

REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
SCCCOMM NO. E086 OF 2022

KOPO KOPO INC ----- CLAIMANT

VERSUS

FIRST WORLD LIMITED ----- RESPONDENT

RESPONSE TO STATEMENT OF CLAIM

1. Claimant's Personal Details

Name: **KOPO KOPO INC**

Postal Address: **21994-00505, NAIROBI**

Physical Address: **PITMAN HOUSE**

Telephone Contact: **0702000222**

JAKAYA KIKWETE ROAD

Email Address: support@kopokopo.com

Nature of Business: **FINANCIAL TECHNOLOGY SERVICES**

Location/Sub/Village: **NAIROBI, KENYA**

2. Respondent's Personal Details

Name: **FIST WORLD LIMITED**

Postal Address: **9603-00300, NAIROBI**

Physical Address: **MANYANJA ROAD,**

Telephone Contact: **0790395476**

DONHOLM NAIROBI

Email Address: firstworldlimited@yahoo.com

Nature of Business: **CAR HIRE**

Location/Sub/Village: **MANYANJA ROAD, DONHOLM**

3. Response to Statement of Claim

In response to the Statement of Claim dated the **8th** day of **December, 2022** the Respondent states as follows: (Please tick where appropriate)

☐ The Respondent does not owe the Claimant any money.

☒ **The Respondent owes the Claimant only a portion of the amount claimed in the Statement of Claim amounting to Kshs. 164,425.55/= as a result of the 50% waiver Promotion offered by the Claimant and utilized by Respondent.**

☐ The Respondent admits the whole of the Claimants claim.

☐ The Respondent has paid to the Claimant all the sum claimed in the Statement of Claim.

☒ **It is the Claimant who owes the Respondent a sum of Kshs. to be ascertained by the Court for breach of the contract arising from the closed MPesa Till Number.**

☒ **If the response is in denial of the whole or part of the claim. Give reasons why the claim is denied**

The Counterclaim of general damages for breach of contract arising from the closed MPesa Till Number with the Set off in the sum of Kshs. 164,425.55/=.

4. In addition to the Respondent's response in paragraph three above, the Respondent state's that this claim (Please tick where appropriate)

☒ **Is filed in the right Court**

☐ **Is filed in the wrong Court and should be transferred to the Small Claims Court at**

5. Counterclaim Without prejudice to the Respondent's response in paragraphs three and four, the Respondent Counterclaims against the Claimant the sum of Kshs on account of

6. Set-Off while admitting the Claimant's claim in the sum of Kshs 164,425.55/=, the Respondent states they are entitled to a Set-Off in the sum of Kshs. 164,425.55/= on account of the 50% waiver Promotion offered by the Claimant and utilized by Respondent.

7. Claim against Third Party The Respondent denies the Claimants claim and states that the person named below ("the Third Party") is liable to the Claimant on the grounds set out in the attached Third Party Notice.

Name of Third Party:

Postal Address:

Telephone Contact:

Email Address:

Location/Sub/Village:

8. Remedy/ Relief Sought

The Respondent requests the Court to:

☐ Dismiss the Claimants claim with costs to the Respondents

☐ Enter Judgment in favour of the Claimant against the Respondent in the sum of Kshs.

✓ **Enter judgment in favour of the Respondent against the Claimant on the Counterclaim of general damages for breach of contract arising from the closed MPesa Till Number with the Set off in the sum of Kshs. 164,425.55/=.**

☐ Enter judgment in favour of the Claimant against the Third-party in the sum of Kshs

Declaration I declare that the information given above is true

Name of Respondent: **FIRST WORLD LIMITED**

Signature of Respondent:



Dated this 7th day of March, 2022

Acknowledge of Service

I acknowledge service of this Response to Statement of Claim delivered to me, with evidential documents attached, on

Name of Claimant:

Signature of Claimant:

For Official Use Only This Response to Statement of Claim was filed on the day of 2022
Signed (Registrar)

REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
SCCCOMM NO. E256 OF 2022

KOPO KOPO INC ----- CLAIMANT


VERSUS

FIRST WORLD LIMITED ----- RESPONDENT

RESPONDENT'S LIST OF WITNESSES

1. Samuel M. Maina, Director of the Respondent

DATED at NAIROBI this 7th day of March, 2022.



MUCHUI-MWENDWA & CO.
ADVOCATES FOR THE RESPONDENT

DRAWN AND FILED BY:

MUCHUI-MWENDWA & CO. ADVOCATES,
COMMERCE HOUSE, 4TH FLOOR, ROOM 411,
MOI AVENUE,
P.O. BOX 5534-00100,
NAIROBI
TEL: 0723723736
EMAIL: muchui.mwendwaadvocates@gmail.com
ADMISSION NO.: P.105/14513/18
PRACTISE NO.: LSK/2022/07633

TO BE SERVED UPON:

RILANI ADVOCATES,
SUITE D5, 2ND FLOOR, RIARA CENTRE
RIARA ROAD
P.O. BOX 25518-00100,
NAIROBI (REF: RA003/C004/002/2020)
TEL: +254 (0)20 2425260
EMAIL: info@rilaniadvocates.legal

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SCCCOMM NO. E256 OF 2022

KOPO KOPO INC ----- CLAIMANT

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FIRST WORLD LIMITED ----- RESPONDENT

RESPONDENT'S WITNESS STATEMENT

I **SAMUEL MUTHUI MAINA** of **P.O. BOX 9603-00300, NAIROBI** wish to state as follows:

1. I am a male adult of sound mind and understanding.
2. Further, I am a director of the Respondent Company herein with requisite authority and hence competent to make this statement.
3. Thus I have the following to state;
4. The suit is not disputed save for the fact that the Claimant has been reaching out to the Respondent to take up a 50% waiver on the outstanding amount Claimed herein.
5. The Respondent has utilized the said Offer thus owes the Claimant **KShs. 164,425.55/=**.
6. That noteworthy, around October, 2018 the Respondent's business premises were burnt down under mysterious circumstances leading to the default in the instant subject matter.
7. That moreso, due to the one/last month breach, the Claimant proceeded to close the MPesa Till Number which as per the Sale and Purchase Terms of the Agreement, was meant to be the channel of the repayment funds.
8. **THAT** indeed, the Agreement envisaged the remedy for diminished earnings/income to be continuous debiting of the MPesa Till until the full amount is repaid and **NOT** closure of the MPesa Till.
9. Therefore, the Claimant's action to close the MPesa Till was in *toto* breach of the contract and frustrated the repayment mode making payment impossible.
10. That further, this action greatly prejudiced the Respondent as it removed the ease of transacting that was envisaged and anticipated by the creation of the MPesa Till Number.
11. **THAT** indeed, from the alleged **16th October, 2018** to date, the Claimant has never issued the Respondent with a Demand Letter and/or facilitated another mode of repayment.

12. Therefore, even with the Respondent's willingness to remedy the Agreement shortly after the default, it was not afforded an opportunity/avenue to thus it could not make any repayments.
13. The reasonable man's test would depict that the Respondent would by now have cleared the monies even if it would have been **KShs. 10,000/= per month.**
14. From the foregoing and noting that the Respondent has taken up the Waiver Offer, the Respondent admits to the debt of **KShs. 164,425.55/= without costs seeing that the continued breach was not attributed to the Respondent.**
15. **THAT** further, noting that the Claimant came to this Honourable Court with dirty hands, the Respondent prays for a remedy of general damages for breach of contract as hereinabove indicated (closure of the MPesa Till).

That is all I wish to state.

Stated by the said SAMUEL M. MAINA

Signature:



Date: 7th March, 2022

DRAWN AND FILED BY:

MUCHUI-MWENDWA & CO. ADVOCATES,
COMMERCE HOUSE, 4TH FLOOR, ROOM 411,
MOI AVENUE,
P.O. BOX 5534-00100,
NAIROBI
TEL: 0723723736
EMAIL: muchui.mwendwaadvocates@gmail.com
ADMISSION NO.: P.105/14513/18
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TO BE SERVED UPON:

RILANI ADVOCATES,
SUITE D5, 2ND FLOOR, RIARA CENTRE
RIARA ROAD
P.O. BOX 25518-00100,
NAIROBI (REF: RA003/C004/002/2020)
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RESPONDENT'S LIST OF DOCUMENTS

1. Authority to Defend dated **7th March, 2022.**
2. Excerpt of the Companies constitution of directors
3. Photos showing the Respondent's burnt Business Premises
4. Copy of Sale and Purchase Terms (Contract)

DATED at NAIROBI this 7th day of March, 2022.



MUCHUI-MWENDWA & CO.
ADVOCATES FOR THE RESPONDENT

DRAWN AND FILED BY:

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RESPONDENT'S WRITTEN AUTHORITY

I **NANCY KENDI GATOBU** of **I.D. NO. 27397994** and a resident of Donholm, Nairobi within the Republic of Kenya and state as follows:

1. **THAT** I am a co-director of the Respondent Company herein.
2. **THAT** I authorize the co-director **SAMUEL M. MAINA** of **I.D. NO. 25057272** to represent the Respondent Company in this suit.

That is all I wish to state.

**Stated by the said NANCY KENDI GATOBU for
FIRST WORLD LIMITED**

Signature:




Date: 7th March, 2022

DRAWN AND FILED BY:

MUCHUI-MWENDWA & CO. ADVOCATES,
COMMERCE HOUSE, 4TH FLOOR, ROOM 411,
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FIRST WORLD LIMITED

Business Details

Statutory obligations

Business Details

[Make Application](#) [Link a Business](#)

[Summary](#) [Addresses](#) [Directors/Shareholders](#) [Share Information](#) [Beneficial Owners](#)

Owners Details

1. SAMUEL MUTHUIMAINA - Director Shareholder

2. NANCY KENDIGATOBU - Shareholder

3. BONIFACE MUNGAIMUIRURI - Shareholder









Kopo Kopo Inc.
Sale and Purchase Terms

For questions or comments

0702 000 222 or email support@kopokopo.com

These Sale and Purchase Terms together with the Terms and Conditions and any agreements, annexures and/or appendices attached or referenced hereto set out the complete Terms and Conditions ("these Terms and Conditions," "this Agreement") agreed to by and between Kopo Kopo Incorporated ("Kopo Kopo," "Us," "We," "Our"), whose principal office is at Wing A, Second Floor, Pitman House, Jakaya Kikwete Road, Nairobi, Kenya, P.O. Box 21994-00505, and FIRST WORLD LIMITED (the "Merchant," "You," "Your"), whose principal place of business is at First World, Nairobi.

BECAUSE

This Agreement sets out the terms on which We will provide You a Cash Advance in return for the purchase of a percentage of Your Future Receivables up to the Purchased Amount; and

ACKNOWLEDGING

That the terms and definitions expressed herein shall have the same meanings as those expressed in the Terms and Conditions attached hereto;

IT IS THUS AGREED THAT

We will offer You a Cash Advance and, in exchange, You will sell Us a Specified Percentage of Your Future Receivables subject to these Terms and Conditions and the terms specified below:

- 1) Cash advance: Ksh 300,000.0
- 2) Purchase amount (Amount to be repaid): Ksh 337,080.0
- 3) Specified daily deduction percentage: 50.0%
- 4) Expected payback period: 60 days
- 5) Minimum repayment amount owed: Ksh 168,540 every 30 days

You hereby authorize that this document acts as a Debit Order instruction against Your Account until the amount owed is fully repaid and consequent Debit Order is to be made effective upon the Payment Date.

In the event that Your Future Receivables diminish such that the amount We debit over a 30 day period is less than the Minimum Payment, You authorize Us to debit all current and future transactions and balances associated with Your Account until the cumulative Minimum Payment amount has been paid in full.

You understand that the Debit Order specified herein will be processed by the Kopo Kopo System and that the details of this Agreement and any and all credits and debits to Your Account may be made available upon Your request.

You acknowledge that the authorities given to Us by You in this Agreement can only be rescinded upon the full repayment of the Purchased Amount and that You are not entitled to refunds of amounts legally debited by Us while these authorities are in effect.

You acknowledge that You may not cede, assign or delegate any of the obligations or rights established herein to a third party without Our prior written consent.

You warrant that You have read, understood and will adhere to these Terms and Conditions. Further, you warrant that you have accepted our standard terms and conditions. You certify that the You, the person signing below, are an Authorized User and understand that this Agreement is legally binding.

On behalf of the Merchant:

Merchant:

Name: Samuel Maina

Email address: firstworldlimited@gmail.com

Mobile phone number: +254790395476

On behalf of Kopo Kopo:

Authorized at: 17-08-2018 17:10