

KENYA / JUDGMENT

Junction Forex Bureau Limited v Rafique [2025] KEELRC 2136 (KLR)

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COURT

Employment and Labour Relations Court

BEFORE

JW Keli

CASE / FILE NUMBER

Employment and Labour Relations Cause E484 of
2022

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Junction Forex Bureau Limited v Rafique (Employment and Labour Relations Cause E484 of 2022)
[2025] KEELRC 2136 (KLR) (18 July 2025) (Judgment)

Neutral citation:

[2025] KEELRC 2136 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nairobi

Employment and Labour Relations Cause E484 of 2022

JW Keli, J

July 18, 2025

Between

Junction Forex Bureau Limited

Claimant

and

Walid Mohammed Rafique

Respondent

Judgment

1. The claimant was the ex-employer of the respondent. Upon separation, the claimant filed a memorandum of claim dated 7th July 2022 against the respondent seeking for the following relief:-i)KES. 16,500,000. 00ii)Interest on (i) above at Court rates from the date of filing this suit until payment in full.iii)Costs of this suit.iv)Any other Relief that this Honourable Court may deem just and fit.
2. In support of the claim, the claimant filed witness statement of Anna Ngiana Rama dated 7th Jul 2022 and list of documents dated 7th July 2022, list of documents dated 7th July 2022 and a further list of documents dated 99th December 2024 being the copy of typed proceedings and judgment in Kibera Chief Magistrates Court CR. Case No. E769 OF 2022.
3. The claim was undefended. The court noted that on the 31st July 2024 the respondent appeared in person and asked to be allowed to appoint an advocate. On 27th March 2025 counsel by the name Ms Taragon appeared at the formal proof and informed the court that his client, the respondent was incarcerated. The court noted that the respondent had been sentenced by the Criminal case trial Magistrate over the theft of the money in issue on the 28th October 2024 for 4 years for each of the count to run concurrently(page 27 of the claimant's list of documents dated 9th December 2024).

Hearing and evidence

4. The claimant's case proceeded on formal proof on the 27th July 2023. CW 1 was Dr. Kimani Njoroge who told the court he was an auditor. He produced the Forensic Audit Report he prepared under Kimani & associates where is the proprietor. He told the court that the respondent was a clerk at the claimant's forex bureau where the monies were lost. That he prepared the report by looking into the Respondent's software Bank statements, banking slips, opening balances per day, closing balances per day and monies coming in per day. The report was done 1st January to 8th May 2022. He produced the report as Exhibit 1.
5. On 27th March 2025 CW2, Anne Ngiana Rama, a director of the claimant, testified on oath and adopted her witness statement dated 7th July 2022 as her evidence in chief. She produced as the claimant's evidence documents under list of 7th July 2022 save for exhibit 1 produced by CW1(Doc 4). She also produced the documents under the further list of documents dated 9th December 2024 as C-exhibit 9 and 10.

The claimant's case

6. The Claimant is a limited liability company registered under the provisions of the Companies Act with registered offices and carrying on its business operations in Nairobi County within the Republic of Kenya.

7. At all material times, the Claimant is a duly registered and licensed to operate forex bureau business for local and international money transfer as well as currency exchange business and operates such business as a Sub-Agent of Western Union Inc. and Diamond Trust Bank Kenya Limited within the Republic of Kenya.
8. The Respondent was at all material times since 10/09/2018 until 24/04/2022 an employee of the Claimant working as Back Office Personnel at a monthly gross salary of KES. 100,000 under terms of Employment Contract dated 10/09/2018 within the Claimants business at Junction Forex Bureau Branch of the Claimant situate at Junction Mall along Ngong Road in Nairobi.
9. On or about 8/05/2022, the Claimant discovered that the Respondent had on diverse dates between 1/01/2022 and the said 8/05/2022 in breach of his Contract of Employment failed account, misappropriated, unjustly enriched himself, irregularly taken the Claimants money for his own use thereby causing the Claimant a loss of KES. 16,500,000 (the suit amount) being the Claimants money/ tools of trade were in possession or custody of the Respondent in the course of business and has until the date of this claim failed and or neglected to return or deliver up the said amount to the Claimant.
10. On 24/05/2022, the Claimant terminated the Respondent employment for gross misconduct particularly stealing by servant and causing the Claimant a loss of the above suit amount in accordance with the Contract of employment and relevant laws. Despite having admitted to have failed to account and deliver up to the Claimant the above amount, the Respondent has to date failed, refused and or neglected to account. deliver up and or return the said suit amount, threatened and intends to retain the above amount, dissipate and or misappropriate the said amount for his own use which actions are not only conversion but also breach of the contract of employment and the Claimant will suffer substantial loss unless the Court intervenes.
11. Particulars of Breach of Contract against the Respondenti)Failure to account for over KES. 16,500,000 given to him to transact for and on behalf of the Claimant in the course of employment.ii)Embezzling or misappropriating the Claimants money for his own use and benefit without the Claimants authority contrary to the Contract of employmentiii)Failure to ensure and or balance the Claimants Book of Accounts to reflect true. accurate and fair state of Claimants business and transactionsiv)Falsification of the Claimants Books of Accounts on cash flow with intent to deceive the Claimant on the state of affairs of the daily transactions.
12. As a result of the above actions, the Claimant has not only suffered loss of the suit amount but also risk blacklisting. suspension or cancellation of its sub-agent forex bureau license for loss of its Clients money. BDespite demands. the Respondent has failed, neglected and or refused to settle the claim thereby necessitating the institution of this suit and the Claimant thus claims the suit amount plus interest thereon at court rates from the date of filing suit until payment in full.

13. Save for a pending criminal case in Nairobi Milimani Chief Magistrates Court Criminal Case No. E749/2022 R v Walid Mohamed Rafique wherein the Respondent was charged for stealing by servant of the subject amount herein and falsification of the Claimants Books of Accounts, there have been no previous proceedings in any court between parties herein and there have been no previous proceedings, in any court between parties over the same subject matter.
14. The claimant filed written submissions after the hearing as follows:-
15. The Respondent owed a fiduciary duty of care to act in good faith and in the best interests of the company in accordance with the contract of employment. However, the Respondent did not live up to this expected standard of duty of care and the fiduciary duty in breach of contract of employment. A fiduciary duty is defined in Black's Law Dictionary 11th Edition as "a duty of utmost good faith, trust, confidence, and candour owed by a fiduciary to the beneficiary...a duty to act with the highest degree of honesty and loyalty towards another person in the best interest of the other person...also termed as duty of loyalty, duty of fidelity, duty of faithful service, duty to avoid conflict of interest".
16. Similarly, the American decision of *Wolf v Superior Court* (2003) 107 CALAPP.4TH 25, 29 [130CALRPTR.2D 860] as relied on in the case of *Nubian Rights Forum v Registered Trustees Of Kibra Nubian Community Land Trust & 4 Others* [2024] (KLR) defines a fiduciary relationship as ... "any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent...."
17. With the above definitions, there is no doubt that the Claimant herein had placed a lot of faith, trust, and confidence in the Respondent herein to deal with his businesses and the funds within the business in the course of employment. Respondent's actions in misappropriating the claimant's funds in the course of employment as presented in this case was breach of fiduciary duty to his employer. That the Respondent herein used his position in the Claimant company to orchestrate the siphoning of funds through cash deposits to his Bank Accounts, M-Pesa Transfers, as well as third-party intermediaries who include his wife, other staff, and his associates from other forex bureaus. The Respondent unjustly enriched himself from the Claimants business and should thus not be allowed to keep what he stole. The Claimant has established and proved that the Respondent stole and misappropriated a sum of KES. 16,500,000. ii) Whether the Claimant is entitled to the principal claim of Kshs. 16,500,000 and interests at court rates from the filing date.
18. Claimant is entitled to the principal amount of Kshs. 16,500,000 misappropriated by the Respondent. It is noteworthy that the Respondent stole the funds despite having regularly and promptly received his pay as per the Contract of Employment. The Respondent cannot

be allowed to keep what he has unjustly received. The Claimant invokes the principle of unjust enrichment, arguing that the Respondent unlawfully benefitted from the funds misappropriated. The Court of Appeal in the case of *Vinayak v Singh & 2 Others* (Civil Appeal (Application) 175 Of 2017) [2023] KECA 1433 (KLR) (24 November 2023) (Judgment), define and discussed the principle of unjust enrichment at paragraphs 33-38 of the judgment and held that the doctrine of "unjust enrichment" is based on equity, and it can be invoked to deny the benefit to which a person is not otherwise entitled. The Court cited with approval various court decisions and held as follows:- "Unjust enrichment has been defined as: "a benefit obtained from another. not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense." (See *Black's Law Dictionary*. Eighth Edition (Bryan A. Garner) at page 1573). A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another; or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.

19. In the leading case of *Fibrosa v. Fairbairn*, [1942] 2 All ER 122, Lord Wright stated the principle thus: "any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi- contract or restitution. "Lord Denning in *Nelson v Larholt*, [1947] 2 All ER 751 stated: "It is no longer appropriate. however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right. not on whether they can be fitted into a particular frame-work. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."
20. Guided by the above excerpts, we shall address our minds to the question whether the appellant has demonstrated the elements of unjust enrichment and whether the justice of this case requires this Court to order a restitution. The essentials of the doctrine of unjust enrichment are: (a) the defendant has been enriched by the unjust benefit; (b) this enrichment has taken place at the expense of the plaintiff; and, (c) the enrichment which has been acquired is unjust or unfair. As was held by the Supreme Court of India in *Sahakari Khand Udyog Mandal Ltd. v Commissioner of Central Excise & Customs*, 2005 AIR SC 1897, the doctrine of "unjust enrichment" is based on equity, and it can be invoked to deny the benefit to which a person is not otherwise entitled. Before claiming a relief of refund, it is necessary for the appellant to show that he has paid the amount for which relief is sought. That he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss.

21. This Court in *Chase International Investment Corporation and Another v Laxman Keshra and 3 Others* [1978] eKLR was emphatic that the aim of equity is to do justice between parties. That is what the doctrine of unjust enrichment is all about.
22. Similarly, in this case, the Respondent herein was not entitled to the funds being claimed herein but took the funds away from the Claimant contrary to the contract of employment. The Respondent unjustly enrich himself with the Claimants funds at the prejudice of the Claimant in unjust and unfair manner. The Claimant submits that it has satisfied the threshold for grant of the reliefs sought as set out in the Court of Appeal case of *Vinayak*[supra).

Decision

23. The claimant produced employment contract of the respondent dated 10th September 2018 as evidence of the employment relationship for three months subject to renewal. The contract appeared to have been extended as the claimant further produced the payslip of salary paid to the respondent (page 19 of claim) for the month of April 2022. The claimant was accused of stealing in the period 1st January 2022 to 8th May 2022 hence within the employment period . (at page 74 of the claim the respondent admitted he was at work when he could not account for Kshs, 16,500,000).
24. The respondent was served with case before he was jailed and did not file any defence. The case was certified as undefended.
25. The court considered the undefended case and took account of the testimony of the claimant's witness, the forensic audit report by Kimani and associates at the material time of the theft when the respondent was at work.(C- exhibit 1, pages 20-23 of the claim was the forensic audit report). The claimant produced its registration documents and the judgment of the Kibera Chief Magistrate Court Criminal case No. E749 OF 2022 where the court found that the respondent was guilty of theft of the suit sum of Kshs. 16,500,000. The criminal court standard of proof is that of beyond reasonable doubt. The court finds that the claim is further proved on a balance of probabilities. On perusal of the judgment of the Magistrate criminal court I found prove of high probability that the Respondent stole the money. Taking into account the foregoing, I find the respondent enriched himself as an employee unjustly as he was paid to provide labour and not to take away the property of the respondent. The respondent was a money exchange bureau hence it is correct to say the stolen money was its tools of trade which it entrusted the respondent to trade on its behalf. The respondent was unable to account for the money and the was convicted for stealing the same. A case of unfair enrichment by the Respondent with the Kshs. 1650000 was established. The court upheld the decisions relied on by the claimant. In *Fibrosa v. Fairbairn*, [1942] 2 All ER 122, Lord Wright stated the principle thus : "any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in

English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution. "Lord Denning in *Nelson v Larholt*, [1947] 2 All ER 751 stated: "It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular frame-work. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires." The claimant is entitled to the equitable remedy of recovery of the money by the respondent to prevent unjust enrichment.

26. In the upshot, taking into account the foregoing, I allow the claim and enter judgment for the claimant against the respondent for payment of Kshs. 16,500,000 with interest at court rates from the date of filing suit until payment in full. The claimant is awarded costs of the suit.
27. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF JULY 2025.
J.W. KELI, JUDGE. In The Presence Of: Court Assistant: Otieno
Claimant – Olala with
Gitoro Respondent: no defence

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CASE PAGE	https://chat.esheria.ai/case-law/kenya/junction-forex-bureau-limited-v-rafiq-2025-keelrc-2136-klr-unknown-topic-employment-and-labour-relations-court-2025

Prepared on 14 October 2026 · Esheria