidence upon adoption by its maker, who must then be available for cross-examination.
43. While a court may permit substitution of a witness where the original witness is unavailable, such substitution does not extend to allowing the substitute witness to adopt and rely on the personal witness statement of the unavailable witness as proof of the facts therein. The substitute witness may only testify to matters within his own personal knowledge and may produce documents properly admissible in evidence.
44. In the circumstances, the purported adoption by Lawrence Nzioka of the witness statement of Christine Lane was irregular and contrary to the *Evidence Act* and established jurisprudence. Consequently, the witness statement of Christine Lane, not having been adopted by its maker and having been improperly introduced through another witness, is hereby expunged from the record. Nevertheless, the oral testimony of Lawrence Nzioka, limited strictly to matters within his personal knowledge, is admitted and remains on record.



Whether the reversal of Kshs. 5,564,275.85/- by the defendant was in breach of bank-customer's relationship and if yes, what reliefs ought to be granted?

45. The relationship between a bank and its customer is contractual in nature. Upon monies being deposited into a customer's account, the bank holds such funds subject to the customer's mandate and the governing terms of the account, and is under a duty to act in good faith and to exercise reasonable care and skill in the operation of the account so that the property in the money is secured and not exposed to dissipation without the authority of the account holder or by a lawful and legal process.
46. In *Fidelity Commercial Bank Limited v Italian Market Kenya Limited* [2017] KECA 370 (KLR), the Court of Appeal held that a bank is not at liberty to interfere with a customer's account except strictly in accordance with the contract between the parties or as permitted by law. Any unilateral interference outside those parameters constitutes a breach of the bank–customer relationship.
47. In the present case, it is not disputed that the sum of Kshs 5,564,275.85 was credited into the Plaintiff's account held with the Defendant. The evidence further shows that the Defendant subsequently reversed the said amount. The Defendant failed to demonstrate that the reversal was effected pursuant to any express contractual provision, court order, or with the consent of the Plaintiff. There was equally no evidence that the Plaintiff was notified of the intended reversal prior to its execution.
48. While a bank is entitled, and indeed obligated, to investigate transactions suspected to be fraudulent or unlawful, such investigations must be conducted reasonably and in accordance with due process. A bank cannot permanently reverse funds already credited to a customer's account without establishing a lawful basis for doing so. As held by the Court of Appeal in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* (Civil Appeal No. 95 of 1999) [2001] KECA 362 (KLR), a bank cannot unilaterally vary the terms of its contract with a customer.
49. In the absence of any lawful justification for the reversal, this Court finds that the Defendant's action amounted to unlawful interference with the Plaintiff's account and property and thus committed a breach of the bank–customer relationship. Once a sum is credited to a customer's account, it becomes a vested property and the bank is not entitled to the use of such funds unless the bank acts pursuant to a lawful mandate of the account holder, a court order, an express contractual right or a statutory mandate, like the cases of agency notices by the Kenya Revenue Authority. It is however to be remembered that even in cases of statutory mandated actions, the money never leaves the account without due process established under the law. In this matter the bank acted in wanton haste by answering to the unlawful demand accentuated by an improper motive by a third party. Such should invite consequences against the banks for unwarranted and arbitrary deprivation of property.
50. The Defendant further declined to permit the Plaintiff to transact on the account notwithstanding the availability of sufficient funds. This restriction, imposed without lawful justification or notice, amounted to wrongful interference with the Plaintiff's contractual rights and fell short of acceptable banking standards. It was in fact a perpetuation of holding back and arbitrary deprivation of property. Wholly unjustifiable.
51. The conduct complained of also amounted to a breach of the fiduciary duty owed by the Defendant to the Plaintiff. A bank occupies a position of trust and confidence vis-à-vis its customer and is required to act in good faith and loyalty in the handling of the customer's funds. By reversing the funds on the basis of unverified representations from a third party, without notice to or engagement with the Plaintiff, and by prioritizing the interests of that third party over those of its own customer, the Defendant acted in a manner inconsistent with that duty.



52. The breach was aggravated by the Defendant's continued refusal to honour the Plaintiff's transaction instructions despite the absence of any lawful freeze, restriction, or court order. This conduct deprived the Plaintiff of the use of its funds, disrupted its business operations, and undermined the trust inherent in the bank–customer relationship. The Defendant's actions went beyond mere negligence and amounted to high-handed and oppressive treatment of the Plaintiff.
53. In the circumstances, the Court is satisfied that an award of general damages for breach of fiduciary duty is warranted. Taking into account the nature of the relationship between the parties, the manner in which the breach occurred with possible dishonour of business obligations by the plaintiff, and the disruption occasioned to the Plaintiff's business, the Court finds that the plaintiff was wronged and entitled to vindictive damages.
54. The Plaintiff further contended that, despite having funds in its account, it was unable to transact. The Defendant argued that the bank stamp on the RTGS form produced by the Plaintiff was merely an acknowledgement stamp. This argument is unpersuasive. Where a customer with sufficient funds issues clear transaction instructions and the bank acknowledges receipt thereof, the bank is under a duty either to act on the instructions or to promptly notify the customer of any rejection and the reasons for it. The Defendant's failure to do either aggravated the breach already found.
55. In view of the Defendant's failure to notify the Plaintiff, its unjustified restriction of the Plaintiff's account, and its disregard of basic banking practice, and the impression created in the mind of the court that customary bank practices were sidestepped and disregarded, the court finds and holds that the wrong was aggravated and ought to attract damages beyond damages for breach of contract and breach of duty of care. The Court finds that the Defendant's conduct warrants an award of aggravated damages. Accordingly, the Court awards the Plaintiff general and aggravated damages for breach of contract and duty of care in the sum of Kshs. 2,500,000/-.

Whether the plaintiff is entitled to a refund of the reversed amount of Kshs. 5,564,275.85

56. When giving his testimony, PW1 informed the Court that the Plaintiff, vide Lodwar CMCC Civil Case No. 6 of 2019, had instituted proceedings against the County Government of Turkana & Another, in which it sought, inter alia, a sum of Kshs. 7,684,396/=-, a portion of which included the sum of Kshs. 5,564,275.85 claimed in the present suit. PW1 further confirmed that the said lower court proceedings had concluded in favour of the Plaintiff and that execution was currently pending by way of mandamus.
57. It is a well-established principle of law that a plaintiff is entitled to recover only once for the same cause of action, and any attempt to recover the same amount twice would constitute double recovery or result in unjust enrichment. The Court of Appeal in *Desai Sarvia & Pallan Advocates v Tausi Assurance Company Limited Civil Appeal No. 280 of 2015 [2017] eKLR* recognized that a party cannot recover twice for the same cause, as doing so would unjustly enrich the claimant at the expense of the defendant.
58. In the circumstances of the present case, to again award the sum of Kshs. 5,564,275.85 to the Plaintiff in the instant suit, when the same amount has already been claimed and successfully awarded in CMCC Civil Case No. 6 of 2019, would result in double compensation and confer an undue windfall upon the Plaintiff.
59. Accordingly, the Court finds that the Plaintiff is not entitled to recover the said sum again in this suit, and any claim to that effect is unsustainable as it would amount to unjust enrichment.



60. Flowing from the foregoing discussions and conclusions, the Plaintiff's suit succeeds to the extent that judgment be and is hereby entered in favour of the Plaintiff against the Defendant for general and aggravated damages in the sum of Kshs. 2,500,000/- together with costs of the suit and interest thereon.

61. It is so ordered.

DATED, SIGNED AND DELIVERED AT LODWAR THIS 22ND DAY OF JANUARY, 2026

PATRICK J O OTIENO

JUDGE

