



**SMEP Microfinance Bank v Omina (Appeal E034 of 2025)
[2025] KEELRC 2742 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2742 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E034 OF 2025
JK GAKERI, J
OCTOBER 8, 2025**

BETWEEN

SMEP MICROFINANCE BANK APPELLANT

AND

STEPHEN MUGELE OMINA RESPONDENT

JUDGMENT

1. By a statement of claim dated 20th March, 2024 the respondent sued the appellant alleging that termination of his employment effective 25th October, 2023 was unfair as it had not been proved that he acted fraudulently and had been a productive and honest employee.
2. The respondent's case was that he organized a market for the Kitale Branch of which he managed and participated on 25th March, 2023, having mobilized resources, using his personal vehicle and because the appellant did not avail the requisite funds on the material day as requested, he sought reimbursement for Kshs.10,800 stating that any error in costs and receipts was a genuine mistake made in good faith.
3. The respondent was accused of having falsified receipts and having approved a mobile banking application without conducting due diligence.
4. He prayed for a declaration that the summary dismissal was unfair, reversal of the dismissal to enable him resign, terminal dues, salary in lieu of notice, 12 months compensation, aggravated damages, settlement of Kshs.742,359 by the employer, costs and interest.
5. The appellant's case was that the respondent was its employee from 14th September, 2018, serving as Manager, Kitale Branch and had overtime failed to uphold the appellant's policies and procedures and general poor performance. That he had notified the bank of the intended market outreach at Yuya, Trans Nzoia on the morning of 26th May, 2023 but the request was not acted on as it required a week's notice.



6. The appellant stated that the respondent sought re-imbusement for tents, chairs, transport and staff lunch but demanded additional documentation. That the appellant's internal investigation revealed that only Kshs.4,000 was spent on tents and chairs.
7. That the summary dismissal was conducted as by law required, following a notice to show cause, response by the respondent, invitation for a disciplinary hearing, summary dismissal letter, appeal and response from the Chief Executive Officer.
8. After considering the evidence placed before it and submissions by counsel, the trial court found that the appellant did not prove its case against the respondent and did not comply with its manual and held that the summary dismissal of the respondent was unlawful and unprocedural. The trial court awarded 12 months compensation, salary in lieu of notice, costs, certificate of service and interest, total Kshs.1,025,000.00
9. This is the judgment appealed against. The appellant relies on 9 grounds of appeal.
10. The trial court is faulted for having erred in law and fact by:
 1. Finding that termination of the respondent's employment was unlawful and unprocedural despite clear evidence of the reason for dismissal.
 2. Failing to properly evaluate the evidence adduced by both parties and ignored the appellant's evidence.
 3. Ignoring the appellant's due compliance with the disciplinary procedures and the Human Resource Manual.
 4. Faulting the disciplinary process solely on the absence of receipts despite corroborated evidence of internal audit queries and witness testimony.
 5. Failing to properly evaluate and consider the appellant's submissions, evidence and judicial precedent.
 6. Awarding salary in lieu of notice and 12 months compensation without legal justification.
 7. Taking into account immaterial consideration including the respondent's challenge in securing new employment.
 8. Awarding costs and interest despite the speculative and unsupported nature of the claims and in particular the Memorandum of Understanding claim.
 9. Misdirecting itself by taking account of irrelevant considerations of alternative employment.
11. These grounds may be condensed into appreciation and application of the evidence, findings by the court taking account or failure to take account of relevant circumstances and reliefs.

Analysis

12. I have considered the submissions filed by counsel for the parties on 6th October, 2025.
13. This being a first appeal, the role of this court is to reconsider and re-evaluate the evidence and arrive at its own conclusions bearing in mind that it neither saw nor heard the witness and make due allowance as held in *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA 123. See also *Peters v Sunday Post* [1958] EA 424.



14. It is common ground that the respondent was the appellant's Branch Manager, Kitale Branch effective September 2018 until 25th October, 2023 when the appellant summarily dismissed him from employment on the grounds of falsification of receipts and failure to conduct due diligence on an application for activation of mobile banking by a customer.
15. The first issue for determination is whether the appellant proved its case against the respondent. This is the issue on which the appeal turns.
16. The respondent's waterloo was a market drive he organized on 26th May, 2023. Evidence on record reveals that the respondent reached out to the team leader on the same day for financial facilitation, which was not availed but the event proceeded as some bank customers and prospective customers had confirmed attendance and the respondent had used his personal car mobilising resources.
17. Shockingly, none of the appellant's bank employee attended the event because according to the respondent, they ran out of time and never received financial facilitation from the team leader.
18. What made the story interesting was that the respondent sought re-imbursement for monies spent at the event which according to his witness statement took place on 25th March, 2023. The witness statement is reticent on what transpired on that day.
19. vide an email dated 6th June, 2023, the respondent sought a refund of Kshs.10,800 comprising:
 - Tent Kshs.5,000
 - Chairs Kshs.1,000
 - Taxi and fuel Kshs.4,000
 - Staff lunch Kshs.800
20. The respondent attached a copy of an undated receipt entitled Yamara Cab Services Limited Tel.0721 690 585 for Kshs.2,500 received from the appellant together with a document entitled Invoice dated by hand 26th May, 2023 for Kshs.6,000 for tents and chairs.
21. By an email dated 8th June, 2023, Mr. Ephantus Kagia Irungu sought evidence of the itinerary for the day, invite from organizer, listregister of participants, photos of the event, accounts opened and follow up. The writer insisted on the need for written approval of such events from the Head of Business Development copied to him as this had not been done.
22. Strangely, the respondent's letter to the Head of Business Mr. Simon Hunja dated 22nd June, 2023 made no direct reference on what transpired on 26th May, 2023. The respondent admitted that the event did not "materialize well due to lack of funds".
23. Neither the respondent nor the appellant availed copies of the documents requested for by Mr. Ephantus Kagia Irungu on 8th June, 2023 and no approval was granted as the contents of the notice to show cause revealed.
24. In his response to the notice to show cause, the respondent did not contest that:
 - i. He had not provided supporting evidence of the outreach.
 - ii. The meeting was organized though one (1) group "Yuya Women Holy S.H.G".
 - iii. Neither him nor any other bank officer attended the event.
 - iv. The cost for tents and chairs was Kshs.4,000.



- v. He approved activation of mobile banking registration for Karlson Frank Wanyonyi while aware that monies in the account had been wrongly credited by finance and failed to conduct due diligence.
 - vi. He had misrepresented facts, forged documents to defraud the appellant and exposed it to risk of loss.
25. Clearly, while the market drive was originated in good faith to promote the appellant's products and the claim for Kshs.4,000 was justifiable, the other claims were not and the documents submitted in support of the claim for chairs and tents were patently suspect for want of authentication.
 26. Was this an error made in good faith as the respondent pleaded? The court is not so persuaded.
 27. It is clear the so called Invoice was prepared after the value of Kshs.4,000 had been obtained from the supplier purposely to inflate the figure to be reimbursed.
 28. Similarly, the respondent did not explain how many kilometres he travelled and to where when using his personal vehicle. Finally, the number of staff members took lunch on that day was undisclosed.
 29. In the court's view, the respondent exposed himself as dishonest, untruthful and failed in the cardinal principle of banking of know your customer (KYC).
 30. Significantly, although the respondent contested certain sections of the minutes of the Disciplinary Committee hearing on 25th September, 2023, the tenor of the minutes is clear and largely confirmed earlier communication between the appellant and the respondent.
 31. For instance, the respondent did not contest the contents of paragraph 2 of the last page of the minutes that he admitted that he did not follow the procedure in activation of mobile banking for the customer in question as dictated by the appellant's policies and procedures. He admitted that he only checked the customer's account while speaking with the Branch Manager, Eldoret.
 32. Similarly, on page 63 of the Record of Appeal, the minutes are emphatic that the respondent confirmed that the documents he had submitted with the claim had indeed been falsified. The change he proposed vide email dated 4th October, 2023 at 2:24pm, that it was as a result of a discussion with his team to cater for expenditure of the event that did not materialize due to lack of facilitation, would not, in the court's view have alter the fact that the documents did not support the claim and the respondent forwarded the documents.
 33. Contrary to the finding of the trial court that the appellant failed to prove that the outreach did not occur, it is discernible that the event took place but bank officials did not attend and the claims for staff lunch, taxi and fuel were fraudulent.
 34. Instructively, the respondent's counsel did not submit that copies of the receipts and invoice on record were not placed before the trial court.
 35. The respondent did not explain why the email on the items to be reimbursed had a figure of Kshs.4,000 while the "invoice" had a different figure".
 36. Equally, the receipt for carcab services had a figure of Kshs.2,500 and the purported receipt for fuel Kshs.1,500 and as adverted to elsewhere in this judgment, none of the documents was authenticated by any one. Equally, the respondent tendered no evidence as to who engaged cab services and when.
 37. Finally, the respondent admitted that he ought to have provided invoices from service providers, as opposed to receipts and the procedure he used was irregular.



38. In sum, the respondent largely admitted that the claim for reimbursement had “errors” and admitted that he did not follow the requisite procedure in the approval of activation of a customer’s mobile banking application and promised to comply with the appellant’s policies and procedures in future.
39. As correctly submitted it is trite law that for a termination of employment to pass muster it must be proved that the employer had a valid and fair reason to do so and conducted the termination in accordance with a fair procedure.
40. In *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR Ndolo J. held that:
- “...for a termination of employment to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness...”
41. The Court of Appeal expressed a similar view in *Naima Khamis v Oxford University Press [EA] Ltd* [2017] eKLR.
42. These decisions echo the provisions of Section 43, 44, 45(2)(b) and 47(5) of the *Employment Act*.
43. The law requires the employer to prove that it had a valid and fair reason to terminate the employee’s employment.
44. Section 43 of the *Employment Act* provides:
1. ...
 2. The reason or reasons for termination of a contract are the matters that the employer at the time of termination genuinely believed to exist and which caused the employer to terminate the services of the employee.
45. This Section has been interpreted to mean that the employer is required to demonstrate that it had reasonable basis for the belief that there existed a ground(s) on which to terminate the employee’s employment.
46. See in this regard, *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR.
47. Equally, in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR), the Court of Appeal expressed itself as follows
48. We have carefully re-evaluated the evidence on record on this issue and we think, with respect, that the trial court applied a skewed standard of proof, and, certainly, not the one provided for under Section 43 (1) of the Act. It is improper for a court to expect that an employer would have to undertake a near forensic examination of the facts and seek proof beyond reasonable doubt as in a criminal trial before it can take appropriate action subject to the requirements of procedural fairness that are statutorily required.
49. 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. That is a partly subjective test...”
50. See also *Bamburi Cement Co. Ltd v William Kilonzi* [2016] eKLR and *Judicial Service Commission v Gladys Boss Shollei* [2015] eKLR and the guidelines in *Halsbury’s Laws of England*, 4th Edition vol. (1B) para. 642 on the range of reasonable responses test.
51. In the instant case the evidence on record shows that the respondent forwarded a claim for reimbursement of Kshs.10,800 in relation to a market drive conducted on 26th May, 2023. The request



- was supported by unauthenticated receipts and invoices including claims for cab services and fuel, yet neither the respondent nor any other employee of the Kitale Branch attended the alleged marked drive or outreach, a fact the respondent admitted during the disciplinary hearing and according to him, the team in Kitale agreed that the claim be forwarded as the respondent did. He equally admitted that he obtained the receipt for fuel from a local gas station. It was dated 26th May, 2023 yet the respondent did not attend the market drive.
52. From the evidence availed to the trial court it was decipherable that the receipts for cab services and fuel were falsified as cab services were not rendered and no traveling took place.
 53. Finally, and needless to belabor the respondent admitted that he did not conduct due diligence before he approved mobile banking activation of one Mr. Karlson Frank Wanyonyi contrary to the appellant's policy and procedures.
 54. In the considered view of this court, appellant demonstrated on a balance of probabilities that it had sufficient reason(s) to summarily dismiss the respondent on 25th October, 2023 as by law required.
 55. Concerning the procedure for termination of services of an employee, the law is unambiguous that it must be fair.
 56. Section 41 of the *Employment Act* prescribes the procedural tenets of a fair termination of employment and as held in *Pius Machafu Isindu v Lavington Security Guards Ltd* [2017] eKLR and *Jane Samba Mukala v Ol Tukai Lodge Ltd* [2013] eKLR, the provisions of Section 41 of the Act are mandatory and non-compliance renders the resultant termination or dismissal of an employee from services unfair.
 57. The procedural precepts are that:
 - i. an explanation of the grounds of termination in a language understood by the employee;
 - ii. the reason for which the employer is considering termination.
 - iii. Entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
 - iv. hearing and considering any representations made by the employee and the person chosen by the employee.
 58. See *Postal Corporation of Kenya v Andrew K. Tanui* [2019] KECA 489 (KLR).
 59. In this matter records show that the respondent was issued with and received a notice to show cause dated 27th June, 2023 and a response was required by Thursday 29th 2023. He was accorded a duration of 24 hours as the letter was served on 28th June, 2023 and the respondent vide letter dated 29th June, 2023 and was invited for a disciplinary hearing vide letter dated 20th September, 2023, scheduled for 25th September, 2023, about 4 days.
 60. Strangely, the invitation notice was emphatic that the colleague who would accompany the respondent would not participate in the hearing and would be an observer which is contrary to the provisions of Section 41 of the Employment under which the person chosen by the employee is entitled to make representations which the disciplinary committee is obligated to hear and consider in making its determination. Equally, contrary to the respondent's argument that the four (4) days was insufficient on account of being in Kitale, the court is persuaded that he had sufficient time to secure a colleague, prepare his defence and travel to Nairobi a day earlier.
 61. The respondent attended the hearing on 25th September, 2023, participated, received a copy of the draft minutes proposed changes, which were declined with reasons and did not sign the minutes, which



- in the court's view, did not invalidate the contents of the minutes. He was given a copy to facilitate his appeal.
62. The respondent received the letter of summary dismissal but refused to acknowledge receipt on 26th October, 2025 during a meeting to discuss the way forward.
 63. The respondent appealed the dismissal vide letter dated 27th October, 2023.
 64. In his appeal, the respondent admitted having forwarded receipts as opposed to invoices or a request for float for the outreach and apologized. He however, did not explain the falsification of the receipts.
 65. As regards due diligence on Mr. Karlson Frank Wanyonyi's account, the respondent stated that he followed up the matter with one Rita and the transfer was reversed.
 66. According to him the biggest risk was occasioned by the officer who made the erroneous transfer of fund to Mr. Karlson Frank Wanyonyi's account, a kin to shifting the blame for his want of due diligence when he approved activation of the mobile banking application.
 67. Puzzlingly, the respondent did not fault the contents of the minutes of the disciplinary hearing or contest any section.
 68. The results of the appeal were communicated vide an email to the respondent dated 6th November, 2023.
 69. The Chief Executive Officer of the appellant upheld the summary dismissal and the respondent cleared thereafter and was paid his dues.
 70. In the considered view of this court, the procedural steps undertaken by the appellant in terminating the respondent's employment was substantially in conformity with the provisions of the *Employment Act* save in two respects:
 71. First, and as adverted to elsewhere in this judgment, the appellant was unambiguous that any colleague who accompanied the respondent for the disciplinary hearing would be a mere observer.
 72. This was part of the "additional information" given by the notice of invitation for the disciplinary hearing. It is unclear to the court why the appellant would notify the respondent that the colleague who would accompany him to Nairobi would merely observe the hearing yet the respondent would cater for his travel and accommodation?
 73. A plain interpretation of the "additional information" by the appellant was that it was intended to communicate the fact that the colleague would not assist the respondent in defending himself and unsurprisingly, the respondent attended the hearing alone.
 74. The "additional information", in the court's view contravened the provisions of Section 41 of the *Employment Act*.
 75. Second, the appellant accorded the respondent one (1) day to respond to the notice to show cause.
 76. Although the law does not prescribe the period or duration, an employee ought to be accorded reasonable time to state his or her case depending on the circumstances of each case.
 77. This is because, the response to the notice to show cause is so critical as it determines whether the charges against the employee are satisfactorily or sufficiently explained and thus dropped or whether there was need for further investigation or disciplinary action against the employee. It is an integral part of the right to fair hearing.



78. Since it is the fulcrum in disciplinary matters, the employee must be accorded sufficient time to respond to the charges or allegations comprehensively.
79. In this case, the respondent may have had no time to consult the persons he had dealt with in planning the market drive and secure documentary evidence in support of his case.
80. The fact that the respondent did not request for more time and responded on time would not in the court's view obviate the employer's duty to accord the employee sufficient time to respond to the notice to show cause.
81. In the considered view of this court by according the respondent 24 hours to respond to the notice to show cause, the appellant impaired the respondent's right to fair hearing which vitiated the process.
82. See *Modern Mail Ltd v Omolo* [2025] KEELRC 1043 (KLR).
83. Under the provisions of Section 45(5) of the *Employment Act*, in determining whether a termination of employment was just and equitable, the court is required to consider inter alia, the procedure adopted by the employer in reaching the decision to dismiss the employee, handling of the appeal against the decision, conduct and capability of the employee up to date of termination, extent to which the employer has complied with statutory requirements in relation to termination including issuance of Certificate of Service and procedural requirements of Section 41 of the *Employment Act*.
84. Having found that the appellant did not accord the respondent sufficient time to respond to the notice to show cause and further indirectly denied the respondent the opportunity to be accompanied by a colleague of his choice, the court is satisfied that the respondent's summary dismissal by the appellant was not conducted in a just and equitable manner and was thus unfair within the meaning of the provisions of Section 45 of the *Employment Act* for which the respondent is entitled to reliefs.
85. Although the trial court found the summary dismissal of the respondent as having been conducted in contravention of the provisions of Section 41 of the *Employment Act*, no detailed reasons were provided.
86. In light of the foregoing, the court is satisfied that the appellant has made a case for interference with the exercise of discretion by the trial court in the circumstances outlined in *Mbogo & another v Shah* [1968] EA 93 and *United India Insurance Co. Ltd & 2 others v East African Underwriters (Kenya) Ltd* [1985] EA 898.
87. As regards the reliefs sought, the court proceeds as follows:
Declaration that the summary dismissal of the respondent by the appellant was unprocedural.
Having found as above, the declaration is merited.
The award of salary in lieu of notice is set aside as the summary dismissal was affirmed.
88. Significantly, although the court considered the duration of 6 years, which the respondent had served as an employee of the appellant, the trial court did not consider other parameters under Section 49(4) of the *Employment Act* to justify the maximum award, such as wishes of the employee, circumstances in which termination of employment took place and the employees contribution to the summary dismissal among others.
89. Although the respondent appealed the appellant's decision, he substantially contributed to the summary dismissal. He was the sole author of his misfortune.



90. In the absence of other reasons, the award of 12 months salary was inordinately high and justifies interference. The court is satisfied that an award of two months, Kshs.150,000.00 would be appropriate.
91. The respondent tendered no evidence of the alleged Memorandum of Understanding check-off loan and more so why the appellant was liable to settle the balance of Kshs.742, 359.00.
92. The claim lacked supportive evidence and is dismissed.
93. Finally, the respondent did not avail evidence of entitlement to aggravated damages. The claim is dismissed.
94. In conclusion, the appeal partially succeeds. The award of Kshs.1,025,000 is set aside and substituted with an award of Kshs.150,000.00.
95. Other Orders of the trial court are upheld.

Each party to bear its own costs of this appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 8TH DAY OF OCTOBER, 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 15th March 2020 and subsequent directions of 21st 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

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