



**Muendo v Absa Bank Kenya Limited (Formerly known as Barclays Bank of Kenya Limited) (Cause 216 of 2020) [2025] KEELRC 3064 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3064 (KLR)

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

**CAUSE 216 OF 2020**

**DKN MARETE, J**

**OCTOBER 22, 2025**

**BETWEEN**

**DOMINIC KASYOKA MUENDO ..... CLAIMANT**

**AND**

**ABSA BANK KENYA LIMITED (FORMERLY KNOWN AS BARCLAYS BANK OF KENYA LIMITED) ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of Memorandum of Claim dated 20th April, 2020. It does not disclose any issues in disputes on its face.
2. The Respondent in a Memorandum of Reply dated 12th August, 2020 denies the claim and prays that it be dismissed with costs.
3. The claimant's case is that he was employed by the Respondent from 26th November, 2007 to 18th December, 2018. It is his case that during his service in Wote, he was awarded Best Compliance Coordinator in the Country. This was done by the then Chief Operation Officer. He earned Kshs. 751,236.00 with house allowance of Kshs. 56,400.00 together with a leave allowance of Kshs. 4,701.00. and a medical cover of Kshs.50,000.00, outpatient and Kshs.300,000.00 inpatient.
4. The claimant's further case is that on 28th November, 2018, together with his colleague, Shillah Mwende and other compliance officers receive instructions from the Head Office to delete or cancel all cases in the branch rescan queues and confirm or email. He was able to execute these instructions by forwarding the cases to the processing centre for deletion/archiving and confirmed this via email as instructed.
5. The other events in progression of the Claimant's case comes out as follows;The claimant sent copies of the email confirming execution of these instructions to his immediate supervisor, Branch Operational Officer, one, Paul Wambua, the Branch Manager, Daniel Mahinda and his desk mate



Shillah Mwende. Thereafter and surprisingly, the claimant vide a letter dated 23rd November, 2018, the Respondent accused the claimant of;

Deleting items in the rescan queue to show that they had been worked on while this was not the case.  
SUBPARA ii.

Not Responding to the Branch Manager's email messages seeking to confirm the status of the cases in the rescan queue.  
SUBPARA iii.

Failing or ignoring to action managers mandates that were outstanding since March, 2018 (eight months down the line) and,  
SUBPARA iv.

A display of lack of seriousness and or commitment to his work.

The Claimant was given a day to give a written explanation of his actions above. The Claimant was able to comply and meet the deadline and in all refuted the allegations made against him. The Claimant also in such response restated his case and sequence of events leading to the current situation. He denied all these allegations and stated that he had done his work as per instructions communicated by his supervisors.

6. The Claimant's further case is that despite explaining his case, he was invited to a disciplinary hearing meeting on 11th December, 2018 in which these issues were to be discussed. Interestingly, the night before the disciplinary hearing, the claimant received a call from the Operations Branch Manager, Paul Wambua, who requested him not to raise issues of victimization and focus only on the matter of deleted cases at the meeting. This would favour his case. He later came to learn that this was a disguised message from the Branch Manager, a Mr. Mahinda, who was bent out to keep his secrets intact.
7. On 18th December, 2018, the claimant received a letter of termination from the Respondent on grounds as follows;
  - i. That on 10th November, 2018, the claimant deleted 18 cases from the rescan queue to show that they had been worked on while indeed this was not the case and they had been deleted.
  - ii. That the claimant failed or ignored to action customer mandate that were outstanding from March to 18th December, 2018.
  - iii. That the claimant failed or ignored to respond to the Branch Manager's emails dated 5th, 7th and 9th November, 2018.
8. The Claimant appealed against this decision of termination but despite being heard on appeal, the termination was sustained. He attributes his misfortune to his relationship with the Branch Manager whose actions at the branch he had whistle blown to the extent of forcing him to resign from employment. This was in toto unfair and unlawful termination of his employment by the Respondent.  
He prays thus;
  - a. A declaration that the claimant's termination from employment was unfair and unlawful and that the process leading to the termination of the claimant was unfair, unlawful and against the rules of natural justice.
  - b. A declaration that the act of discrimination in the place of work is unconstitutional, unlawful and illegal and amounts to breach of contract of employment and deprivation of property.
  - c. Service pay month pay (month pay/years worked) at Kshs. 221,187.00 for the years worked.



- d. Twelve (12) month's compensations for unfair dismissal at Kshs.221,187.00 per month.
  - e. A one-month notice pays accordance with Claimant's employment contract at Kshs.221,187.00, per month.
  - f. A stay on the interest on the personal loans by the claimant.
  - g. Compensation for the interest on the aforesaid sums at the court rates from the of termination.
  - h. General and aggravated damages including exemplary damages for, loss of career, loss of future earnings, injury to reputation, unfair targeting and discrimination.
    - i. An order for payment of actual pecuniary loss suffered as a result of termination leading to loss of career from the date of termination, to the date of payment.
  - j. Cost of the suit and rest thereon at court cases
9. The Respondent's case is a denial of the claim. However, they acknowledge the employment particulars of the parties as set out in the claim.
10. The Respondent's further case comes out as follows;
- i. The Claimant failed to process eighteen (18) customers instruction items in the Branch Sybrin rescan queue for over six (6) months and upon several follow-up by his line supervisor, the claimant deleted these without action the same.
  - ii. On 5th November, 2018, the Branch Manager sent an email indicating that Machakos Branch had fourteen (14) cases on rescan queue and nine (9) of these are not been actioned on for between three (3) to nine (9) months.
  - iii. The claimant in disregard of branch process or escalation to his line manager deleted these eighteen (18) cases and reported clearance which was not the case. The physical customer instructions remain unprocessed.
  - iv. On 9<sup>th</sup> November, 2018, the claimant did an email to Mr. Isaac Ontweka confirming these deletions.
  - v. The email under reference, dated 9th November, 2018 from Mr. Ontweka as referred to by the claimant was part of a thread of emails sent a month prior to the date of the said email but the claimant chose to hide behind this and pretend that he had instructions for deletion.
11. This was in contravention of express instructions issued to him earlier as follows;
- Action Required;
- a. Review and close/retire all requests which are above 1 month old, with immediate effect.
  - b. Review and close/delete all requests between 11-29 days, or justify their existence.
  - c. Branch Makers review Rescan queues and check for any TEMP cases belonging to own branch and that treat such in line with action 1&2, as above.
  - d. Branch Makers to ensure Rescan Queues are cleared of items which are more than 5 days old, going forward.
  - vi. The claimant has totally ignored the Branch Manager's emails of 5th, 7th and 9th November, 2018 seeking information on the eighteen (18) cases.



12. The Respondent's other case is a denial of unlawful and unfair termination of employment and avers that appropriate disciplinary procedure was undertaken in the termination of the employment of the claimant. His appeal against termination was also heard and determined out of his favour.
13. Again, the claimant was not a blemish free employee as he had been served with warning letters and reprimands as follows;
  - i. On 7th May 2010, he was issued with a Letter of Reprimand for a cash shortage of Kshs.5.000.
  - ii. On 4th April 2018, he was issued with a First Written Warning Letter for making system inquiries into a customer account without authorization, and
  - iii. On 11th April 2018, he was issued with a Final Written Warning Letter for failing to conduct proper customer identification in a case of fraudulent cash withdrawal of Kshs300.000.
14. The matter came to court variously until the 29th January, 2024 and 12th March, 2025 when it was heard. Here, the parties testified in support and reiteration of their respective cases.
15. The issues for determination therefore are;
  1. Whether the termination of the employment by the Respondent was wrongful, unfair and unlawful.
  2. Whether the claimant is entitled to the relief sought.
  3. Who bears the costs of this cause.
16. The 1st issue for determination is whether the termination of the employment by the Respondent was wrongful, unfair and unlawful. The claimant in his written submissions seeks to rely on the provisions of section 45(2) of the *Employment Act*, 2007 which uphold the tenets of unfair termination of employment as one where the employer fails to prove that the termination was done for valid reasons and also fair reasons related to the employee's conduct, capacity or compatibility. Additionally, this can be done based on the operational requirements of the employer and must involve fair procedure as enunciated with authority of *George Musamali vs G4S Security Services Kenya Limited* [2016] KEELRC 1665 (KLR.)
17. The Claimant further submits that the impugned deletion or archiving were authorized from the headquarters by a Mr. Ontweka vide an email dated 7th November, 2018. He was therefore not a defaulter and acted on instructions from his seniors and supervisors. He even reported this action which is a testament of good faith. The claimant also denies all the other allegations against him and submits that these were intended to implicate him due to his sour relationship with Branch Manager for whistleblowing on his insidious activities at the branch leading to his resignation.
18. The claimant also submits a case of procedural unfairness and a contravention of section 41 and 44(3) and (4) of the *Employment Act*, 2007 that provide for an open representative disciplinary meeting before termination or dismissal. This is espoused in the authority of *University of Nairobi v Anyui* [2021] KECA 112 (KLR) where the requirements of procedural fairness were set out.
19. The claimant additionally submitted that he was not awarded sufficient time to respond to the allegations raised against him. This is because he was issued with a show cause letter dated 23rd November, 2018 on 26th instant. He was required to give a response on 27th November, 2018 at 1700 hours, less than 24 hours after the receipt of the said letter. He was subsequently issued with a notice of disciplinary hearing dated 7th December, 2018 on 10th December, 2018 for a disciplinary hearing



on the following day. Again, this was hardly 24 hours from the time of receipt of such notice. This was an ambush as claimant again was not given sufficient time to adequately prepare his case.

20. In all, the claimant submits that he was not awarded an opportunity to challenge the evidence brought against him. He was not even accompanied by a union official or employee of his choice as is required of by the law. The substance of the minutes of the meeting are indicated that the claimant was never afforded an opportunity to cross examine the witnesses for the Respondent. This amounted to procedural unfairness as was enunciated in the authority of *Kenya Plantation and Agricultural Workers Union v Eastern Produce (K) Limited* (Employment and Labour Relations Cause 22 of 2019 [2022] KEELRC 1302 (KLR).
21. The Respondent in their written submission dated 28th May, 2025 submits in reiteration of a case of lawful termination of employment. A highlight of the factual background of the case is had in which the Respondent narrates the sequence and implications of events leading to the claimant's termination of employment.
22. It is the Respondent's further submission that in reporting the clearance from the queue, the claimant selectively relied on an email dated 9th November, 2018 that appeared to authorize deletion but ignored the original directive of 8th October, 2018 titled Action Required. This issues instruction as follows;
  - a. Review and close/retire all requests which are above 1 month old, with immediate effect.
  - b. Review and close/delete all requests between 11-29 days, or justify their existence.
  - c. Branch Makers review Rescan queues and check for any TEMP cases belonging to own branch and that treat such in line with action 1&2, as above.
  - d. Branch Makers to ensure Rescan Queues are cleared of items which are more than 5 days old, going forward.
23. This was irresponsible and cunning on his part.
24. The Respondent further submits a case of fair and lawful termination of claimant's employment in that there was compliance with sections 41,43 and 45 of *Employment Act*, 2007. The conduct of the claimant in deleting these cases amounted to gross misconduct warranting summary dismissal.
25. The Respondent again submits that the reasons for dismissal were valid and met the parameters of the authority of *Pius Machafu Ishindu vs. Lavington Security Guards Limited* [2017] eKLR which emphasised the place of sections 41, 45 and 47(5) in a determination of the validity or otherwise of a termination of employment. In the circumstances of the case, the claimant was issued with a notice to show cause letter on 23rd November, 2018 requiring that he shows cause as to why disciplinary action should not be taken against him on the grounds raised in the letter. This was responded to but was found unsatisfactory and therefore a call for disciplinary proceeding which determined a termination of employment bearing in mind his previous warning letters including a final one on 11th April, 2018.
26. The decision of termination of employment was appealed against and the claimant was afforded an opportunity to present any new evidence he had. This was still found to be unsatisfactory and the decision of termination of employment upheld. The Respondent seeks to rely on the authority of *Halsbury's Laws of England* (4<sup>th</sup> edition, Volume 16) paragraph 482 which provides as follows;

“In adjudicating on the reasonableness of the employer's conduct the employment tribunal must not simply substitute its own views with those of the employer and decide whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach



(the range of reasonable responses test) is that in many cases there is a band of reasonable responses to the employer's conduct within which an employer might reasonably take one view and another quite reasonably take another the function of a tribunal as an industry jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair, but if it falls outside the band, it is unfair."

27. I agree. The circumstances surrounding this matter and the evidence adduced dictate a case of termination of employment. This is because the conduct of the claimant in not only neglecting his duty and also the wholesale deletion of the queue against the custom of the trade and express instructions of his supervisors amounted to gross misconduct on his part. This had nothing to do with his relationship with the Branch Manager or even whistle blowing as he claims. It is strictly neglect of duty for which he has to pay the price. I therefore find a case of lawful termination of employment and hold as such. This answers the 1st issue for determination.
28. The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case for unlawful termination of employment, he becomes disentitled to the relief sought.
29. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 22ND DAY OF OCTOBER 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances;

Mr. Arori instructed by Muma & Kanjama Advocates for the Claimant.

Mr. Chacha Odera and Ann Kandima instructed by Oraro & Company Advocates for the Respondent.

