



Kendi v Safaricom Sacco Limited (Employment and Labour Relations Appeal E259 of 2023) [2025] KEELRC 2511 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2511 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E259 OF 2023**

**JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

JACKLINE KENDI APPELLANT

AND

SAFARICOM SACCO LIMITED RESPONDENT

(Being an Appeal from the Judgment and Decree of the Hon. M. Wafula (PM) delivered on 16th November, 2023 in Milimani MCELRC No. E401 of 2021)

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. M. Wafula (PM) delivered on 16th November, 2023 in Milimani MCELRC No. E401 of 2021 between the parties filed a memorandum of appeal dated the 15th of December 2023 seeking the following orders:-
 - a. The Appellant prays that the appeal herein be allowed setting aside the entire Judgment of the subordinate court delivered on 16th November, 2023 in Nairobi MCELRC No. E401 of 2021 and substituting the said Judgment and order with an order allowing the Appellant's claim dated 10/03/2021.
 - b. Costs of this appeal and costs of the suit as the subordinate court be borne by the Respondent.
 - c. Any further relief that the court may deem fit and appropriate in the circumstances.

Grounds of the Appeal

2. The Honourable Trial Magistrate misdirected himself on the matters before him and the relevant law on the matter in failing to consider that the Appellant had proved her claim to the required threshold, that the Respondent's conduct during the course of the Appellant's employment amounted to unfair



- labour practices, discrimination, unfair termination hence illegal and unlawful thereby making a wrong and erroneous decision.
3. The subordinate court in failing to appreciate and consider the Appellant's pleadings, evidence and submissions and giving more weight to the Respondent's pleadings and testimony in court arrived at a wrong and erroneous decision.
 4. The subordinate court erroneously observed that the Claimant had failed to file her submissions despite being granted 14 days to do so while in fact the Claimant had filed her submissions within the stipulated timelines on 15/07/2023 thereby arriving at a decision without considering the Claimant's submissions.
 5. The subordinate court erred in holding that the issue of whether the Respondent's Human Resource & Administration Officer had capacity to testify was a preliminary issue to be raised at pre-trial while it is trite that a preliminary objection on a point of law may be raised at any time before judgment.
 6. The subordinate court erred in failing to consider that the Respondent guaranteed the Super Premium Loan of Kshs. 840,000.00 advanced to the Claimant to be paid within 72 months whose repayment was a check off from her salary until payment in full thereby giving the Claimant a legitimate expectation that her contract was going to be renewed and without any basis made a finding that the loan was guaranteed by her colleagues.
 7. The subordinate court misdirected himself or acted on matters which it should not have acted upon or failed to take into consideration matters which it should have taken into consideration particularly the issue of constructive dismissal which was never pleaded thereby arriving at erroneous decision in law.
 8. The subordinate court misapprehended the facts by failing to consider the Appellant's pleadings, evidence and submissions and hence thus arriving at a wrong and erroneous decision.
 9. The subordinate court misdirected himself on the law and matters before it thereby making a decision that is wholly erroneous in law.
 10. The subordinate court's decision was wholly erroneous in law, contrary to judicial precedent on the matters and a miscarriage of justice.

Background to the Appeal

11. The Appellant filed a claim against the Respondent vide a statement of claim dated the 10th of March 2021 seeking the following orders:
 - a. A declaration that the Respondent actions stated in the claim herein against the Claimant in the course of employment at the Respondent amount to unfair labour practices, discrimination in employment, unfair termination of the termination hence illegal and unlawful.
 - b. Compensation for unfair labour practices and termination of employment.
 - c. Salary in lieu of notice.
 - d. Service pay.
 - e. Severance pay.
 - f. Damages for discrimination.
 - g. Any other appropriate relief as the court may deem fit to grant.



- h. The costs of this cause.
(see pages 4-8 of the ROA dated the 13th of May 2025)
12. The Appellant also filed his verifying affidavit, list of witnesses, witness statement, and list of documents with the bundle of documents attached, all dated the 10th of March 2021 (pages 9-21 of ROA).
 13. The claim was opposed by the Respondent who entered appearance and filed a statement of response dated the 28th of May 2021 (pages 22-25 of ROA). They also filed their witness statement of one Tabby Njeri Karagu; list and bundle of documents with the bundle of documents attached (pages 30-67 of ROA).
 14. To counter the response, the Appellant filed a Reply to the Statement of Response dated the 17th of June 2021 (pages 26-29 of ROA).
 15. The Plaintiff's/Appellant's case was heard on the 5th of June 2023, where the Plaintiff testified in the case. She relied on her witness statement as her evidence in chief, produced her documents, and was cross-examined by counsel for the Respondent Mr. Bwire (pages 95-97 of ROA).
 16. The Respondent's case was heard on the same day, when the Respondent's witness, one Tabby Karagu, testified in the case. She relied on her witness statement as her evidence in chief, produced the Respondent's documents, and was cross-examined by counsel for the Appellant Mr. Litoro (pages 98-99 of ROA).
 17. The parties took directions on filing of written submissions after the hearing. The parties complied.
 18. The Trial Magistrate Court delivered its judgment on the 16th of November 2023 dismissing the Claimant's case, save for ordering that she be issued with a Certificate of Service, with costs to the Respondent (Judgment at pages 88-93 of the ROA).

Determination

19. The appeal was canvassed by way of written submissions. Both parties filed.
20. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-
“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
21. Further in on principles for appeal decisions in *Mbogo V Shah* [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has



failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

Issues for determination

22. In her submissions dated the 3rd of June 2025, the Appellant identified the following issues for determination:
- i. Whether the preliminary objection on the capacity of the Respondent’s Human Resource & Administration Officer to testify could be raised at any point before judgment.
 - ii. Whether the subordinate court erred in failing to consider the Respondent guaranteed the super-premium loan of Kshs. 840,000.00 to the Claimant was a legitimate expectation that her employment contract would be renewed.
 - iii. Whether the unfair labour practices were discriminatory to the Appellant.
 - iv. Whether the Appellant was entitled to the prayers sought.
23. On their part, the Respondent identified the following single issue for determination in their submissions dated 24th June 2025:
- i. Whether the preliminary objection on the capacity of the Respondent’s Human Resource & Administration Officer to testify could be raised at any point before judgment.
24. The court having perused the grounds of appeal was of the considered opinion that the issues placed before the court for consideration in the appeal were:-
- a. Whether the preliminary objection on the capacity of the Respondent’s Human Resource & Administration Officer to testify could be raised at any point before judgment.
 - b. Whether the subordinate court erred in failing to consider the Respondent guaranteed the super-premium loan of Kshs. 840,000.00 to the Claimant was a legitimate expectation that her employment contract would be renewed.
 - c. Whether the unfair labour practices were discriminatory to the Appellant.
 - d. Whether the Appellant was entitled to the prayers sought.
- Whether the preliminary objection on the capacity of the Respondent’s Human Resource & Administration Officer to testify could be raised at any point before judgment.
25. The simple answer to the issue as framed by the appellant would be -yes. The court perused the record of appeal index and found no notice of preliminary objection was filed. The issue came up during the cross-examination. The witness for the respondent told the lower court that she had no letter of authority allowing her to testify on behalf of the respondent. During re-examination the witness told the court that – ‘ I am the human resource and with authority to represent the SACCO. There is no objection to my representing the respondent’.”
26. The appellant submitted that the capacity to testify of Tabby Karanja(RW1) was questionable for lack of a company resolution by the board of directors authorising her to testify and relied on the decisions in *Ibacho Trading Company Limited v Samuel Aencha Ondora & 3 others* (2017)e KLR , *Kenya Commercial Bank Limited v Satge Coach Management Ltd*(2014)e KLR and *Steel Formers Limited v SGS(Kenya) Limited & another* (2020)e KLR all to the effect that the resolution of the company was mandatory for commencement of legal proceedings in the name of the company.



27. Conversely, the respondent submitted that it was trite law that failure to attach authority to act was not fatal to the litigant's case and could not form basis of dismissal of their case and relied on the decision of the court of appeal in *Makupa Transit Shade Limited & another v Kenya Ports Authority and another* (2015)e KLR to effect that it was sufficient for the deponent to state they were duly authorised and it was then upto the respondent to demonstrate evidence that the deponent was not authorised. Same finding in *Eye Company (K) Limited v Erastus Rotich t/a Vision Express*(2021)e KLR and *Spire Bank Limited v Land Registrar & 2 others*(2019)e KLR.
28. The Respondent's witness Tabby Karanja filed witness statement (undated at pages 30-33 of ROA) and stated that – 'I am the Human Resources and Administrative Manager of Safaricom Sacco limited the respondent herein. I have been duly authorised by the Board of Directors of the Sacco to swear this statement on its behalf.' The court finds that the issue could have been raised at any stage being a legal issue. The court on appeal determines the issue on merit to find that this was a procedural technicality, that this being a defence there was no prejudice that could be suffered by the appellant even if there was no written authority, for the witness demonstrated she was an authorised officer by the respondent to testify in its defence. This is unlike a case of commencing suit by the company which can deny liability for defence costs. The court further is guided on merit of the issue by the decision of the Court of Appeal in *Makupa Transit Shade Limited & another v Kenya Ports Authority and another* (2015)e KLR where it was held:-' In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorised by it. It was therefore sufficient for the deponents to state that "they were duly authorised." It was then upto the appellants to demonstrate by evidence that they were not so authorised.'
29. In the instant case Karanja was the Human Resources Manager of the Respondent. It cannot be disputed she had knowledge of the employment dispute. Karanja further stated she was authorized by the board of directors of the SACCO. The appellant did not provide any evidence to the contrary. The basis of the appellant's objection was meritless and a pure technicality. The trial court ought to have decided the issue on merit. The court on appeal has done so as above.

Whether the subordinate court erred in failing to consider the Respondent guaranteed the super-premium loan of Kshs. 840,000.00 to the Claimant was a legitimate expectation that her employment contract would be renewed.

30. The ground of the appeal was that the subordinate court erred in failing to consider that the Respondent guaranteed the Super Premium Loan of Kshs. 840,000.00 advanced to the Claimant to be paid within 72 months whose repayment was a check off from her salary until payment in full thereby giving the Claimant a legitimate expectation that her contract was going to be renewed and without any basis made a finding that the loan was guaranteed by her colleagues.
31. The role of the court at the first appeal includes re-evaluating evidence presented before the trial court to determine whether the court's findings were incorrect (*Selle, supra*). Did the trial court, without any basis, make a finding that the loan was guaranteed by colleagues? During cross-examination of the appellant on this issue, the following is recorded: 'at paragraph 13, I took a loan, and the sacco guaranteed me. But in fact, the Sacco did not guarantee me. It was my colleagues who guaranteed me.' I find no valid ground for the appeal on the issue, as the trial court's finding is based on cross-examination findings, where the appellant stated it was her colleagues who guaranteed the loan. I see no reason to fault the trial court's findings. Regarding the issue of legitimate expectation, having reviewed the decisions relied upon by the parties, the court finds that the expectation was based on a false narrative that the respondent had guaranteed the loan. The contract expired by the passage of time, and there was no basis for a legitimate expectation. I uphold the Court of Appeal's decision on the issue of legitimate



expectation in fixed contracts in *Transparency International - Kenya v Omondi* (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR) (17 February 2023) (Judgment), where it was held: ‘The respondent was under a fixed-term contract with a definite start date and termination date. No ambiguity was created to establish an expectation of contract renewal through the appellant’s issuance of a fixed-term contract. The contract ended automatically when the termination date arrived. Whether a contract with a renewal clause will be extended or not is at the discretion of the employer, and it cannot establish a legal right under the doctrine of legitimate expectation.’ I find no reason to fault the decision of the learned trial magistrate.

Whether the unfair labour practices were discriminatory to the Appellant.

32. The appellant did not raise a ground of appeal directly on the issue. the issue of discrimination was however raised before the lower court in the pleadings of the parties. The appellant on the issue submitted as follows:-

Whether the unfair labour practices were discriminatory to the Appellant?

33. The appellant invited this Court to find that the Respondent's unfair labour practices were discriminatory against the Appellant in the sense that the people whom the Appellant trained were promoted, but she remained in the same position. She relied on the case of *Rose Wangui Mambo & 2 Others vs Limuru County Club & 15 Others* [2014] eKLR citing *Peter K. Waweru vs Republic* [2006] eKLR as follows: "...Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions ...whereby persons of one such description are subjected to...restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description...Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex...a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured." That it was demonstrated that, part of the Appellants duties included training new employees as loan officers which obligations together with other duties in the course of her employment was discharged faithfully. Despite the foregoing, the Respondent engaged another employee whom the Appellant had trained for the loan officer position on probation basis between November 2015 and February 2016 and later on discriminatively in March 2016 confirmed the said employee for employment as a loan officer on permanent basis salary of KES.40,000.00 leaving the Appellant as a contractual employee performing the same work.
34. That further in March 2016, the Appellant was deployed by the Respondent to customer care department of the company as Credit Officer customer care Relations Assistant again on 1 year contract at a monthly salary of KES 35,000.00.33.0 In March 2018, the Appellant was deployed by the Respondent Company to Customer Care Teller and Later between May to December 2018 redeployed to work as a Credit Officer until 31/12/2018 when the Respondent refused to renew her contract of employment or employ the Appellant on permanent basis. It is was demonstrated that between the period of November 2017 and April 2018, the Respondent failed to issue her with formal contract despite request from the Appellant. Consequently, the Respondent discriminated the Appellant by maintaining her salary at KES 35,000.00 yet other employees performing similar duties and employed by the Respondent after she had recruited and trained them or working in previous positions were paid a monthly salary of KES 50,000.00 and employed on permanent basis after serving probation yet the Appellant was informed by the Respondent that no vacancy for permanent basis employment. That the Respondent who had the burden of proof to demonstrate that the Appellant was not discriminated failed to do so within the balance of probability. *Simba v Karen Hospital Limited* (Cause E239 of 2020) [2023] KEELRC 929 (KLR) (20 April 2023) (Judgment)"Under the [Employment Act](#), when an employee alleges discriminatory treatment at the workplace, the burden lies



with the employer to provide evidence to demonstrate that the acts that the employee complains about are not discriminatory. Specifically, section 5(7) of the Act provides as follows: -"In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged....." Tha the Appellant was discriminated against especially by the fact that other employees were being promoted and permanently employed.

35. Conversely the respondent submitted as follows- To fully answer the above issue, the Respondent seeks to answer the alleged unfair practices as pleaded in the claimant's claim before the trial court. The Appellant's claims were as follows:

a) Failure to renew the Claimant's contract and not giving reasons for non-renewal.

36. Numerous cases have emphasized that fixed contracts are terminated by effluxion of time and thus the employer is not obligated to give reasons for non-renewal. In the case of Francis Chire Chachi v Amatsi Water Services Company Limited the Court of Appeal stated as follows: -

This court has recently stated that employers are not under any obligation to give employees reasons for the non-renewal of fixed term contracts, unless there is such an obligation created in the expiring contract. Additionally, Rika J., in *Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Limited & another*, underscores that an employer need not give reasons to an employee why a fixed term contract would not be renewed. In the words of the Learned Judge:

The only reason that should be given is that the term has come to an end, and no more.... Reasons, beyond effluxion of time, are not necessary in termination of fixed-term contracts, unless there is a clause in the contract, calling for additional justification for the termination.

37. The Respondent has clearly demonstrated that a fixed term contract does not carry any obligation, rights or expectations beyond the date of expiry as is supported in the holding of *The Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho-Kariuki*.

38. On giving less pay to the claimant while discriminatively employing the claimant on a contract basis yet employing other people on a permanent basis. It is trite that parties are bound by their pleadings. It was therefore expected of the Appellant to produce material evidence before the trial court to justify her assertion of the aforementioned issue, which she failed to do so. The Supreme Court has had occasion to lay emphasis on the burden of proof in cases of discrimination in the case of *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others*," where the Court applied section 108 of the *Evidence Act* in requiring the claimant to prove their claim in a matter involving discrimination. The court also grappled with the issue of direct and indirect discrimination. The court observed thus: Section 108 of the *Evidence Act* provides that, "the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;" and section 109 of the Act declares that, "the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. This court in *Raila Odinga & others v Independent Electoral & Boundaries Commission & others*, Petition No 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms: "...a petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden...." [Emphasis ours] In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the superior courts below, it is clear to us that, by no means did the burden of proof shift to 1st respondent.



Decision

39. During cross-examination the appellant told the trial court that some of the colleagues were promoted to permanent terms but she was not. That there was discrimination in that they were doing the same duties. RW1 told the court that there is a process of transition from contract to permanent and that there must be a vacancy which is subjected to open process, and that they had responded to the appellant on the same in letter (it was dated 16th April 2018 at page 66 of ROA). The Learned Trial Magistrate held that the appellant did not prove with specificity the interns she had trained or that the employer was obliged to give her priority on promotion or permanent employment vacancies. The appellant relied on the decision in *Simba v Karen Hospital Limited* (Cause E239 of 2020) [2023] KEELRC 929 (KLR) (20 April 2023) (Judgment)

“Under the *Employment Act*, when an employee alleges discriminatory treatment at the workplace, the burden lies with the employer to provide evidence to demonstrate that the acts that the employee complains about are not discriminatory. Specifically, section 5(7) of the Act provides as follows: -“In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged.....”Section 5(3) of the *Employment Act* outlaws discrimination on the basis of several factors including gender and pregnancy. It provides that:-“No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee—

- 2(a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status;
- (b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.”

40. In relation to the burden of proof when it comes to cases involving discrimination, Section 5 (7) of the *Employment Act* provides that:

“In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.”

41. The Honourable Supreme Court in the case of *Gichuru v Package Insurance Brokers Ltd* (Petition 36 of 2019) [2021] KESC 12 (KLR) (22 October 2021) (Judgment) held as follows:-

“(44) The protection of employees against any form of discrimination at the work place is therefore a significant matter and the burden placed upon an employer to disprove the allegations of discrimination is enormous. The employer must prove that discrimination did not take place as alleged and that where there is discrimination, it was not with regard to any of the specified grounds. Subsection 7 thus provides:

- “(7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place



as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.”

- (45) Section 47 (5) of the *Employment Act* further requires that:
- “(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”
- (46) This however does not automatically shift the burden of proof in cases of discrimination against an employee to the employer. According to section 5(7) of the Act, an employer alleged to have engaged in a discriminatory practice must give reasons for taking certain actions against the employee. Where such actions are shown not to have any justification against the protected group, then there exists discrimination against such an employee and must therefore be addressed. In this instance, the appellant had discharged the burden as to shift it to the respondent who failed to discharge on their part.
- (47) This court had occasion to lay emphasis on the burden of proof in cases of discrimination in the case of *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] eKLR where the Supreme Court applied section 108 of the *Evidence Act* in requiring the claimant to prove his claim in a matter involving discrimination. The court also grappled with the issue of direct and indirect discrimination. The court observed thus:
- (49) Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
- (50) This court in *Raila Odinga & others v Independent Electoral & Boundaries Commission & others*, Petition No 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:
- “...a petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”
- (51) In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of



the turn of events at both of the Superior courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.”

- (48) Black’s Law Dictionary, 10th Edition defines discrimination as “failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.” However, it must be appreciated that not all cases of distinction amount to discrimination...
- (49) Discrimination is also defined in the International Labour Organisation Discrimination (Employment and Occupation) Convention, 1958 (No 111) as follows: -

“For the purpose of this convention the term discrimination includes – any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; such other distinction exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the member concerned after consultation with representative employers’ and workers’ organizations where such exist, and with other appropriate bodies –

Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.” Did the appellant lay a prima facie basis of the alleged discrimination before the lower court? The trial court found in the negative. On perusal of the pleadings, the court found that there was an allegation of discrimination based on other employees who the appellant stated she trained for same job and were placed on permanent basis. On perusal of the pleadings there was no disclosure of the names and number of the alleged staff. In paragraph 4 of her witness statement the appellant stated she trained a loan officer in November 2015 who was on probation and later discriminatorily, in March 2016, the said officer was confirmed to employment on permanent basis leaving her as contractual employee. The respondent produced the letter of employment of the appellant at that time, dated 16th October 2015. The employment of the appellant was as a credit assistant and not a loans officer. The February 2016 contract was of a customer relations officer. (pages 42 and 49 of ROA). The contract of the alleged officer was not produced for comparison purposes. Applying the above-cited jurisprudence from the Supreme Court, in the foregoing context, it is clear to the court that the appellant, in the instant appeal,



bore the overriding obligation to lay substantial material before the lower court, in discharge of the evidential burden establishing their treatment at the hands of the respondent as discriminatory. Only with this threshold transcended, would the burden fall to the respondent to prove the contrary. I find no basis to fault the trial court's finding that the appellant did not lay a basis for the claim of discrimination.

Whether the Appellant was entitled to the prayers sought.

42. The court having found no merit in the entire grounds of appeal finds no basis to disturb the finding of the trial court that the only prayer to issue was certificate of service.

Conclusion

43. In conclusion, the appeal is held to be without merit and is dismissed with costs to the respondent. The Judgment and Decree of the Hon. M. Wafula (PM) delivered on 16th November, 2023 in Milimani MCELRC No. E401 of 2021 is upheld.

44. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Appellant – Olala

Respondent: Bwire

