

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**CAUSE NO. E037 OF 2025**

**GEOFFREY KISAKA ..... CLAIMANT**

**VERSUS**

**CONSOLIDATED BANK OF KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

The claimant is an adult. The respondent is a bank, registered under the Banking Act and regulated by the Central Bank of Kenya.

The respondent employed the claimant as a credit analyst on 1 November 2010. He was later promoted to the role of relationship manager on 1 November 2012. Later, he was promoted to the branch manager on 1 November 2013.

The claimant worked as the branch manager until 10 18 October 2024. He claims that he was issued a notice to show cause dated 20 August 2024 over allegations of contravening the bank's credit policy and procedures with respect to a loan facility advanced to Jowak Agencies Limited and David Mureithi Kanyi, and his related accounts, African Budget and Executive Homes Company Limited.

The show cause notice cited the claimant to have contravened the credit policy by:

- a) Supporting and recommending to the credit department for approval of the equity release loan of Ksh. 26 million instead of recommending an asset finance letter of credit facility to procure the construction machinery.
- b) Supporting and recommending for approval a term loan of Ksh. 65 million, yet the customer's loan was in arrears and the customer was struggling to pay, thereby exposing the bank to potential loss.
- c) The credit facility was advanced to David Mureithi Kanyi, supporting and recommending to the credit department for approval of a loan of Ksh. 75 million, thereby exposing the bank to financial loss.

The claim is that the show cause notice was served on 21 August 2024, and the claimant was required to respond by 28 August 2024.

On 22 August 2024, the claimant was served with another letter suspending him from duty pending a disciplinary hearing.

On 27 August 2024, the claimant replied to the notice to show cause. He noted that his official email account with the respondent had been suspended and sought access to defend his case. The respondent was granted limited access under security supervision. He was unable to obtain the necessary evidence to defend himself against the allegations made.

The disciplinary hearing was held on 16 September 2024, and thereafter his employment term was terminated on 17 October 2024. The reasons were that the claimant had flouted the respondent's bank credit policy procedures, thereby exposing the respondent to imminent loss. These reasons were not valid because the claimant had conducted due diligence when appraising the loan facilities to Jowak Agencies Limited and David Mureithi Kanyi and his related account, African Budget and Executive Homes Company Limited. As the branch manager, the claimant only recommended approval of the loan facility, but did not approve it.

The loan facilities were analyzed and approved by the credit department, the management credit, and the board of directors, in accordance with the delegated limits, not by the branch or the claimant.

The claim is that termination of employment was unfair since he was denied full access to his workstation to secure records necessary for his response. This was in contradiction to articles 41 and 47 of the constitution. This has caused the claimant loss and damage, and claims the following:

- a) Damages for loss of employment at 12 months ksh. 4,126,500.
- b) Loss of prospective future earnings for 18 years, Ksh.74, 277,000.
- c) Loss from employer pension contribution for 18 years.
- d) Damages for breach of articles 41 and 47 of the Constitution.
- e) Loss of medical benefits under the respondent scheme.
- f) Mortgage loan interest payable be reinstated back to the staff rate of 6% and not the current commercial rate of 16%.
- g) Interests on court rates.
- h) Costs of the suit.

The claimant testified in support of his case that, as the branch manager, he conducted due diligence when appraising the loan facilities for Jowak Agencies Limited and David Mureithi Kanyi, as well as his related account, Africa Budget & Executive Homes Company Limited. His role was to recommend approval of the loan facility. The credit department, management, and the board of directors made the actual payment.

The claimant testified that in every loan application, there is a proposer and a seconder. In this instance, he was the proposer. The credit policy has the duties and responsibilities of a proposer, which he diligently followed. At the time his employment was terminated, the loan facilities to Jowak Agencies and David Mureithi Kanyi were not performing; hence, they were a bad business. The proposer is not accountable. Before any approval, he was required to check with the credit department whether the client had any other loan facilities with different banks.

After the loan facility was granted and paid, the respondent discovered that the creditor was listed with the CRB. Before the loan facility, he had an unpaid loan facility with other entities, but had not been listed with the CRB.

He was issued with the notice to show cause dated 20 August 2024. He replied with the available access since he was on suspension. The respondent allowed him limited access but protested that he had no liberty to make his representations. He attended the disciplinary hearing on 16 September 2024 without representation, in accordance with due process. The reasons given for the termination of employment were not valid, since he had clearly explained his role, which was not taken into account. The disciplinary process was only conducted to justify a predetermined decision to terminate his employment.

The claimant testified that the claims should be allowed as prayed.

#### Response

In response, the respondent admitted that the claimant was employed on 27 September 2010 and rose to the position of branch manager.

On 5 June 2024, the respondent, through the CEO, received an internal memorandum from the acting head of credit, forwarding a report on investigations into the loan facilities advanced to one of its clients. It was suspected that the facilities granted to the customer may not have been above board, and some covenants and conditions required for the approved facilities may not have been adhered to.

It was recommended that, based on the report, the matters arising therein be forwarded to internal audit for review in accordance with the bank policy.

Upon review by the audit team, investigations from 13 June to 10 July 2024, the respondent, through the CEO, received a report dated 5 August 2024. The objectives of the investigations were to determine if there were any breaches in the bank's policies and procedures for granting credit facilities and to assess whether due diligence was applied. The same was to determine the respondent's total exposure.

From the audit review, it emerged that the process of granting the client and his related accounts loans amounted to Ksh. 75 million was flawed, starting from the branch to the credit department at the head office. The audit team's opinion was that there were many glaring inadequacies in the customer's application, which the branch and the credit department should have noted. It would have resulted in the loan application being declined.

Due to the shortcomings, the respondent faced an imminent loss of Ksh. 176,292,725. In particular, the claimant's action and omissions resulted in the exposure. The claimant:

- a) He supported and recommended to the credit department for approval the initial loan application from the client for Ksh. 75 million despite various shortcomings.
- b) Not independently confirming the customer's assertion that they collect the retail income as alleged.
- c) Not independently confirming the authenticity of bank statements provided by the customer from other banks.
- d) Disregarding the recommendation that the bank take the title of the property that was to be purchased as additional security.
- e) Singing a voucher debiting the client's account, thus creating an overdrawn position in the account, a transaction that was not authorized by the credit department, contrary to the credit policy.
- f) Singing and endorsing the client's request for an additional facility, wherein false information regarding the details of its repayment had been provided, among others.

The audit team recommended that the claimant be issued a notice to show cause why disciplinary action should not be taken for contravening the bank's credit policy and procedures. He was also suspended pending a disciplinary hearing, which was held on 16 September 2024. He attended but was unable to satisfactorily explain why he failed to exercise due diligence in advancing the client's loan facilities. He was found to have failed to

authenticate the various documents, such as bank statements and sale agreements, provided by the customer during the application process.

The respondent found significant flaws in the way the claimant handled the loan applications; the disciplinary committee found his integrity questionable, as many lapses could have been avoided, given his experience as a bank manager.

The disciplinary committee recommended termination of employment under section 44 of the Employment Act for negligence in performing duties and exposing the respondent to an imminent loss of Ksh. 176,292,725. Upon termination of his employment, the claimant's terminal dues were processed, including half salary up to 17 October 2024, notice pay, and 10 pending holiday days.

In evidence, the respondent called Jacqueline Thagichu, the acting credit administration manager, who testified that the claim was issued with a notice to show cause and that he was invited to attend a disciplinary hearing, where he failed to exonerate himself, leading to his termination of employment.

Upon cross-examination, the witness testified that she is not familiar with the audit report submitted to the CEO regarding the subject loan facilities.

The respondent called Rose Mukoba, the head of human resources. She testified that, before her termination, the claim was processed through the disciplinary process. He was issued a notice to show cause, and he replied. He asked for access to the emails, which was permitted. Several other employees were implicated in the matter and were subjected to disciplinary action.

Mukoba testified that of the 9 employees who were subjected to disciplinary hearing following the audit, the credit team that facilitated the loan facilities were not affected. The audit found that the credit team failed to conduct due diligence on the customer. None in the team was disciplined.

Mukoba testified that Doris Maingi, in the credit team, left the respondent's employment. She was the final person to check the application in the credit department. Festus Wanyonyi was dismissed. Emmanuel Wambua was denied. Bernard Gitau was cautioned for making only a recommendation.

The claimant approved the loan application on behalf of the respondent and is therefore responsible. His employment was terminated. The duty to confirm the transaction rested with the credit department, not the claimant. There was no disciplinary action against the credit team members.

#### Determination

Through notice dated 17 October 2024, the respondent terminated the claimant's employment because he had contravened the Bank Credit policies and procedures concerning loan facilities granted to the following customers:

- a) Jowak Agencies Ltd.
- b) David Mureithi Kanyi and associated company, African Budget & Executive Homes Company Ltd.

The respondent further explained that, following a disciplinary hearing against the claimant, he was found negligent in the performance of his duties, as he did not undertake proper due diligence when appraising loan requests for David Mureithi Kanyi and his companies for Ksh. 75 million. The claimant was accused of failing to provide a detailed site visit report to support the application, thereby requiring the respondent to finance the purchase of a property whose value would be unrealizable if the customer defaulted.

The claimant was also accused of supporting the diversion of funds on behalf of African Budget & Executive Homes Ltd by signing the date input forms, thereby allowing the loan proceeds to be disbursed to the customer's account, contrary to the approval conditions set out in the letter of offer.

The claimant was further accused of supporting the diversion of funds by Jowak Agencies Ltd and claimed that, in the case of equity release facilities, it did not matter whether the customer utilised the funds for the intended purpose, whether or not approval was granted, as long as the facility was serviced.

Before his employment was terminated, the claimant was invited to show cause, and the allegations made against him were set out, and he was invited to reply. He denied all the claims and gave his explanations.

At the heart of the claimant's termination of employment was the internal investigations report dated 5 August 2024.

Upon a series of investigations, records checks and analysis, the internal audit team established that the claimant, being the branch manager at Mombasa, was responsible:

- a) Supported and recommended the loan application from David Kanyi despite the mentioned shortcomings, which include the following;
  - i. Independently confirming the customer's assertion that they collected rental income of Kes 1,444,000
  - ii. Not independently confirming the authenticity of bank statements provided by the customer from other banks.
  - iii. Disregarding the recommendation that the bank take the title of the property to be purchased in Shanzu as an added security for the loan. It was also not prudent to recommend equity release under the mortgage loan facility rather than a straight-up mortgage facility.
  - iv. Recommending the takeover of the loan for KES 15 M from Letshego despite the aforesaid glaring shortcomings. It would have been prudent to minimize the exposure by not taking over the loan.

The investigations also revealed that the claimant signed a voucher authorising the debiting of the account of David Kanyi Mureithi with Ksh. 52 million, leading to an overdrawn account.

The claimant supported and recommended the loan application of African Budget and Executive Homes Ltd despite there being irregularities. The claimant did not consider that Irene Maina & Advocates was the same lawyer representing both the initial seller of the property at Shanzu and the customer, which created a conflict of interest. The claim endorsed the CAS, which purported that AB&EH had an ongoing housing project with 1,048 units, but the information was not verified.

Further, the claimant was alleged to have failed to review the valuation report for the land in Nyali being purchased, which was under excavation. It was recommended that he be issued with the notice to show cause why disciplinary action should not be taken for contravening the bank credit policy.

For these allegations against the claimant, the audit team made their final recommendations that the members of the MCC, Judie Odadi, the head of credit, Fred Rono, the head of finance, Albert Anjichi, the manager legal, Edward Nthuli, head of operations and Japheth Kisilu, CEO, were misled by the credit department to consider and approve the loan

application for Ksh. 75 million from David Mureithi Kanyi. The credit team misled the MCC members into approving a loan application from African Budget & Executive Homes Ltd. The MCC members would be informed of the procedures and would also undergo refresher training on advanced credit appraisal techniques.

The audit team also recommended that Green Gain Consults Ltd should be penalised for giving an exaggerated valuation by being removed from the pre-qualified list of service providers.

Ultimately, an employer may issue a show-cause notice to an employee for allegations of misconduct, including gross misconduct, on the shop floor. The intention is to address such matters procedurally and to allow the employee to attend and make his representations.

The employee is entitled to due process and procedural rights under section 41 of the Employment Act (the Act). The Court of Appeal addresses the motions in the case of *Oyombe v Eco Bank Limited* (Civil Appeal 185 of 2017) [2022] KECA 540 (KLR) (13 May 2022) (Judgment), that;

*...Four elements must thus be satisfied for the summary dismissal procedure to be said to be fair, being:*

- a. An explanation of the grounds of termination in a language understood by the employee;*
- b. The reason for which the employer is considering termination;*
- c. Entitlement of an employee to have a representative of his choice when the explanation of the grounds of termination is being made;*
- d. Hearing and considering any representation made by the employee and the representative chosen by the employee.*

The due process for gross misconduct is aptly summarised in the case of *Chepkuto v Egerton University Investment Co Ltd* [2024] KECA 1848 (KLR), which states that Section 44 of the Employment Act requires the employer to demonstrate that the employee's conduct reflects a fundamental breach of their contractual obligations. This breach may arise from various actions or omissions listed in that section and related issues. Furthermore, Section 41 of the Act outlines the procedure for notification and hearing before termination on the grounds of gross misconduct.

Further, sections 41, 43, and 45 of the Employment Act are not only concerned with the

presence of valid reasons or grounds for termination. They also require the employer to observe due process in handling the release of the offending employee. The employee must be informed of the accusations against him; given a chance to defend himself; permitted to call witnesses in support of his case; and notified of the decision taken by the employer to terminate his services, as held in *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR.

The reasons given for termination of employment must be genuine, valid and reasonable as required under sections 43 and 45 of the Act. The Court of Appeal in ***Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike*** [2017] eKLR addressed at length the motions seeking to establish whether there are genuine and valid reasons for the termination of employment. The employee must be found directly culpable, and all facts must be weighed before liability for the misconduct is determined.

In this case, the respondent investigated the internal audit team. Various employees were found culpable, but ultimately, as set out above, the key recommendations concluding the audit were that members of the MCC were misled to approve the loan facilities for the customer by the credit department. Further, the MCC members should be trained on Advanced Credit Appraisal techniques. Also, Green Gain Consultants Ltd should be penalised for providing exaggerated valuations.

In his response to the notice to show cause, the claimant provided a detailed response, which is corroborated by the audit investigations.

On 17 February 2022, David Mureithi Kanyi submitted the DHS application for a loan facility of KSh. 75 million to the respondent.

On 24 February 2022, the claimant appraised the application and recommended the facility.

The matter was placed with the credit and finance department. On 13 April 2022, the credit analyst, Gitau Ngigi, head of credit, Judie Odadi, approved the facility.

On 14 April 2022, the management credit committee, including the head of credit, head of finance, manager of legal, head of operations, and the chief executive officer, all approved the facility.

Through an application submitted to the respondent on 25 October 2022, David Mureithi Kanyi sought a loan facility of Ksh. 75 million. The claimant submitted the application and

his creditworthiness, and with the assistance of the business development officer, Emmanuel Wambua Juma, the application was approved. He recommended the facility.

The matter was escalated to the next level, the Credit and Finance Committee.

On 1 November 2022, the head of credit, Erastus Gashoya, the credit analyst, Gitau Ngigi, and the manager of credit, Elizabeth Kerich, under the credit and finance committee, approved the loan facility of KSh. 51 million to David Mureithi Kanyi. The transaction is further approved by the management credit committee, comprising the head of credit, head of finance, manager, legal, head of operations and central processing, chief commercial officer, and the chief executive officer.

All these officers are senior and supervise the claimant.

The alleged breach of credit policy and procedures occurred in the credit department, not with the claimant. As the proposer, he was not the ultimate approver. Where the MCC members failed to undertake their due diligence, blaming the claimant is not the answer. Indeed, the audit team recommended that the MCC members undergo a refresher training on credit appraisal.

Ultimately, the summary dismissal action against the claimant was invalid and unreasonable and cannot be justified by the respondent's internal audit report. Indeed, the human resources manager, Ms Mukoba, testified in court that several employees of the respondent were invited to show cause; only two employees, including the claimant, were suspended and denied full access to work records to facilitate their responses.

Equally, Mukoba testified that several employees of the credit department who were mentioned in the internal audit were not taken through the disciplinary process.

The claimant had diligently served the respondent since 2010. He rose through the ranks to the branch manager. He had no record until this incident involving David Mureithi Kanyi, during which he secured benefits for the respondent, but the credit department failed to provide him with the necessary support.

Blaming the claimant is shifting responsibility to the wrong employee.

The court finds employment terminated unfairly.

The claimant is entitled to compensation. The claimant served the respondent from 2010 to 2024, a period of 14 years. He had no poor record. A compensation of 10 months is hereby found justified. Ksh. 343,875 x 10 = Ksh. 3,438,750.

On the claim for damages and loss of prospective future earnings, the claimant was working in the banking sector, which is selective and has not secured new employment since. However, the award of compensation has taken into account his long service to the respondent, and he is required to mitigate the consequences of his termination accordingly.

On the claim for payment of lost years of service, as alleged above, the compensation awarded shall suffice.

On the claim for damages for breach of articles 41 and 47 of the Constitution, the cumulative effect of the respondent's actions was unfair labour practices, which is addressed and redressed above. Compensation awarded shall suffice.

For the claim for loss of medical cover, the employer's pension contributions are part of the employment. This cannot be secured outside the employment relationship.

However, as regards the mortgage facility secured during employment payable at the rate of 6%, the benefits accrued with employment and with the finding that there was unfair termination of employment, the claimant should be allowed to offset the facility at the employee rate of 6% and not any other commercial rate as held in **Chris Kisire Chepkoi v National Bank of Kenya Limited [2017] eKLR** that:

*The requirement that all contracts of employment be terminated within the law is mandatory pursuant to the provisions of sections 41, 43, 45 and 47 of the Employment Act, 2007. To make the claimant lose a benefit that was available within his employment, which has now been terminated, and the same is alleged to be unfair, would remove the claimant from his employment with the respondent and deny him work benefits that were denied to him upon the termination of such employment.*

In **Gisemba v Tausi Assurance Company (Civil Appeal 405 of 2018) [2022] KECA**, the court held that there was a close nexus between employment and the employment benefits, and the mortgage was one of the benefits the appellant received through financing. Allowing the employer to change the mortgage terms upon unfair termination of employment would constitute double punishment for the employee.

I thus agree that the claimant shall continue to repay the mortgage facility at a rate of 6%. Where there is payment under any other higher rate, the same shall be reassessed and allocated accordingly.

On costs, the claimant is successful and is awarded costs.

Accordingly, judgment is entered for the claimant against the respondent in the following terms;

- a) Employment terminated unfairly;
- b) Compensation Ksh. 3,458,750.
- c) The claimant shall continue to pay the Mortgage loan at an interest at 6%.
- d) Costs of the suit.

Delivered in open court at Mombasa, this 30<sup>th</sup> day of October 2025.

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant: Japhet

..... and .....