



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

(ON Makau J on 30th April, 2026)

CAUSE NO. E489 OF 2023

SHEFELD STEEL SYSTEMS
LIMITED.....CLAIMANT

-VERSUS-

JANE ACHIENG ESHIWANI OKUMU.....
RESPONDENT

JUDGMENT

Introduction

1. The Claimant is a limited liability company incorporated in Kenya while the Respondent was its employee from 1st November 2004. By a Memorandum of Claim dated 15th June 2023, the Claimant sued the Respondent for, conversion, breach of contract and unjust enrichment that led to loss of

Kshs. 146,085,932.15 by the Company. Therefore it prayed for the following reliefs:-

- a) A declaration that the Respondent is liable for the loss of Kshs. 146,085,932.15 suffered by the Claimant;***
- b) The sum of Kshs. 146,085,932.15 being the amount lost by the Claimant as a direct consequence of the Respondent's unlawful actions;***
- c) Interest on (b) above at Court rates from the date of filing suit until payment in full'***
- d) Costs of this suit; and***
- e) Any other relief or orders that this Honourable Court may deem fit and just to grant.***

2. The Respondent filed a Response to the claim dated 6th September 2023, denying any wrong doing and prayed for the suit to be dismissed with costs.
3. The suit went to full hearing and both sides tendered evidence and thereafter filed written submissions.

Facts of the case.

4. The Claimant employed the Respondent as an Assistant Accountant on 1st November 2004 responsible for account

data entry, preparation of books of accounts, wages and salaries. She rose through the ranks to become Finance Controller and Administration Manager from January 2011 to April 2021. During that period she was allegedly responsible for, **inter alia**, preparation of Bank reconciliations, ensuring accuracy of all ledges and sub ledgers, and confirmation of all cash transactions.

5. In May 2018. The Claimant's Board passed a resolution that included the Respondent as a signatory to the Claimant's Bank account held with Bank of India. Her sole authority was limited to cheques of upto Kshs. 500,000. In March 2021, the Respondent's Managing Director, Mr. Suresh Kanotra was notified in confidence that the Respondent had been processing cheques for her own personal use and in particular payments made to Almond Grove Limited.
6. Investigations were done which revealed that the Respondent fraudulently used the Claimants funds to purchase properties in Kenya and Uganda. The Board retained the firm of Grant Thornton to undertake forensic investigations and its Forensic Report revealed that the Respondent had defrauded the company by:-
 - a) Making payments amounting to Kshs. 11,247,851.55 to her relatives (i.e mother, brother, and sisters), and her own company.

- b) Making payments amounting to Kshs. 134,838,060.60 to companies or third parties who had not provided any supplies or services whatsoever to Claimant.
7. In total, the Claimant allegedly lost Kshs. 146,085,932.15 through the Respondent's unlawful actions including breach of contract and fiduciary duty. However the Respondent contended that all was well until the Main Director of the company died and she fell out of favour with the remaining two directors. She described the directors as fraudsters who are using her as scapegoat. She contended that the directors had praised her for stellar performance in execution of her assignments including winning tenders were money and time was spent.
8. She denied the alleged fraud, conversion, breach of contract, breach of fiduciary duty and unjust enrichment and maintained that all her wealth was earned through sweat and hardwork. Therefore she maintained that Claimant is not entitled to the reliefs sought.

Evidence

9. The Claimant called two witnesses. CW1 was its Managing Director one Suresh Kanotra who adopted his written statement dated 15th June 2023 and produced 14 documents as exhibits. He stated that the Respondent was employed for

16 years and he noted that she was defrauding the company. She wrote letter dated 5th March 2021 to HFCK and forged his signature purporting that his office had authorized purchase of a house when he approached the Respondent, she wrote an apology letter dated 1st April 2021.

10. He testified that the Respondent further confessed that she had used company cheques for personal gains. He conducted an audit which discovered that over Kshs. 17,000,000 was used to pay transactions not related to the company. Further investigations revealed that over Kshs. 5,000,000 were embezzled from the company. The offence had continued from 26th June 2018 when the Respondent was authorized to sign out cheques. The authority was limited to Kshs. 500,000 to enable payment to creditors since he travels a lot in his business.
11. After noticing the embezzlement of company funds, he reported the matter to the police and hired a lawyer and a Forensic Auditor. The Forensic Auditor's Report revealed embezzlement of Kshs. 146,085,932.15 and he contended that the Claimant never did any business with the Respondent, or her family or their businesses. He further stated that authority to sign cheques of upto Kshs. 500,000 was not for purposes of paying out kickbacks and contended that Claimant is a blue chip company that does not engage in corruption but lawful businesses.

12. He testified that there was no agreement to pay the Respondent any commission for facilitating risk businesses or to represent him in risk businesses. He contended that only sales department gets commission while the other staff get bonuses. Finally, he contended that the letters/statements in Page 8, 10, 12 and 13 were voluntarily written by the Respondent in her own handwriting when she was asked to refund the embezzled money, and she was not forced to sign the same.
13. On cross examination, he confirmed that the Claimant is a company with two directors and he had no written resolution appointing him to testify in this suit. He further confirmed that the company did legal audit every year and no audit ever raised any issue. He also confirmed that the Respondent was reporting to him directly since the time of her appointment.
14. He contended that the Claimant had Kenya shillings account which it authorized the Respondent to sign cheque, but confirmed that Page 355 - 408 is a USD account statement. He contended that the Respondent, as the financial controller, was responsible for managing the docket. He admitted that his instructions to her were mainly done verbally. He further admitted that the Claimant had several

projects for the government including Kakamega Hospital kitchen, State House and College of Insurance.

15. He contended that the Respondent listed the property acquired and registered in her name and he reported the case of embezzlement to the DCI to investigate. He contended that the values of the property listed in Page 10 were given by the Respondent and the Forensic Report.
16. He confirmed that the letter dated 5th March 2021 was not addressed to anyone but, to whom it may concern. He maintained that the signature was not his but Respondent's forgery. He admitted that item 5 in paragraph 10 of his statement was about legal fees of Kshs. 50,000,000 but stated that item 1 and 13 are not one and the same item, as they are two apartments in the same place. He maintained that Kshs. 11,000,000 went to the Respondent's relatives.
17. In re-examination he contended that, as the Managing Director, he had authority to testify for the Company. He contended that he was not aware that the Respondent was withdrawing such amounts from the company and contended that payments for the company are done against invoices and not without such demands. He maintained that the Respondent was fully responsible for financial controls.

18. He contended that she voluntarily wrote the document in Page 10 vide which she revealed the money embezzled. He admitted that the handwritten document in Page 10 dated 3rd April 2021 indicates a payment of Kshs. 50,000,000 as legal fees and miscellaneous expenses. He maintained that the annual audits done by external Auditor did not reveal any irregularities because the Respondent was in charge of the Finance Department which gave the information to the auditor, and she ensured that the fraud was covered.
19. CW1 was Mr. Parag Shah, a partner at Grant Thornton Advisory East Africa Limited. He signed the Forensic Investigation Report on Page 14 - 576 of the Claimant's bundle. He also prepared a witness statement dated 13th October 2025 which he adopted as his evidence in chief. He testified that the Claimant engaged the firm to do a forensic audit and discovered that Kshs. 146,085,932.15 had been embezzled.
20. He stated that investigation involved review internal audit, accounts documents including journals and vouchers and also interview of company officials including CW1, accountant and the internal auditor. He contended that the embezzled sum was through (a) payment to persons known or related to the Respondent

(b) Payment to unauthorized supplies without evidence of any supplies.

(c) Discrepancy between accounts and back statements.

21. He confirmed that all the payments were within the authorized limit of Kshs. 500,000 and most of them were done through cheques. None of the cheques were for purposes of the Claimant's business. Page 81 - 84 is a schedule of the cheque numbers, dates, payees and the amounts. The payees were not suppliers to the Claimant but related to the Respondent and Grove Limited. Page 88 - 319 are cheque for 2020 and 2021.
22. On cross examination, he confirmed that the Forensic Report was prepared by his firm and he signed the forwarding letter on Page 15 of the Claimant's documents. He admitted that the Claimant had no internal auditor and Dan was just called to review the books when the fraud was discovered.
23. He stated that Page 551 -552 are Mpesa payments to Grove Limited but admitted that he had no Mpesa statement or Mpesa texts for Kshs. 1,450,000. He contended that Amagua Water and Amistone Logistics were paid large sums of money but they were not suppliers to the Claimant. He contended that the audit reviewed all the payments documents including cheques from the Banks including

cheques but admitted that he did not produce the Bank statements for the Kenya shillings amounts. He contended that the cheques are better evidence because it indicates the names of the payee and details.

24. He contended that the company in Page 17 was owned by the Respondent's brother as reflected in her employee form. He contended that forensic investigation is used to verify roles and responsibilities. In this case the Respondent was the Financial controller with authority to pay upto Kshs. 500,000. Finally he stated that money was irregularly paid without any supporting invoices or other evidence of supplies to the Claimant.
25. The Respondent testified as RW1 and adopted her written statement dated 14th October 2024 and a bundle of six documents dated 31st January 2024. She testified that she was handling the projects as indicated in paragraph 3 of her witness statement. In the said projects she was supposed to pay facilitation fees to the people who gave the Claimant government tenders. She was being sent to deliver the money to strangers. The instructions were given to her verbally by the CW1.
26. In May 2026 she received a call from Joseph Mucheru to go to the DCI office to record statement on alleged fraud in the company. She recorded a statement as in this case and

visited the DCI office severally until she was made to sign a typed statement which was different from what she had recorded by her hand. Disowning the handwritten letters/statement alluded to by the CW1. Thereafter her vehicles were impounded and the court ordered for their release. To date the vehicles are still impounded.

27. She admitted that she bought a house at Kitengela at Kshs. 8,000,000 but denied owning any property in Uganda. She contended that she was reporting to the CW1 directly and she had authority to sign cheques for Kenya shillings account. However, she contended that no payment could be done without confirmation from the CW1. She further stated that there were monthly, quarterly and annual internal audits and no problem was noted in any of the audits.
28. On cross examination, she admitted that she was authorized to sign cheques for upto Kshs. 500,000 for facilitation of tenders from government. She maintained that the instruction to do the facilitation was done by CW1 verbally and the back used to notify the CW1 through phone calls or emails before paying any cheque. All the said emails are with the Claimant. She testified that she used check Dapex Freight International Linato Limited and his brother Johnstone Amayamu Onyango to pay the facilitation fees to people who gave the Claimant tenders including Kenya University Project, would championship under 18, Controller

of State House, Kakamega Referral Hospital, College of Insurance, Ministry of Defence, and Office of the Deputy President.

29. She confirmed that the said companies and her brother were not suppliers to the company but they were used to transmit the facilitation fees. She was not the one securing the tenders but her role was facilitation of the people giving the government tenders to the Claimant. She admitted that she has not provided the evidence of the said facilitation services.
30. She admitted that she purchased a house from Grove Limited worth Kshs. 8,000,000. She also admitted that she authorised the letter dated 5th March 2021 and signed it following a verbal authority to do so. She further admitted that she wrote the apology letter dated 5th May 2021 but denied writing and signing the letters on Page 10, 12 and 12.
31. She admitted that as the financial controller, she had fiduciary duty and the duty to uphold integrity. Finally, she admitted that following a complaint by the Claimant she was charged in a criminal court.
32. In re-examination, she contended that all emails from the Bank went to the CW1. She confirmed that the facilitation fees for tenders was paid in cash upon verbal instructions

from the CW1 from 2018 to 2021. She disowned the signatures referred to by counsel during cross examination and contended that she was not an expert to compare the signatures.

Submissions

33. It was submitted for the Claimant that it is entitled to the reliefs sought for the reason that the Respondent abused her position of trust and engaged in systematic fraudulent misappropriation of the company funds through falsified payments and forged documents. It was further submitted that the company's Board passed resolution to unilaterally sign Kenya shillings cheques not exceeding Kshs. 500,000 to facilitate payment for company expenses or supplies, particularly when the CW1 was travelling. The said authority was granted in good faith and strictly for legitimate business purposes.

34. It was further submitted that the Respondent abused the said authority and embezzled company funds by issuing numerous cheques not exceeding the limit of Kshs. 500,000 to individuals and entities with no business relationship with the Claimant, and falsely representing or the counterfeits that the payments were payment to legitimate suppliers or service providers.

35. It was further submitted that on 5th March 2021, the Respondent wrote and signed a false letter purporting that it had been authored by the CW1 advancing her Kshs. 2,500,000 on her behalf for purchase of a house from Almond Grove Limited. The letter falsely alleged that the said sum was her 2020 dues. It was further submitted that the Respondent admitted the offence of misappropriating Kshs. 6,000,000 and apologized. In addition she wrote the letter dated 3rd April 2021 seeking for time to repay the funds.
36. It was further submitted that a comprehensive Forensic Audit by Grant Thornton revealed that the Respondent had embezzled Kshs. 146,085,932.15 through payment to family members and parties who provided no services to the Claimant and through payment to third party individuals and companies with no legitimate dealings with the Claimant. All the unilaterally signed cheques were scrutinized and no supporting invoices or documents justified the payments. Therefore it was submitted that the admissions by the Claimant and the findings in the Forensic Audit Report prove on balance of probability that the Respondent engaged in fraud, breach of fiduciary duty and embezzlement.
37. It was argued that the Respondent committed criminal offences which amounted to actionable tort of conversion and formed the basis for a recovery of the misappropriated

funds. For the foregoing reasons, it was concluded that the Claimant had proved its case on a balance of probability.

38. For emphasis, reliance was placed on **Stephen Kanini Wang'ondu v. The Ark Limited [2016] eKLR**, where the court held that expert evidence is admissible and persuasive where it is based on professional inquiry and analysis. In the present case it was argued that no evidence was tendered to suggest that the Forensic Audit Report was prepared on the basis of illogical, irrational, false or incomplete facts. On the contrary it was submitted that the report was founded on hard undisputed evidence and facts comprised of voluntary written submissions of wrong doing by the Respondent, copies of the cheques issued by the Respondent, cheque book counterfoils, and the fact that the questioned payments were made to third parties and Respondent's family members who had not provided services or supplies to the Claimant.
39. It was submitted that in **Juriction Forex Bureau Limited v. Rafique [2025] KEELRC 2136 (KLR)** Keli J relied on forensic audit report to hold the employee liable for recovery of the lost funds. Further reliance was placed on **Sanergy Limited v. Murigi [2025] KEELRC 2802(KLR)** where the court relied on the admission of wrong doing by the Respondent to find that embezzled funds were recoverable.

40. Finally it was submitted that CW1 denied ever authorizing the alleged kickbacks or the forged letter and the Claimant failed to provide any evidence to corroborate the alleged verbal instruction to pay kickbacks and write the forged letter. It was argued that the Claimant was ISO certified company with present finance and accounting policies, where there is no room for verbal instructions for payment without delivery noted for goods and services rendered. Therefore the court was urged to grant the prayers sought in the claim.
41. On the other hand, it was submitted for the Respondent that the suit is incurably defective as it was brought without resolution of the company as required by the law and without authority of the company. It was submitted that there was evidence that the company had three directors who did not make any resolution authorizing filing of the suit and the CW1 to represent the company as a witness.
42. It was submitted that the said authority was a mandatory requirements which has been uphold by the court in **Kenya Commercial Bank Limited v. Stage Coach Management Limited [2014] eKLR** and **East Africa Portland Cement Limited v. Capital Market Authority & 5 others [2014] eKLR** where the suits were struck out for want of bold resolution authorizing filing of suit.

43. As regards the alleged defrauding of the Claimant, it was submitted that there is no dispute that the Respondent was authorized to transact and sign cheques upto Kshs. 500,000 in the Kenya shillings accounts only. It was further submitted that the CW1 admitted that the Respondent reported to him and he used to give her all instructions verbally. It was argued that it was not enough for the Claimant to accuse the Respondent of fraud and forgery without adducing evidence to substantiate the allegations. Reliance was place on **Ng'ang'a v. Njabani [2024] KEHC 2290 (KLR)** where the court held that forgery must be specifically pleaded and proved.
44. As regards liability to pay Kshs. 146,085,932.55, it was submitted that the Claimant has not discharged the burden of proving, the same said sum specifically. It was submitted that no proof has been tendered to establish that the said sum was lost by the company due to her actions. She contended further that no evidence was tendered to prove that the 14 properties listed existed, that they were registered in her name, and that they were directly acquired using money from the company.
45. It was further submitted that the mere calculation of the value of the items in the list does not amount to Kshs. 146,085,932.15. Besides, the CW1 admitted in evidence that

no irregularities had been revealed in all the annual audits mandated by the law.

46. It was further submitted that, the CW1 admitted in evidence that the Claimant had been given several government tenders which corroborates the Respondent's evidence that CW1 had verbally instructed her to facilitate the said tenders from the account she had been made a signatory.
47. As regards the authenticity of the Forensic Audit Report by Grant Thornton Advisory E. A Limited, it was submitted that CW2 involved Claimant's Auditor Miss Danny Olago and Financial Controller Harshil Shah to corroborate the findings but failed to interview the Respondent and or look at the annual audit reports or returns to Kenya Revenue Authority.
48. It was further submitted that no evidence like Mpesa statement was tendered to prove the sum of Kshs. 11,247,851.55 was paid to companies and individuals closely related to the Respondent including her sisters, brothers and entities owned or controlled by her family members.
49. As regards the claim that 138,838,550 allegedly paid to strangers who had not rendered any services or supplied any goods, it was submitted that the Claimant did not produce in this court a list of all its prequalified suppliers.

50. It was further submitted that the Bank statement relied upon in the Forensic Audit was not produced as an exhibit. Besides, no conclusive report was adduced from the DCI or court to confirm that there in deed a fraud took place.
51. It was further submitted that CW2 was not competent expert witness as he never did the investigations and prepare the forensic audit report. The forensic audit was done by Steven Bett who was the only person qualified to defend the report in court. Finally it was submitted that a forensic report does not on its own provide sufficient prove of fraud without a comprehensive criminal investigation by the DCI which has a specialized fraud unit.
52. In view of the foregoing matters, it was submitted that the Claimant is not entitled to the reliefs sought and therefore the court should dismiss the suit with costs.

Issues for determination and analysis

53. Having carefully considered the pleadings, evidence and submissions summarized above, the following issues fell for determination:-
 - a) Whether the suit is fatally defective for want of resolution from the Board to institute the suit.
 - b) Whether the Claimant entitled to the recover Kshs. 146,085,932.15 from the Respondent.

Lack of Board Resolution

54. The Respondent submitted that the suit is fatally defective for being instituted without a resolution of the company's Board of directors. The Claimant was served with the Respondents submissions but never filed any rejoinder. The issue of lack of Board's resolution was also raised during the hearing in relation to the authority of the CW1 to testify on behalf of the Claimant company.
55. In **Kenya Commercial Bank Limited v. Stage Coach Management Limited [2014] eKLR** Mumbi Ngugi J cited the case of **Affordable Homes Africa Limited v. Ian Henderson & 2 others** where Njagi J held that:-

“ The upshot of these considerations is that in the absence of a board resolution sanctioning the commencement of this action by the company, the company is not before the court at all. For that reason, the Preliminary Objection succeeds and the action must be struck out with costs, such costs to be borne by the advocates for the Plaintiff.”

56. Ngugi J further cited the case of **East Africa Portland Cement Limited v. Capital Market Authority & 5 others** in which Okwany J held that:-

“ It is my humble view that the plaintiff was lackadaissal in pursuing their case and it is my finding that failure to tender the company resolution authorizing the case deal a fatal blow to their case.”

57. In this case there is no doubt that the Claimant has not filed a copy of its Board’s resolution authorizing filing of the suit before the court. The Claimant is a limited liability company incorporated in Kenya which can only take decisions through the agency of its organs, namely the Board of directors or the General meeting. There being no resolution of the Claimant’s Board authorizing commencement of the suit, the suit is fatally defective and it must be struck out. However on without prejudice basis I will consider the merits of the case.

Merits of the reliefs sought

58. The Claimant seeks to recover Kshs. 146,085,932.15 being the money allegedly defrauded/embezzled by the Respondent between 2018 and 2021 when she was a signatory of the Claimant’s Kenya shillings account. Her mandate was for cheques not exceeding Kshs. 500,000. The basis of the claim is the Forensic Audit Report prepared by Granton Thornton Advisory East Africa Limited dated August 2021. The report was produced as any exhibit by the CW1.

CW2, a partner of the said Audit firm also referred to the same Audit Report but admitted that it was prepared by a team in his Audit firm and then he signed a forwarding letter.

59. The Respondent submitted that CW2 was not a competent expert witness because he never did the forensic investigations. It was submitted that the only person who could testify on the report is the one who did the investigation. CW2 contended that he was part of the team that did the investigation and he signed the forwarding letter dated 19th January 2022.
60. I have considered the forensic report in Page 14 - 576. Item 1 in the table of contents is the detailed findings, item 2 is background information, item 3 is glossary, item 4 list of exhibits, item 5 list of annexures, item 6 is list of tables and item 7 is list of appendixes. There is no expert opinion signed by the CW2 or any of the team of forensic investigators involved. In my view, without any signature by the forensic investigator the Audit Report is not authentic. For an expert opinion to have legal authenticity, it must be signed by the expert witness who authored it. Consequently, the forensic audit report is not valid document.
61. The foregoing notwithstanding, there is evidence on record that implicates the Respondent with the offence of fraud and embezzlement. She admitted that she wrote the letter dated

5th March 2021 and signed it purporting to be authored by CW1 to justify payments to Almond Grove Limited for purchase of a house. By an apology letter dated 1st April 2021, she admitted that she took about Kshs. 6,000,000 from the Claimant to purchase the house from Grove Limited and she intended to pay back.

62. By a further letter dated 3rd April 2021 she admitted that she took money without Claimant's knowledge including Kshs. 8.5 M to buy house from Grove Limited, Kshs. 6.7 M to buy House from Gichengu Patrick, Kshs. 15 M to buy land in Kitale and Kshs. 12 M to buy land in Kisumu. The Claimant produced another letter in Page 12 -13 of its bundle referenced, "Statement on the guide of properties." But it does not have any date or signature by the Respondent. Therefore I find the said document to be lacking authenticity.
63. The Respondent attempted to disown the admissions referred to above, before this court but she did not adduce any evidence to prove that she was forced to write the same and that she has since reported a complaint to the police for investigations and action. Consequently, I find that, the Claimant has proved on a balance of probability that the Respondent defrauded/embezzled its funds to the tune admitted in the said documents, and specifically the letter dated 3rd April 2021 being Kshs. 41,200,000.

64. The Respondent admitted the said sum and sought time to sale the properties to raise funds to refund to the Claimant. She also prayed for a pardon for the wrong doing. Consequently I find and hold that the Respondent defrauded/embezzled the Claimant's sum of Kshs. 41,200,000 but I decline to award due to the defect in suit.

Conclusion

65. I have found that the Respondent embezzled Kshs. 41,200,000 from the Claimant which I could have awarded. However, I have already found that the suit is fatally incompetent for being filed without a resolution of the Claimant's Board of directors authorizing commencement of the suit. Consequently, I strike out the suit with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

**ONESMUS MAKAU
JUDGE**

Appearance

Gichuhi for Wandati for Claimant

Amunga for Respondent

