



**Komu v Standard Chartered Bank Kenya Limited (Cause E192 of 2021) [2024] KEELRC 1839 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1839 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E192 OF 2021**  
**SC RUTTO, J**  
**JULY 12, 2024**

**BETWEEN**

**GEOFFREY KOMU ..... CLAIMANT**

**AND**

**STANDARD CHARTERED BANK KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Mr. Geoffrey Komu, the Claimant herein, brought the instant suit through a Statement of Claim dated 25<sup>th</sup> February 2021. Mr. Komu avers that he was employed by the Respondent Bank as Head of Security, Kenya and East Africa with effect from 8<sup>th</sup> May 2014. According to the Claimant, he served the Respondent Bank diligently and he was routinely subjected to annual performance review and evaluation and obtained positive performance evaluation during his tenure. It is the Claimant's case that his employment contract was unfairly and unlawfully terminated by the Respondent. Consequently, the Claimant prays for the following reliefs against the Respondent:
  - a. A declaration that the termination of the Claimant's employment as set out herein was in breach of *the Constitution* of the Republic of Kenya and the Claimant's fundamental rights as enshrined in the Bill of Rights, in particular his rights to fair labour practices, fair administrative action, equality and freedom from discrimination, right to information, human dignity, privacy and that his purported termination from employment was unfair and in contravention of section 45 of the *Employment Act*.
  - b. An award of Kshs 10,259,865 (854,988.75\*12) Million in damages for unfair termination, being the Claimant's twelve months' salary.
  - c. An award of Kshs 8,336,140.30 (1.5\*6.5Yrs\*854,988.75) Million being the service pay due to the Claimant upon termination of his service.



- d. An award of Kshs 35 million being damages and compensation for breach of fundamental rights under *the Constitution* of Kenya, loss of reputation, character and professional assassination, libel, breach of natural justice and effectively being denied the opportunity to recover gainful employment as a result of the manner and alleged grounds of his termination from employment, taking into account the sensitivity of his career industry, seriousness and nature of the allegations levelled against the Claimant. The quantum of damages under this claim is modest and takes into account the fact that the Claimant's professional reputation is damaged beyond redemption and he is not in a position to acquire gainful employment within his remaining employable life from the date of his unfair termination, and assumes that the Claimant's monthly income will remain at the level it was when he was unfairly terminated.
  - e. General damages for mental anguish, torture and trauma resulting from the discriminative and inhuman treatment accorded the Claimant by the Respondent.
  - f. An award of costs of the suit.
  - g. Interest on outstanding payments from the date of filing of this suit until payment in full.
  - h. Any other remedy as the Honourable Court may consider appropriate.
2. Through its Statement of Response dated 25<sup>th</sup> August 2021, the Respondent avers that the Claimant's contract of employment was terminated on account of his breach of contract of employment and the said termination is justified under Sections 44 and 45 of the *Employment Act*. In the Respondent's view, the reliefs sought in the Claim are unfounded and as such, has asked the Court to dismiss the suit with costs.
  3. The matter proceeded for hearing on diverse dates, during which both sides called oral evidence.

#### **Claimant's Case**

4. The Claimant testified in support of his case as CW1 and called two additional witnesses who testified as CW2 and CW3. At the outset, the Claimant sought to adopt his witness statement and supplementary witness statement to constitute his evidence in chief. He further sought to rely on his initial list and bundle of documents as well as the supplementary list and bundle of documents to constitute his evidence.
5. It was the Claimant's evidence that after the Dusit Hotel attack, he had a lot of projects that he had recommended to enhance security for the Respondent's head office building at Chiromo.
6. That in August 2019, the Respondent had a project for upgrading the CCTV systems in various branches. According to the Claimant, the process for the procurement of these systems was followed properly after inviting four companies for a closed tender. He completed the evaluation process together with the procurement team and his line manager.
7. The contract was awarded to AUA Industria based on the total operational cost for the five-year contract period. The timelines for the supply and installation of the systems were shared with AUA Industria.
8. Since the systems (CCTV hardware) were supposed to be imported, AUA embarked on the installation of the infrastructure (cabling, network configuration etc) which was the bulky part of the project. This was completed in November 2019. The delivery schedule for the hardware kept on changing and this was not done by the end of the year 2019.



9. The Claimant further averred that on 17<sup>th</sup> March 2020, he informed his line manager that he would be working from home. She did not respond until 9:00 am when she alerted him to be in the office by 10:30 for a certain discussion.
10. When he arrived at the office, his line manager handed him a suspension letter. According to the Claimant, the suspension was open-ended and did not indicate for how long he was supposed to be away. The letter further indicated that the management reserved the right to add any other issues against him.
11. The Claimant contends that there was no prior show cause letter, disciplinary sanction or any discussion regarding the allegations raised in the suspension letter.
12. That on 2<sup>nd</sup> April 2020, he received a call from Mr. Bernard Theuri of Akkad Systems who requested to meet him. Mr. Theuri revealed that he had been informed that there was some work for him to do at the Respondent Bank concerning CCTV and access control. He had no idea of any pending work since they had concluded installations or tendering for these systems (CCTV and access).
13. Mr. Theuri informed him that BGB Security which is based in Dubai had reached out to him to work on an assignment at the Respondent Bank. He later learnt that Akkad Systems were subcontracted by BGB Security to conduct a security audit for CCTV and Access control systems installed in the Respondent Bank by AUA Industria, their major competitor in the country.
14. According to the Claimant, BGB had previously submitted proposals for some works in Uganda and Kenya and he declined since they did not have a physical office in any of the countries in East Africa.
15. The Claimant further averred that when the CCTV hardware was delivered on site by AUA Industria, he was already on suspension, and was barred from accessing the Respondent's premises or systems.
16. He further stated that on 20<sup>th</sup> May 2020, he was invited for an interview by the Respondent's Shared Investigation Services team. The interview took over two hours and according to him, the issues probed were not in any way related to the allegations raised against him in the suspension letter.
17. It was the Claimant's contention that the issues were those raised in the BGB audit report and in his view, the team was just fishing for information.
18. He asked the Shared Investigation Services team why he was not invited to share his responses on the audit report before it was published. The Claimant contended that the issues raised regarding CCTV and access control were work in progress; and other installations were completed before he joined the bank in 2011. After the interview, he was advised that he would be called for a disciplinary hearing or a clearance if deemed necessary.
19. In the Claimant's view, the BGB audit report was not independent because some hyperlinks added to the report were directing him to the Respondent's intranet upon clicking on them.
20. That on 2<sup>nd</sup> July 2020, he was called for a disciplinary hearing. According to the Claimant, the allegations contained in the disciplinary notification letter had drastically mutated introducing performance issues which were never discussed or raised in the previous year.
21. He further averred that there were some emails which were purported to have been sent in 2017 and 2018 but were never flagged by the mailing system (Data leakage protection System); raised in his performance meetings, or any other risk forum as is the case/process.
22. The Claimant stated that he raised a concern about conflict of interest policy breach where a competitor was allowed to conduct an audit for AUA systems, and a breach of Non-disclosure



- agreement (NDA) where a competitor was allowed to review contracts for AUA Industria. That he also raised other pertinent issues.
23. On 30<sup>th</sup> July 2020, he was notified by Susan Gaisie that the disciplinary hearing outcome letter was ready. On 3<sup>rd</sup> Aug 2020, he collected the letter which had indicated that he was dismissed for gross misconduct and had 14 days to appeal.
  24. On 13<sup>th</sup> August 2020, he appealed and an appeal hearing panel was constituted. The hearing was conducted on 8<sup>th</sup> September 2020. He received the verdict of the Appeal dated 28<sup>th</sup> September 2020 which upheld the dismissal decision.
  25. According to the Claimant, his unlawful termination has caused him to suffer great economic loss and consequently affected his family.
  26. In his supplementary witness statement, the Claimant stated that in April 2018 Identisys Limited was contracted by the Tsebo group to print 1800 employees' cards for the bank. That Identisys kept delaying delivery of the cards and most of the cards were not up to the standard needed by the Bank.
  27. That the Tsebo staff through G4S contracted staff Humphrey Gitonga, contacted AUA to make staff cards. He contacted Tsebo Staff (Betty Cheruiyot and Teresia Mbugua) to onboard a vendor. This took so long and due to the risk the Bank was being exposed to, they unanimously agreed to use AUA Industria whose contract was still valid since 2007. According to the Claimant, this contract was being extended every other time through modification notes.
  28. The LPO was raised to AUA Industria by Humphrey Gitonga and approved by Susan Gaisie-his Line manager.
  29. With respect to the Access Control System from Lenel, the Claimant averred that the process of procurement was commenced by Amjad Bhatti who was the then, Regional Head of Security for Middle East, and Africa. That further, Lenel access control system has a single supplier in the East Africa Region (AUA industria) and the prices for the Access Control System hardware and software are set at the Lenel head office.
  30. In this regard, the Claimant contended that there is no way he could have influenced the procurement process or gotten a price lower than what is set at the global office. The Claimant further denied commissioning the access control system since the six months liability period had not lapsed.
  31. Mr. Humphrey Gitonga who testified as CW2 similarly adopted his witness statement to constitute his evidence in chief.
  32. It was his evidence that in May 2009, he was deployed at Stanbank House along Moi Avenue which was then Respondent's Head Office as a security officer seconded by Wells Fargo Ltd.
  33. In 2010, he joined the Respondent's Security Control room as an operator.
  34. That in 2011, Wells Fargo Ltd lost Respondent's security contract to G4S Kenya Ltd. CW2 averred that he was part of the team that crossed over to G4S Kenya and maintained to work as a control room operator.
  35. It was CW2's further evidence that AUA Industria did the installation of access control (Onguard - Lenel System) and CCTV System (Dallamier) which had approval from the Respondent's Security Group.
  36. That at the Head Office, he was part of the controllers handling the security systems (Access control system; CCTV system; Intruder Detector Alarm system; Vault biometric system; Signal



transmission to local Police Station; and Integrated Fire alarm system) installed at various branches of the Respondent within Kenya.

37. Mr. Joshua Mumo who testified as CW3 equally adopted his witness statement to constitute his evidence in chief.
38. It was his testimony that he was employed by AUA Industria Ltd from 2017 to 2021 as a Project Manager and was in charge of overseeing projects for corporate institutions among them being the Respondent.
39. Some of the specific projects which he oversaw during his tenure at AUA Industria were the Lenel access control project for the Respondent's Bank's Headquarters, CCTV installation projects for various branches across the country, Vault Biometric access control for various branches among others.
40. That further, he oversaw the CCTV upgrade project for 17 branches, the Head quarter access control upgrade project and the Yaya Centre branch optimization project.
41. With respect to the CCTV project for the 17 branches which was ordered in 2019, he was requested by the AUA management to work with the Respondent security team to deploy CCTV infrastructure (Laying cables, switches etc) as they waited for the CCTV cameras which had been ordered from Germany. Together with his team, they installed the infrastructure at the branches which were scheduled for installation.
42. CW3 further stated that the delivery of the CCTV cameras was delayed until April 2020. According to him, they staged the cameras at their workshop to confirm if each camera was working properly before delivery at the Respondent's offices.
43. That at the time he left AUA Industria in 2021, the cameras had not been installed yet. He later learnt that the cameras were installed after he had left.
44. CW3 further stated that during his tenure, he was also in charge of the team that was installing the access control upgrade project at the Respondent's headquarters in 2019. He worked closely with the Respondent's security team to deliver a project with a tight timeline. He tested the equipment, and confirmed that it was working fine.
45. That the job cards for purposes of payment were signed by Humphrey Gitonga. This paved way for the project liability period to lapse which is normally six months before the project commissioning documents are signed off. He left AUA Industria in 2021 and these documents had not been signed off.

### **Respondent's Case**

46. The Respondent called oral evidence through two witnesses being Ms. Susan Gaisie and Ms. Nidaa Darr who testified as RW1 and RW2 respectively.
47. Ms. Susan Gaisie who was the first to go, identified herself as the Respondent's Head of Property for Kenya and East Africa. Similarly, she adopted her witness statement to constitute her evidence in chief. She further produced the documents filed on behalf of the Respondent to constitute her evidence in chief.
48. It was RW1's evidence that in January 2020, the Head of the Shared Investigation Services unit within the Bank alerted her about investigations being conducted over the Claimant's conduct. That this had been brought to their attention through "whistleblowing", referred to as "Speak up".
49. She was not given the full details of the investigations but was expected to assist with certain information to aid in the process.



50. It was RW1's evidence that as part of the Respondent's exercise initiated in 2019 to review and address all open purchases of more than six months old, anomalies were identified with some security purchase orders. The purchase orders had been raised by an employee of G4S Kenya Limited (G4S), one Humphrey Gitonga as far back as 2017.
51. She stated that G4S was engaged by the Respondent as an independent contractor to provide specific security services and the purchase orders in question related to certain services which would have been provided by various vendors including G4S and which the Respondent's security team, under the direct charge of the Claimant, was now requesting the finance team to cancel because they had been raised in error or mapped to the wrong vendor.
52. According to RW1, the request for cancellation raised a red flag because the purchases had already been receipted and proper justification ought to have been given before their cancellation. Efforts to have the security team provide evidence of work done and invoices for the receipted purchase orders for payment to be made to the vendors did not yield any results.
53. She highlighted the issues and anomalies to the Head of Supply Chain in February 2020 and he requested they meet with all property stakeholders including the Claimant and Humphrey Gitonga to understand the challenges they were experiencing.
54. The meeting to discuss and address the issues of aging purchase orders was held on 5<sup>th</sup> March 2020. During the meeting, it became apparent that there had been a security project to install intruder detection systems for the top compartment of ATMs between 2018 and 2019.
55. The collective amount for this initiative exceeded USD 50,000. That being the case, the procurement process should have been managed by the Respondent's Supply Chain Management team as per its procurement procedures. Instead, the security team raised purchase orders and tagged them to the cost centers of the Respondent's branches.
56. That in the final analysis, neither the Supply Chain Management team nor herself had visibility of the transactions involved until the review.
57. It was also discovered that the security team had allowed Humphrey to directly raise purchase orders for goods supplied to the Bank yet G4S who employed him was an independent contractor engaged by the Bank to provide oversight security in specific areas of the Bank's operations which did not include initiating purchases.
58. RW1 further averred that the Respondent had in fact outsourced the raising of purchase orders for security activities and other activities related to facilities management to another independent contractor, Tsebo Facilities Solutions. That there was therefore a conflict in the role Humphrey was purporting to play in the Bank.
59. She also questioned the Claimant regarding certain email exchanges involving procurement of goods and services but the answer he gave exposed non-adherence to the Respondent's procurement procedures.
60. She therefore saw the need to escalate the matter to the senior management team on 11<sup>th</sup> March 2020 for guidance. The senior management recommended the Claimant's suspension from duty pending completion of the investigation process which had already started with the whistleblowing of January 2020.



61. That by a letter dated 17<sup>th</sup> March 2020, the Claimant was suspended from duty pending further investigations. He was categorically informed in the suspension letter that the Respondent reserved the right to add further issues (as appropriate) should the same arise in the ensuing investigations exercise.
62. Meanwhile, Humphrey Gitonga being a suspected accomplice in the malpractices was replaced by G4S at the request of the Respondent. G4S carried out its own investigations into his (Humphrey Gitonga) activities while assigned to provide security services at the Respondent Bank.
63. A report of G4S investigations into Humphrey's role in the suspicious activities jointly with the Claimant was shared with the Respondent on 30<sup>th</sup> April 2020. He was found to have breached his employment contract with G4S and his services were terminated.
64. RW1 further averred that during investigations into the Claimant's role in the suspicious activities the Respondent identified additional issues of concern.
65. In light of what was apparent to be serious breaches and flaws in performance of his duties the Claimant was invited for a disciplinary hearing by a letter dated 23<sup>rd</sup> June 2020. The letter listed the accusations cited in the investigations report in detail and reminded the Claimant that the accusations were serious issues which he needed to respond to.
66. The letter inviting the Claimant for the disciplinary hearing also forwarded a copy of the Disciplinary Standard and a copy of the Group Code of Conduct.
67. The Claimant was further reminded that if there was any other document, he would wish to rely on during the disciplinary hearing, he should state so. Further, he had the opportunity to be accompanied by a colleague if he so wished.
68. The disciplinary hearing was held on 2<sup>nd</sup> and 3<sup>rd</sup> July 2020 and the Claimant chose not to be accompanied by a colleague. He confirmed that he was ready to proceed with the hearing alone and not to be accompanied by a fellow colleague.
69. RW1 further averred that the Claimant was provided with the full opportunity to defend himself against the accusations against him.
70. Noting that the Claimant was the head of security for the Respondent and bearing in mind the nature of the findings by the investigations team and the conclusion by the disciplinary panel, there was no doubt that the Respondent would have no confidence in him as its employee.
71. By a letter dated 28<sup>th</sup> July 2020, the Claimant's services were terminated and he was at given an option to appeal against the termination if he so wished.
72. The Claimant appealed against the termination of his contract. By a letter dated 4<sup>th</sup> September 2020 the Claimant was notified of the hearing date for his appeal and his right to be accompanied by a colleague of his choice was restated. The appeal proceedings were conducted on 8<sup>th</sup> September 2020.
73. By a letter dated 28<sup>th</sup> September 2020 the Claimant was informed of the dismissal of his appeal. The appellate panel did not find any compelling reason to interfere with the decision of the disciplinary panel and the termination of the Claimant was upheld.
74. RW1 further stated that upon termination of the Claimant's service, he was paid his terminal benefits in accordance with his contract of employment and the law and the Respondent has no further liability in favour of the Claimant.



75. Ms. Nidaar Darr who testified as RW2 identified herself as the Respondent's Executive Principal in charge of Shared Investigative Services for the Africa Region. Equally, she sought to rely on her witness statement to constitute her evidence in chief. She further produced the investigation report as an exhibit before Court.
76. It was RW2's evidence that sometime in January 2020, her office received a report through a "Whistleblowing" process practiced within the Respondent Bank.
77. The report alleged that the Respondent's security team headed by the Claimant, was involved in various scams while dealing with the Respondent's security projects.
78. It was further alleged that the team was engaged in raising fictitious purchase orders which ended up being settled by the Respondent. As the investigative arm of the Bank, her department took upon itself to establish the truthfulness of the allegations.
79. They commenced investigations by establishing who were the vendors involved; the purchase vouchers raised in their favour; and the payments made to them, if at all.
80. They also retrieved email communication exchanged between the Respondent's security team and third parties outside the Bank.
81. Upon concluding their investigations, her team prepared an Investigation Report. In the course of their investigations, they established amongst other things that confidential Bank documents had been sent to a company known as Sealmark Limited.
82. It was established as per the company profile of Sealmark Limited that it presented itself as a leading security management company with specialties in Retail, Manufacturing, Logistics, Banking and Insurance sector and its range of services included provision of risk management, investigation information services, technical security solutions and protective security.
83. The profile further provided that Sealmark Limited's management team comprised the Claimant as the Managing Director and Humphrey Gitonga (CW2) as the Operations Director.
84. In light of the several anomalies in the sourcing for security items from vendors and the possible conflict of interest on the part of the Claimant, while performing his duties, as more particularly identified in the Investigation Report, her team recommended that the Claimant should be subjected to a disciplinary process. They handed over the report to the Employee Relations department of the Respondent for further action.

### **Submissions**

85. It was the Claimant's submission that his conviction and discipline was entirely based on an investigation report by a company known as BGB and Akkad Systems. That it came out clearly during the hearing that this company was a competitor to AUA and was obviously not pleased that AUA had won the tender to provide the security contracts to the Respondent. In this regard, the Claimant contended that the Respondent did not carry out independent investigations to prove the allegations against him.
86. The Claimant further submitted that the Respondent acted unreasonably and unfairly by subjecting him to disciplinary proceedings over things that occurred when he was already on suspension and over functions that were not exclusively his.
87. It was the Claimant's further submission that the reasons for termination were not lawful, reasonable, and fair.



88. The Claimant further submitted that the Respondent sent him on suspension, set out specific reasons for his suspension then abandoned those reasons and started fishing for new grounds to end his employment.
89. Placing reliance on the case of *Kiilu vs Standard Chartered Bank Kenya Ltd (Cause 1213 of 2017)* (2023) KEELRC 2698 (KLR), the Claimant submitted that the Respondent failed to carry out independent, unbiased and reasonable investigations to satisfy the test of fairness.
90. In the Claimant's view, the Respondent's decision to subject him to biased disciplinary proceedings, founded on biased investigations, amounts to unfair labour practice and a violation of *the Constitution* as well as the *Employment Act*.
91. With respect to procedure, the Claimant submitted that the Respondent fished for new and distinct reasons to punish him. In the same vein, the Claimant submitted that the reasons for his dismissal from employment were totally different from the reasons that led to his suspension. That further, the Respondent never gave feedback on the Claimant's appeal on his performance appraisal, and the silence confirms that the dismissal was aimed at sending him out at all costs.
92. He further submitted that the Respondent took a casual approach with respect to his appeal, summarily rejecting it on the basis that it contained no new evidence.
93. The Claimant further submitted that he was never invited to show cause on the new allegations upon which he would be subjected to disciplinary proceedings that would see him leave the organization unceremoniously, robbing him of livelihood and tainting his name in the eyes of any reasonable future employer. In support of this position, the Claimant placed reliance on the case of National Cereals and Produce Board vs John Kirui Torongei (2013) eKLR.
94. It was his contention that the only basis upon which the disciplinary proceedings could be founded were those set out in the suspension letter.
95. The Claimant further posited that the Respondent failed to follow its own disciplinary procedure prescribed in its Group Disciplinary Standards by failing to offer him an opportunity to show cause, having changed the grounds for the disciplinary hearing from those contained in the suspension letter.
96. On the other hand, the Respondent submitted that the Claimant's action was in breach of the Group Information and Cyber Security Policy which prohibits sending of Group Information to any private or personal email. Still on the issue, the Respondent posited that as the head of the Respondent's security detail, there could have been no better officer of the Respondent upon whom the responsibility of ensuring the observance of the Group Information & Cyber Security Standard; Data Leakage Prevention rested, than what was expected of the Claimant. In the Respondent's view, the Claimant deserved to be summarily dismissed for the violation of the Group Information and Cyber Security Policy alone.
97. With respect to the allegation that the Claimant filed to ensure the order of supply of CTV cameras by AUA met the Respondent's standards, the Respondent submitted that by his own action, the Claimant subjected it to excessive costs and loss arising from the cameras delivered as established by the BGB Security Report and the Investigation Report.
98. The Respondent further submitted that for reasons best known to himself, the Claimant instructed AUA to print access cards without following procurement procedures and ensuring that there was a written contract in place before the assignment was awarded to AUA.



99. In the same vein, the Respondent submitted that since in printing the access cards the Claimant had to provide AUA with data of individual Respondent's employees who would be using the cards, the Claimant violated the individual employees' rights to privacy.
100. According to the Respondent, all the four listed grounds in the dismissal letter justified the termination of the Claimant's contract.
101. The Respondent further submitted that in line with Article 47 of *the Constitution* and Section 4 of the Fair Administrative Actions Act and further as per the requirement of Article 41 of *the Constitution*, the letter inviting the Claimant for a disciplinary panel hearing listed the issues that were to be canvassed at the meeting.
102. It was the Respondent's further submission that the Claimant was granted sufficient opportunity to defend himself as required by *the Constitution*.
103. According to the Respondent, the issues contained in the BGB Security Report were just one of the many gross misconducts the Claimant engaged in and which formed the basis for the termination of his contract.
104. In the Respondent's view, due process was followed in giving the Claimant a fair hearing before his services were terminated and there was no malice or ulterior motive harbored against him as he would like the Court to believe.

### **Analysis and Determination**

105. Having considered the pleadings by both parties, the evidence on record together with the rival submissions to my mind, the following issues stand out for determination by the court: -
  - i. Whether the Respondent had fair and valid reasons to terminate the employment of the Claimant;
  - ii. Was the Claimant accorded procedural fairness prior to being terminated from employment?
  - iii. Is the Claimant entitled to the reliefs sought?

### **Valid and fair reason?**

106. Section 43 as read together with Section 45 (2) (a) and (b) of the *Employment Act* (Act) are the key statutory provisions in determining this issue. In this regard, Section 43 requires an employer to prove the reasons for termination while Section 45(2) (a) and (b) provides that a termination of employment is unfair if the employer fails to prove: -
  - a. that the reason for the termination is valid;
  - b. that the reason for the termination is a fair reason-
    - i. related to the employee's conduct, capacity or compatibility; or
    - ii. based on the operational requirements of the employer; ...
107. In the instant case, it is discernible from the Claimant's letter of summary dismissal dated 28<sup>th</sup> July 2020 that his exit from the Respondent's employment was based on four grounds which I will reproduce hereunder verbatim:
  - i. It is confirmed that you forwarded multiple confidential SCB documents as indicated above from your SCB email address to info@sealmark.co.ke and gkomu@sealmark.co.ke.



Your action is in breach of Group Information and Cyber Security Policy-requires SCB employees to use email, the internet, internal and external collaboration and social networking forums responsibly and protect the Group brand from reputational damage and preserve the confidentiality of Group information assets. Section 4.1(a) prohibits the sending of Group information to any private or personal email account.

- ii. You have failed to ensure that the order and supply of CCTV cameras by AUA in August 2019 met SCB standards since the cameras supplied by AUA were manufactured by Dallmeier, which is not a preferred SCB supplier of CCTV equipment listed in the Group Security CVMS Systems Specifications and Installation Standards. Your action was breach of Group Code of Conduct requirement to comply with laws, regulations and Group Standards.
  - iii. You are culpable for failing to ensure that proper Bank process was followed in procuring printing of Staff Access Cards from AUA. The cards were consequently procured in August 2018 and AUA was allowed to Supply the Cards without any contract in place. Your action therefore breached Group Code of Conduct requirement to "Act ethically, honestly, professionally and with integrity at all times", "manage risk effectively" and the Group Valued Behaviour-"Do the Right Thing"
  - iv. While you were the SCB contact and person responsible to validate the correct Installation of Lenel Security System Upgrade you commissioned and validated poor quality of work done by a contracted Company AUA including cases where controller panels were assembled with non-Lenel transformers, power supply and cabinets. Your action is in breach of the Group Code of Conduct- requirement to "Use good judgement" and "Act Responsible"
108. I will proceed to consider each of the reasons aforementioned in no particular order.
109. With respect to the allegation that the Claimant failed to ensure that the order and supply of CCTV cameras by AUA Industria met the Respondent's standards, the Claimant stated that the procurement process is managed by the supply chain functions where he does not belong and that he only provided the technical specifications and did not specify that the contractor should supply Dallmeier branded cameras. The Claimant further stated that the technical specifications do not show that there was a particular brand of cameras preferred. He further stated that the cameras were delivered while he was on suspension.
110. A perusal of the contract executed between the Respondent and AUA Industria in this regard, reveals that the specifications for the CCTV equipment to be supplied did not indicate the preferred suppliers or those not preferred. It merely listed the specifications and made no mention of a particular brand. Indeed, there is no evidence that what was supplied was outside the specifications spelled out in the contract.
111. Further to that, the Respondent did not exhibit the Group Security CVMS System Specifications it alluded to in the charges levelled against the Claimant. In addition, during cross-examination, RW2 confirmed that the said specifications did not name any brand and specifically, Dallmeier.
112. In light of the foregoing, it cannot be said that the Claimant failed to ensure that the order and supply of CCTV cameras by AUA Industria met the Respondent's standards yet there is no evidence that the said standards were documented in the first place and that the Claimant was aware of the same.
113. On account of the foregoing, it is this Court's finding that the said allegation did not constitute a fair and valid reason to cause termination of the Claimant's contract of employment.



114. The Claimant was further cited for commissioning and validating poor quality work done by a contracted company by the name AUA Industria including cases where controller panels were assembled with non-lenel transformers, power supply and cabinets.
115. It is evident from the record that the Respondent's case with respect to this issue is based entirely on the findings contained in the BGB Security Report. Further, it is noteworthy that the report by the Respondent's Shared Investigative Service drew heavily from the BGB Security Report.
116. Disputing this allegation, the Claimant argued that the BGB Security Company which undertook the investigations into the issue, was not independent and was a competitor of AUA Industria. From the record, the Claimant urged the Respondent's disciplinary panel to disregard the report on that account.
117. The record bears that in an email dated 28<sup>th</sup> March 2018, the Claimant addressed one Cornelius as follows:
- “I have reviewed the email trails with BGB and I feel we have breached our NDA with AUA. For me this can cause serious conflict of interest since you have already shared AUA's pricing matrix with a competitor...”
118. Notably, this communication was almost two years prior to the Claimant being sent on suspension.
119. In view of the foregoing observations, I am inclined to find that the Claimants' concerns with respect to the independence of the BGB Security Report were not far-fetched. This being the case, I cannot help but find that again, the allegation that the Claimant commissioned and validated poor quality work done by AUA Industria, was not a valid and fair reason to terminate his contract of employment.
120. The Claimant was further accused of failing to ensure that a proper process was followed in procuring the printing of staff access cards by AUA Industria. In this regard, the Respondent contended that AUA Industria was allowed to print the cards without any contract in place.
121. During the disciplinary hearing, the Claimant told the panel that AUA Industria had been printing the staff access cards since 2008 and that there was an extension of the existing contract. That he did not get the full contract from procurement despite his request. The Claimant further told the panel that the specific printing by AUA Industria was pegged on the access control system lease contract that commenced in 2007. In this regard, the Claimant admitted that there was no specific contract to print the cards.
122. In essence, the Claimant admitted that AUA Industria was printing the staff access cards without any contract in place. It is further evident from the record that an entity by the name Identisys had been contracted to print the staff access cards on or about December 2017/January 2018.
123. The Claimant told the disciplinary panel that several challenges concerning the contract arose hence they reverted to AUA Industria. It would thus seem that the changeover back to AUA Industria was devoid of any formal arrangements.
124. Being the technical person responsible for the staff access cards, the Claimant failed in his role by not ensuring that there was a contract in place prior to the service in question being rendered by AUA Industria. Besides, it is notable that printing of the staff access cards entailed disclosure of staff information to a third party. As such, the Respondent was exposed to potential liability.
125. On this ground, the Respondent had a valid and fair reason to commence termination of the Claimant's contract of employment.



126. The Claimant was further accused of forwarding multiple confidential documents belonging to the Respondent from his official (SCB) email address to info@sealmark.co.ke or gkomu@sealmark.co.ke on 24<sup>th</sup> August 2017, 27<sup>th</sup> September 2018, 14<sup>th</sup> August 2018, 13<sup>th</sup> February 2019 and 17<sup>th</sup> May 2019.
127. In this regard, the Claimant was cited for breaching the Respondent's Group Information and Cyber Security Policy as well as the Group Information and Cyber Security Standard: Data Leakage Prevention.
128. In his submissions, the Claimant averred that the emails related to past years and for many years, no one raised an issue. He further argued that he was not shown any computer record of the emails but was only shown printed documents which may have been manipulated and typed out by a malicious person to appear as genuine emails.
129. In support of its case, the Respondent exhibited a copy of the emails allegedly sent by the Claimant from his official email address geoffrey.komu@sc.com to info@sealmark.co.ke.
130. It is notable that through the said emails, the Claimant forwarded a number of documents that belonged to the Respondent. These documents were the Control Risk Proposal, Control Risk Report, Master Timeline Biometric Safe Lock, Scope for Security Assessment and Staff Evacuation Service, and Technical and Financial Proposal Branches for CCTV Cameras Audits.
131. During cross-examination, the Claimant admitted that he is the owner of Sealmark Security Consultancy Limited. Therefore, despite the Claimant's assertions that he cannot recall sending the emails in question, it does not take away the fact that the emails forwarding the Respondent's official documents emanated from his official email account to his own company's email account.
132. In support of its case, the Respondent exhibited its Group Information and Cyber Security Policy which provides at clause 3.3 for protection of information. It mandates information custodians to protect the confidentiality of information within the information system.
133. Further under the Group Information and Cyber Security Standard: Data Leakage Prevention, owners and custodians of information are required to ensure protection against information leaks is deployed for information systems and technology infrastructure.
134. Fundamentally, the thread running through the two policies aforementioned is protection of information and prohibition of information leakage.
135. What's more clause 2.1 of the Claimant's contract of employment prohibited him using for his own purposes or for any purposes other than those of the Bank or any Group Company any confidential information concerning the Bank.
136. In essence, the Claimant was under a duty not to expose any confidential information belonging to the Respondent.
137. In light of the policy requirements and the Claimant's contractual obligation, it becomes apparent that by forwarding the Respondent's documents to Sealmark Security Consultancy Limited, the Claimant acted in breach of his contract of employment, the Respondent's Group Information and Cyber Security Policy as well as the Group Information and Cyber Security Standard: Data Leakage Prevention.
138. This is further noting that under Clause 9 of the Group Information and Cyber Security Policy, failure to comply with the Policy renders an employee liable to disciplinary action including termination of employment.



139. Being the head of Security at the Respondent Bank, the Claimant should have been at the forefront in securing the Respondent's information. Quite the contrary, he violated the relevant policies and his contract of employment by sharing information belonging to the Respondent.
140. In light of the foregoing, the Claimant availed to the Respondent a valid and fair reason for termination of his employment.
141. In arriving at this finding, I am mindful of the standard of proof applicable in employment cases. As was held by the Court of Appeal in the case of Kenya Revenue Authority vs Reuvel Waithaka Gitahi & 2 others [2019] eKLR:
- “The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee's services.”
142. Applying the standard of proof to the case herein, I am satisfied that the Respondent has proved that it had a valid and fair reason to commence the process of terminating the Claimant's employment contract on grounds that he forwarded multiple documents belonging to the Respondent through his official email address at the Bank to info@sealmark.co.ke.
143. In light of the foregoing, I find and hold that the first and third reasons for the Claimant's summary dismissal were fair, valid and related to his conduct, within the meaning of Section 43 as read together with Section 45(2) (a) and (b) of the Act.

#### **Procedural fairness?**

144. The requirement for fair procedure is generally provided for under Section 45 (2) (c) of the Act. In addition, Section 41 (1) of the Act makes specific requirements with regards to the process to be complied with by an employer. It entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.
145. From the record, the Claimant was suspended from duty on 16<sup>th</sup> March 2020. Evidently, the Claimant's suspension was to allow for further investigations into the issues highlighted. The issues identified at that point were: suspected financial impropriety following review of purchase orders older than three months and non-compliance to procurement procedures in acquiring security equipment for the bank.
146. The Claimant has contended that the reasons for his dismissal are totally different from the reasons that led to his suspension.
147. Revisiting the letter of suspension, it is apparent that the Claimant was notified that the suspension does not constitute a disciplinary action nor does it imply any assumption that he is guilty of any misconduct. My understanding of the foregoing expression is that the Claimant had not been accused of any wrongdoing at that point. The suspension was being undertaken to ascertain the veracity of the issues under investigation. Indeed, the investigations could go either way.
148. Therefore, in my view, the issues being investigated during the Claimant's suspension did not constitute reasons that could result in the termination of his employment.
149. What's more, the Claimant was notified that the Respondent reserved the right to add further issues as appropriate in light of any information obtained. Therefore, it means that the issues contained in the letter of suspension were not conclusive.



150. In the case of case of Mary Chemweno Kiptui vs Kenya Pipeline Company Limited [2014] eKLR, the Court held as follows with regards to suspension: -

“A suspension therefore is ultimately a right due to an employer who on reasonable grounds suspects an employee to have been involved in misconduct, of poor performance or physical incapacity and wishes to remove such an employee from the work place to enable further investigation without subjecting the employee to further commission of more acts of misconduct, underperformance or the conditions leading to incapacity. The suspension period is a time available to an employer to control as the employee can be summoned back to work any time to undertake disciplinary proceedings or upon terms and given by an employer.”

151. In this regard, the Respondent cannot be faulted for suspending the Claimant as it did in order to undertake investigations into issues that had come into its attention.
152. From the record, the Claimant was subsequently, issued with a notification of disciplinary meeting dated 23<sup>rd</sup> June 2020 for a hearing that was slated for 25<sup>th</sup> June 2020.
153. Notably, the notification provided in detail the reasons why the Respondent was considering terminating the Claimant’s employment. Indeed, the Claimant was notified that the meeting of the disciplinary review could result in his termination.
154. In this regard, it is my respectful view that the mere fact that the Respondent failed to issue the Claimant with a separate notice to show cause does not invalidate the process.
155. The bottom-line is, he was notified of the reasons that could potentially lead to the termination of his employment and given an opportunity to present his defence at an oral disciplinary hearing.
156. From the record, the Claimant attended the hearing of his disciplinary case on 2<sup>nd</sup> July 2020 and ventilated his case as his responses to each of the allegations levelled against him, are captured in the attendant minutes.
157. He also exercised his right of appeal and once again, it is discernible from the record that he was given an oral hearing and he made his presentations before a differently constituted panel.
158. In view of the foregoing, I cannot help but note that the Claimant was accorded procedural fairness as he was notified of the allegations levelled against him beforehand and given an opportunity to be heard on his explanation with respect to each allegation.
159. In the circumstances, I am satisfied that the Respondent complied with the spirit of Section 41 of the Act hence the disciplinary process leading up to the Claimant’s dismissal from employment was procedurally fair.
160. In sum, I find that the Claimant’s dismissal from the Respondent’s employment was neither unfair nor unlawful.

## Orders

161. In the final analysis, I find that the Claimant is not entitled to the prayers sought hence I dismiss the Claim in its entirety with an order that each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2024.**

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**STELLA RUTTO**

**JUDGE**

Appearance:

Mr. Wambuta instructed by Mr. Amol for the Claimant

Mr. Sewe instructed by Mr. Obura for the Respondent

Millicent Kibet Court Assistant

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

