



**Mokebo v Kenya Women Microfinance (Cause E035 of 2025)  
[2025] KEELRC 2634 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2634 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E035 OF 2025  
JK GAKERI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**NANCY MOKEBO ..... CLAIMANT**

**AND**

**KENYA WOMEN MICROFINANCE ..... RESPONDENT**

**JUDGMENT**

1. The claimant was initially employed by the respondent on 1<sup>st</sup> May, 2009 as a Business Development Officer and later rose to Acting Unit Manager, Ahero, was promoted to Deposit Taking Unit Manager, Muhoroni DTU and subsequently as Branch Manager, Kisumu East Non-Deposit Taking Branch Central Nyanza.
2. The claimant alleged that she was accused of improper impounding and transfer of Tujenge Funds, Kshs.32,800 from Account No.1005519014 of Royal Smart Group Inuka Account No. 1005538655 of Sylvia Aluoch on 22<sup>nd</sup> July, 2023 and dismissed from employment effective 26<sup>th</sup> June, 2024 which the claimant alleges was unlawful and illegal.
3. The claimant prays for:
  - i. 12 months compensation Kshs.1,020,000.00
  - ii. Salary in lieu of notice Kshs.85,000.00
  - iii. Leave payment Kshs.1,276,200.00
  - iv. Overtime Kshs.119,280.00
  - v. House Allowance Kshs.256,000.00
  - vi. Certificate of service



- vii. Cost of the suit
- viii. Interest on (i) – (v) from 21<sup>st</sup> January, 2024.
- ix. Any other relief the court may deem just and fit to grant.

### **Respondent's case**

3. The respondent's case is that when the claimant was the Manager Deposit Taking Unit fraudulent of goods impounding and irregular transfer of funds took place and funds from sale of impounded goods were misappropriated.
4. The respondent relied on the Audit Report which the claimant filed as part of her documents.
5. The respondent's case is that it had a reason to terminate the claimant's employment and complied with the procedural requirements, including a hearing and prayed for dismissal of the claimant's case with costs.
6. On cross-examination, the claimant confirmed that she was the Branch Manager Kisumu Unit, office effective April 2021 when the contract of employment was renewed.
7. The claimant testified when the Audit Report was being prepared, no one questioned her but admitted having received and, responded to the notice to show cause, was invited for a disciplinary hearing, attended and defended herself was given a copy of the minutes and a letter of termination of employment.
8. The claimant denied having been involved in the impounding of goods, supervising the same or handling the Kshs.10,000.
9. On the reliefs claimed the claimant admitted having been paid salary in lieu of notice, salary for June 2024 leave for 2021, 2022 and 2023 not paid fully.
10. The claimant admitted that she had no evidence of pending leave days and her overtime was not approved for payment by immediate supervisor and had no evidence of having worked overtime.
11. As regards house allowance, the claimant admitted that her salary was consolidated and had no evidence of underpayment.
12. The claimant further admitted having received a certificate of service which she alleged had errors.
13. RWI, Caroline Mungai confirmed, on cross-examination that the claimant's employment was terminated because of fraudulent activities under her watch but was not charged in a court of law. The witness admitted that she was unaware of any investigation being conducted.
14. RWI further testified that the money in question was transferred after authorization was received from the group but the minutes were falsified and signatures were authenticated and the transfer took place in operations and the claimant had no authority to verify the signatures.

### **Claimant's Submissions**

15. As to whether the Claimant's dismissal from employment was fair, reliance was placed on the decisions in Janet Nyandiko V Kenya Commercial Bank Ltd (2017) ACCR and Walter Ogal Anuro V. Teachers service Commission (2013) eKLR, to urge that where fraud was alleged the standard of proof was higher and in the instant case, the respondent did not avail issue specific evidence on the allegations.



16. Reliance was also placed on *Kenfreight (EA) Ltd V. Benson K. Nguti* (2016) eKLR, on the essence of evidence to prove the allegations against an employee and urge that the Claimant's dismissal was procedurally defective and substantively unmerited.
17. On fraud, counsel submitted that the respondent was required to provide clear, cogent and compelling evidence and cited the decisions in *Co-operative Bank of Kenya Ltd V. Banking Insurance & Finance Union Kenya* (2017) eKLR and *RWWV. EKW* (2019) eKLR, to urge that the employer failed to prove fraud.
18. On underpayment, counsel submitted that the Claimant was underpaid under the Regulation of Wages (Amendment) Order 2018 and ought to have been paid Kshs. 120,000.09, exclusive of house allowance as a Branch Manager citing the decisions in *Elizabeth Washeke & Others V. Airtel Kenya Ltd* (2013) eKLR and *Peter Kamau Mwaura V. National Bank of Kenya* (2020) eKLR to urge that the Regulation of Wages Orders were binding.
19. According to Counsel, the respondent violated the Regulation of Wages (General) (Amendment) Order 2018).
20. Counsel submitted that the Claimant was entitled to all the reliefs prayed for.

### **Respondent's submissions**

21. On whether termination of the Claimant's employment was unfair, counsel for the respondent cited the sentiments of the Court of Appeal in *Pius Machafu Isindu V. Lavington Security Guards Ltd* (2017) eKLR and those in *Omondi V. Technical University of Kenya* (2024) KEELRC 2424 (KLR), to submit that the respondent had complied with the provisions of the *Employment Act* and the Claimant had admitted on cross-examination that she was aware of the contents of the Respondent's Human Resource Policy Manual and conceded having been taken through a disciplinary process and cited no procedural flaws.
22. Further, Counsel submitted that the audit unearthed inculpatory evidence against the Claimant which resulted in the notice to show cause and the Claimant defended herself.
23. It was also submitted that the fraudulent transactions relating to the illegal impounding of goods and misappropriation of funds rendered the Claimant culpable by virtual of being the overall supervisor at the branch as she had neglected her duties under Clause 18.2.4 of the Human Resource Manual consistent with the provisions of Section 44 (4) (c) of the *Employment Act*.
24. As regards the standard of proof by the employer, reliance was placed on the sentiments of the Court of Appeal in *Kenya Revenue Authority V. Reuvel Waithaka Gitahi & 2 Others* (2019) KECA 300 (KLR) where the Court cited its earlier decision in *Bamburi Cement Ltd v. William Kilonzi* (2016) KLR as well as the guidelines in *Halsbury's Laws of England*, 4<sup>th</sup> Edition Vol. 16 (1B) paragraph 642, on the range of reasonable responses test, to urge that the respondent had justifiable grounds to terminate the Claimant's employment.
25. As regards the prayers sought, Counsel submitted that none was merited as termination of the Claimant's employment was not unfair, salary in lieu of notice and unpaid leave days were paid, a fact the Claimant acknowledged, overtime was unproven, the claimant's salary was consolidated, thus inclusive of house allowance and a certificate of service had been issued.

Counsel prayed for dismissal of the Claimant's suit with costs.



## **Analysis and determination**

26. It is common ground that the claimant was an employee of the respondent serving as the Branch Manager, Kisumu East Branch since 17<sup>th</sup> April, 2024.
27. Strangely, the letter of engagement dated 17<sup>th</sup> April, 2024 did not specify the claimant's duties or responsibilities as a Branch Manager.
28. It is equally not in dispute that the respondent terminated the claimant's employment vide letter dated 21<sup>st</sup> June, 2024 effective 26<sup>th</sup> June, 2024 allegedly for involvement in fraudulent activities.

## **Reason for termination**

29. A notice to show cause dated 9<sup>th</sup> may, 2024 accused the claimant of involvement in fraudulent activities citing the allegations raised in an audit report.
30. Strangely, neither the notice to show cause nor the letter of termination of the claimant's employment set out or particularised the fraudulent activities the claimant was involved in or how she facilitated or participated in the activities.
31. Among other documents availed by the claimant was a copy of the Internal Audit Report for Kisumu East Branch, the cover page of which revealed that the audit was conducted from 19<sup>th</sup> February, 2024 to 23<sup>rd</sup> February, 2024 and the claimant was given a copy.  
The report rated the Branch at 43% which was equal to a 'D'.
32. The report isolated various concerns including undue cash handling by one BDO –Stella, questionable sale of impounded hoover incorrect tagging of group clients unauthorised transfer of Tujiunge funds Kshs.32,800 by BDO-Stella with group chairlady through falsified minutes of the group, inaction on deceased client's accounts, improper handover procedures, lack of training on applicable policy and procedure manuals, performance gaps, utilization of regional program car, lack of due diligence in finding, neglected individual clientele, non-attendance and improper follow ups, improper handling and disposal of official documents among others.
33. Notably, although the findings of the internal audit largely implicated the Branch Manager's office and the management, the report did not identify any particular misconduct on the part of the claimant.
34. Relatedly, the report identified the particular persons who participated or were involved in the impounding of goods, handling of cash, sale of impounded hoover and cash trial, incorrect tagging of group clients including the authorised transfer of Tujiunge funds on 22<sup>nd</sup> July, 2023, among others and no action appear to have been taken against them as the Internal Audit report was reticent on the recommendations.
35. The absence of specific infractions attributable to the claimant perhaps explains why neither the notice to show cause nor the letter of termination of the claimant's employment specified the alleged fraudulent activities or the claimant's role in the activities.
36. The law on termination of the employment contracted as encapsulated in the provisions of Section 41, 43, 44, 45, 46 and 47(5) of the *Employment Act* is unambiguous that the employer must prove that it had a valid and fair reason to terminate the employee's employment.
37. There must have been a substantive justification for the termination of employment as held in *Walter Ogal Anuro V Teachers Service Commission* (supra).



Section 43(1) of the *Employment Act* provides:

38. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for termination, and where the employer fails to do so the termination shall be deemed to have been unfair within the meaning of Section 45.

Similarly, under Section 45(2) of the Act,

39. A termination of employment by an employer is unfair if the employer fails to prove—

40.

(a) that the reason for the termination is valid;

41.

(b) that the reason for the termination is a fair reason—

42.

(i) related to the employees conduct, capacity or compatibility; or

43.

(ii) based on the operational requirements of the employer; and ...

Finally, under Section 47(5) of the Act

44. 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.

45. The common thread in the foregoing provisions is the obligation of the employer to prove the reason or reasons or grounds which caused termination of the employee's employment.

46. Although the standard of proof is on a balance of probabilities, the employer is required to prove that it had reasonable basis for the genuine belief that it had a reason(s) to terminate the employee's employment as held in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* [2019] eKLR and *Galgalo Jarso Jillo V Agricultural Finance Corporation* [2021] eKLR.

The term reason literally means explanation or justification.

Black's Law Dictionary 10<sup>th</sup> Edition defines reason as

“An expression or statement given by way of explanation or justification; whatever is supposed or affirmed to support a conclusion”.

47. The requirement of an explanation or justification for termination of employment is imperative.

48. The reason or reasons relied upon by the employer must be valid and fair. Valid means 'legally sufficient'.

49. It requires no emphasis that fraud is a very serious allegation and in particular, when made by an employer against an employee. The allegation ought to be grounded on sufficiently verifiable evidence of the alleged activities. Particulars of the fraud ought to be demonstrated to sustain the charge.



50. In *Emfil Ltd V Registrar of Titles & 2 Others* [2014] eKLR, the Court of Appeal held:
- “Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary balance of probabilities...”
51. See also *Victor Moga V Richard Kebira Mariera* [2015] KEHC 2777 (KLR), *Mellen Mbera V James Theuri Wambugu* [2020] KECA 832 (KLR), *Kilonzo V Kiiru & Another* [2019] KEELC 5111 (KLR), *JBR V IMM* [2019] KEELC 3835 (KLR), *Osodo V Akama* [2022] KEELC 13276 (KLR), *Johana Kipkemoi Rono V Paul Kipsigei Rono* [2020] KEELC 1598(KLR) and *Josphat Mwangi Kamunge & another V Susan Wangechi Njirani* [2018] KEHC 4783 (KLR).
52. In the instant case, other than the general charge, that the claimant was involved in fraudulent activities, neither the activities nor the particulars of fraud were enumerated for the claimant’s rebuttal.
53. The alleged fraudulent activities ought to have been unpackaged but were not. Not a single instance of fraud perpetrated by the claimant was evidentially demonstrated by the respondent.
54. The claimant admitted, on cross-examination that she did not handle the Kshs.10,000.00 and did not supervise the impounding of the items in question.
55. Significantly, the respondent’s witness admitted on cross-examination that the alleged fraudulent activities occurred under the claimant’s watch as opposed to her actual involvement and was not sure whether any investigation was conducted. She also admitted that the claimant was not charged in a court of law, transfer of monies was authorised by the Group, the claimant was not involved in the transfer of the cash and it was not her duty to authenticate signatures.
56. RWI’s evidence revealed that the claimant was not involved in any fraudulent activity but irregularities and other nefarious activities took place at the Branch she was managing.
57. A charge of neglect to perform work or careless or improper performance under Section 44(4)(c) of the *Employment Act* may have ameliorated the respondent’s case.
58. For the foregoing reasons, it is the finding of the court that the respondent has failed to prove on a balance of probabilities that it had a valid and fair reason to terminate the claimant’s employment as by law required.
59. The generalized allegation of the claimant’s involvement in fraudulent activities fell below the prescribed threshold and termination of the claimant’s employment did not pass the substantive fairness test.

## Procedure

60. On procedural requirements, evidence on record reveals that the claimant was issued with a notice to show cause dated 9<sup>th</sup> May, 2024 and although a response was required no timeline was fixed. The claimant responded vide letter dated 15<sup>th</sup> May, 2024 denying the charge of being involved in fraudulent activities and was invited to a disciplinary hearing vide letter dated 12<sup>th</sup> June, 2024, hearing was scheduled for 18<sup>th</sup> June, 2024 from 8:30am at the Respondent’s KWFT Centre 8<sup>th</sup> Floor and was notified of her right to be accompanied by a fellow employee.
61. Evidence on record shows that the claimant attended the hearing as scheduled and signed the minutes. The disciplinary panel considered the matter on 20<sup>th</sup> June, 2024 and recommended termination of the claimant’s employment.



62. The claimant did not fault the hearing or the process and did not appeal the decision.
63. From the evidence on record, it is the finding of the court that the respondent complied with the provisions of Section 45(2)(c) of the [Employment Act](#) and mandatory procedures prescribed by Section 41 of the [Employment Act](#).
64. Having found that termination of the claimant's employment was unfair for want of a substantive justification, the claimant is entitled to appropriate reliefs as explained below.

### **Salary in lieu of notice**

65. The claimant admitted having been paid salary in lieu of notice as intimated by the letter of termination of employment.  
The prayer is unmerited and it is dismissed.

### **Leave payment**

66. The claimant tendered no evidence on the number of unutilized leave days or when they accrued. The claim for Kshs.1,276,200 as payment for leave for 15 years lacked supportive evidence and it is dismissed.

### **Overtime**

67. The claim for Kshs.119,280 as overtime lacked supportive evidence as neither the claimant's written statement dated 16<sup>th</sup> April, 2025 nor the oral evidence adduced in court provided particulars as to when the claimant worked overtime. Significantly, on cross-examination, the claimant admitted that she had no evidence of having worked overtime.  
The claim is dismissed.

### **House allowance**

68. Clause 2 of the claimant's copy of the employment contract dated 17<sup>th</sup> April, 2024 clearly stated that her salary was consolidated and as provided by the provisions of Section 31(2)(a) of the [Employment Act](#), the employer was under no obligation to pay house allowance, a fact the claimant admitted on cross-examination.  
The claim is dismissed.
69. Twelve (12) months compensation for unlawful termination of employment
70. In determining the quantum of compensation under Section 49(1)(c) of [Employment Act](#), the court was guided by the provisions of Section 49(4) of the Act and took in this case, into account that:
  - i. The claimant was an employee of the respondent for a duration of 14 years, which is a long time.
  - ii. The claimant had no previously recorded cases of misconduct or warning letters.
  - iii. The claimant did not express her wish to remain in the respondent's employment or appeal the decision or pray for reinstatement or reveal her expectations as to the length of time she had anticipated remaining in the respondent's employment.
71. In the circumstances, the court is satisfied that the equivalent of four (4) months gross salary is fair compensation, Kshs.340,000.



72. The claimant is entitled to a certificate of service by dint of Section 51 of the *Employment Act*.
73. In conclusion, judgment is entered in favour of the claimant against the respondent as follows:
- a. Equivalent of 4 months gross salary Kshs.340,000.
  - b. Certificate of service.
  - c. Costs of the suit at half scale.
  - d. Interest on the Kshs.340,000 at court rates from date of Judgment till payment in full.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

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 has 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.

**DR. JACOB GAKERI**

**JUDGE**

