

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 129 OF 2017**

**ANTHONY KINYUA MAINA.....**

**CLAIMANT**

**VERSUS**

**CFC**

**STANBIC**

**BANK**

**LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. For determination is the Claimant's Memorandum of Claim dated 24<sup>th</sup> November, 2016, and filed on 25<sup>th</sup> January, 2017. The Claimant seeks the following reliefs as against the Respondent: -
- i. A declaration that the Claimant's termination was unlawful;
  - ii. A declaration founded on the provisions of Article 35 of the Constitution of Kenya, 2010, that the Claimant was not involved in the loss of funds that triggered Criminal case No. 743 of 2014.
  - iii. A declaration that the Claimant's termination of contract of service without cogent grounds, was a violation of the Claimant's right under section 41 of the Employment Act.

- iv. Twelve (12) month's salary .....  
Kshs.1,200,000/=
- v. Un-utilized leave days (26 days).....  
Kshs.86,666.67/=
- vi. Compensation for unlawful termination
- vii. Interest on (iv) and (v) above at the court's rate
- viii. Cost of this suit

2. The Respondent entered an appearance on 10<sup>th</sup> April, 2017, and subsequently filed a Response to the Memorandum of claim dated 26<sup>th</sup> May, 2017, denying the Claimant's averments.

3. The Claimant's case was heard on three different occasions being 19<sup>th</sup> January, 2022, 28<sup>th</sup> October, 2022 and 14<sup>th</sup> March, 2023. The Claimant testified in support of his case and adopted his witness statement and produced the documents filed as exhibits in the matter. His other witness was dispensed with and he proceeded to close his case on 4<sup>th</sup> October, 2023.

4. The Respondent's case was heard on 15<sup>th</sup> February, 2024, when one Sylvester Odhiambo testified, adopted his witness statement and produced the Respondent's list and bundle of documents and further list and bundle as exhibits in the matter. The witness was stood down and heard again on 11<sup>th</sup> July, 2024, and the Respondent's case was finally concluded on 24<sup>th</sup> April, 2025 with the evidence of the Respondent's second witness (RW2) named John Lemelele, the Manager Investigations of the Respondent. He equally adopted his

statement and produced documents in the Respondent's supplementary list as exhibits in the case.

5. Submissions were received from both parties, and have been duly considered.

### **The Claimant's case**

6. The Claimant's case is that by a contract of employment dated 24<sup>th</sup> August, 2012, he was appointed a Team Leader Customer Service, on Job Grade SBG 9, with effect from 27<sup>th</sup> September, 2012.
7. It is his case that throughout the period of service, he served the Respondent with loyalty, dedication and diligence until 9<sup>th</sup> May, 2014, when the Respondent wrote to him, and informed that he had been suspended with effect from 9<sup>th</sup> May, 2014 for a period of one (1) month, to pave way for further investigations on alleged irregularities in his area of operation.
8. The Claimant avers that on 14<sup>th</sup> May, 2014, the Respondent notified him to attend a disciplinary enquiry meeting on 16<sup>th</sup> May, 2014, which he attended, and was accused of causing the bank to incur a loss of USD 70,000.
9. The Claimant states that a disciplinary hearing was held on 16<sup>th</sup> May, 2014, where he explained to the panel that the alleged fraud which he was accused of had happened at Wayaki Way branch, in Nairobi and that action should be taken against the person responsible, who was named Nelly Wanjiru Njeri, as he worked at the Respondent's branch in Mombasa.

10. He states that by a letter dated 30<sup>th</sup> June, 2014, the Respondent notified him that he had been dismissed from the Bank's service. He avers that, being aggrieved by the decision of the Respondent, on the basis that he was not granted a fair hearing, he appealed against the decision by sending an appeal to the Chief Executive on 11<sup>th</sup> July, 2014.
11. The Claimant states that the Chief Executive notified him through a letter dated 31<sup>st</sup> July, 2014, that the Respondent had upheld its decision to terminate his services. The Claimant states further that in the notification referred to above, dated 16<sup>th</sup> May, 2015, the Respondent clearly indicated that the alleged fraud was committed in another branch, was reported to the police, and after thorough investigations, the Prosecutor filed a case of theft in CRIMINAL CASE NO. 743 OF 2014 against a lady by the name Nelly Wanjiru Njeri & Another, who were believed to have committed the fraud at Waiyaki Way branch.
12. It is his case that on 3<sup>rd</sup> August, 2015, he was summoned to attend court as a witness on 10<sup>th</sup> November, 2015, where he attended and testified in support of the prosecution and, by extension, the Respondent which is the Complainant in this case.
13. The Claimant states that his termination was unlawful, since somebody else was charged with the offense he was accused of in court. It is his assertion that if he was indeed a culprit of the offense, to warrant his termination, then the

investigations conducted by the police prior to filing of the criminal case should have brought that out.

14. It is the Claimant's contention that his termination was unlawful and in blatant contravention of his employment Contract, as somebody else was found culpable for the offence.
15. The Claimant asserts that banking business is a very sensitive business and once someone is accused of being involved in irregularities like fraud, the person almost loses a chance of being employed again, unless his name is cleared from such allegations.
16. During examination in chief, the Claimant told the court that on 8<sup>th</sup> May, 2014, he authorized a transaction for payment of USD to a customer named Stephen Kiarie, and that it emerged later that the customer's account had been credited with Kshs.6,500,000 from the Respondent's Waiyaki Way Branch which deposit was found to be fraudulent. It is his testimony that he was subsequently on 9<sup>th</sup> May, 2014 suspended from employment ostensibly to allow for investigations.
17. It is the Claimant's case that he was notified of disciplinary charges on 14<sup>th</sup> May, 2014, received the notification on 15<sup>th</sup> May, 2014 to attend a disciplinary hearing on 16<sup>th</sup> May, 2014, in Nairobi, and that he had to travel from his station in Mombasa to attend the hearing.

18. The Claimant confirmed that he attended the hearing and answered to the charges levelled against him, though he protested the composition of the disciplinary committee. He avers that after the hearing he was summarily dismissed on the basis that the Respondent Bank had lost money, and had also lost confidence in him.
19. On cross-examination, the Claimant told the court that the issue before the disciplinary committee was not fraud, but failure to follow procedure. He averred that anti-money laundering checks apply to both withdrawals and deposits. He further avers that he conducted a customer interview on 7<sup>th</sup> May, 2014, when the customer came to find out if the money had been deposited from Waiyaki Way branch.
20. The Claimant confirmed that AML cheque is limited and anything beyond Kshs.100,000 should go through AML check, and that he had no limit at the time.
21. The Claimant confirmed that he reserved 70,000 US dollars for the client on 6<sup>th</sup> May, 2014, after being asked to do so by Executive Banking. The Claimant further confirmed that, indeed, the Respondent lost money.
22. He confirmed that he was informed of his right to be accompanied and did not express difficulty in being accompanied. The Claimant admitted that his terminal dues were tabulated and that they were over and above his monthly pay.

23. The Claimant further confirmed that employees named Jennifer and Thuku were charged, and another named Nelly was dismissed.
24. On re-examination, the Claimant told the court that on the day of the subject transaction, the branch manager was away in Nairobi and his Assistant was launching new ATM cards, and being the team leader, he took over some of their roles. He told the court that approval was his duty whether or not the branch manager was present.
25. It is his position that the minutes of the disciplinary hearing were not properly recorded, as the person said to have taken minutes was not present in the meeting. He avers that the head of HR, who was also the head of the disciplinary committee, did not attend the hearing.
26. The Claimant prays that his claim be allowed.

### **The Respondent's Case**

27. The Respondent avers that indeed the Claimant was its former employee employed on a contract of employment dated 24<sup>th</sup> August, 2012, and that his employment commenced on 27<sup>th</sup> September, 2012.
28. The Respondent states that following a severe breach of his employment contract, his services with the Respondent were terminated upon going through the laid down disciplinary procedures. It avers that in doing so, the

Respondent strictly adhered to the employment contract to ensure that none of the Claimant's rights were violated.

29. It is the Respondent's case that the Claimant worked as a Team Leader Customer Service, on Job group **SBG 9** at their Digo Road Branch, Mombasa, reporting to the Branch Manager.

30. The Respondent avers that the Claimant's position came with great responsibility and required one to be not only vigilant and diligent, but also conscientious in the performance of his or her duties due to the sensitive nature of the Claimant's Business.

31. The Respondent states that it went to great lengths to ensure that all employees were regularly trained.

32. It is the Respondent's case that on 8<sup>th</sup> May, 2014, in the course of his duties, the Claimant received an instruction from one of the tellers in his branch seeking authorisation for the purchase of seventy thousand United States Dollars (USD.70,000/=) then equivalent to Six million, one hundred and sixty thousand (Kshs.6,160,000/=) by one of the Respondent's customers, a Mr. Stephen Chorio Kiai, a holder of account number 010002810632 domiciled in Digo Branch Mombasa.

33. The Respondent further avers that the Claimant authorised the said transaction by signing against the customer's payment instructions and went ahead to get the

US dollars from the Respondent's vault and which was paid out to the said customer via the Respondent's teller in a fraudulent manner.

34. It avers that typically, the Claimant was required to not only authorise the transaction on the Respondent's system, but he was also required to ascertain the authenticity of the transaction, review the history of the customer's account, and ascertain the identity of the customer.
35. The Respondent states that the Claimant intentionally and negligently failed to follow established procedures necessary when paying out or handling such colossal amounts of money, by negligently or intentionally failing to post an authorisation of the said transaction into the Respondent's system until 4.30 p.m., whereas the money was paid out at 9.30 a.m.
36. The Respondent further states that the Claimant failed to check the said customer's account status and transactional history, as was the requirement.
37. The Respondent avers that their Human Resource Consequence Management Guide sets out procedures to be followed by the Respondent's employees when handling instructions to safeguard the bank from fraud and subsequently loss of funds. It avers that the Claimant deliberately ignored these procedures, consequently exposing the Respondent to financial loss.

38. It avers further, that the Claimant deliberately and wilfully disregarded the Anti-Money Laundering Guidelines and did not adhere to established payment procedures when handling the transaction as required. It avers that the regulations are not discretionary, but mandatory procedures set out in law, and every employee of the Respondent, especially those in the position of the Claimant, are made aware of them.
39. The Respondent states that as a result of the Claimant's actions and omissions, the Respondent incurred a financial loss of six million, one hundred and sixty thousand (Kshs.6,160,000/-) through fraud, thereby putting the Respondent in jeopardy.
40. It states that consequent to the substantial financial loss through fraud, it commenced investigations into the circumstances under which the said money was lost and the culprits involved actively or by aiding and abetting.
41. The Respondent avers that vide a letter dated 9<sup>th</sup> May, 2014, the Claimant was suspended from the bank's service for 1 month to allow effective investigations as the irregularities were in his area of operation in line with the Respondent's disciplinary procedure.
42. It is its case that on 14<sup>th</sup> May, 2014, the Respondent requested the Claimant to attend a disciplinary enquiry to be held on the 16<sup>th</sup> May, 2014, and that it requested the

Claimant to be accompanied by a representative in case he needed one.

43. The Respondent avers that the disciplinary Enquiry was held on the 16<sup>th</sup> May, 2014, and the Claimant was accorded an opportunity to explain the circumstances under which the loss of six million, one hundred and sixty thousand (Kshs.6,160,000/-) occurred and to defend himself on the allegation that he played a key role in facilitating the fraud.
44. The Respondent avers that resulting from the Disciplinary Enquiry hearing, the Disciplinary Committee having heard and considered the Claimant's representations, concluded that the fraudulent transaction was facilitated in both the Waiyaki Way Branch, Nairobi and the Digo Branch, Mombasa which was the Claimant's area of operation, and that the Claimant's deliberate or negligent failure to adhere to the established procedures led to the financial loss incurred by the Respondent.
45. The Respondent states that the Claimant, aggrieved by the Disciplinary Committee's findings, appealed to the Chief Executive Officer on the grounds that he was not accorded a fair hearing vide a letter dated 11<sup>th</sup> July, 2014.
46. It avers that the Disciplinary Committee's findings were upheld and the appeal failed, and the decision was communicated to the Claimant vide a letter dated 31<sup>st</sup> July, 2014.

47. The Respondent avers that at all material times, the Claimant had access to any information that he may have required to defend himself, and at no time did he request any such information, and the same was denied.
48. The Respondent further states that the Claimant does not deny that the money was paid out in his area of operation and that he was in charge of the authorisation of the transactions. It avers further that he does not deny that he did not follow the set out procedures required before paying out the money and that he did not authorise the transaction in the system as required thus beating the entire purpose of having a system.
49. The Respondent states that the Claimant was notified of the Disciplinary enquiry and the date of the disciplinary hearing vide a letter dated 14<sup>th</sup> May, 2014, which letter contained the allegations against him and allowed him ample time to prepare his argument, justifications, and/or explanations.
50. It avers that the Disciplinary hearing took place on the 16<sup>th</sup> May, 2014, and that the Claimant was accorded a fair hearing before the disciplinary committee, and was allowed to adduce evidence in his defence.
51. The Respondent contends that indeed one Nelly Wanjiru Njeri (in charge of the Waiyaki way Branch Nairobi) following police investigations was criminally charged in CRIMINAL

CASE NO.743 OF 2014 where the Claimant also appeared as a witness for the prosecution.

52. It avers that the Disciplinary Committee and internal investigations concluded that the Claimant played a role leading to the financial loss. The Respondent further avers that negligence is not a criminal offence and could not be prosecuted by the office of the Director of Public Prosecutions, and that the Respondent was not in control of the police investigations or the prosecution of the criminal case.

53. It is the Respondent's position that the Claimant had a contractual obligation to be just and faithful in all dealings and transactions and render a true account of all matters relating to the bank. It avers further that as per the contract entered into between the Claimant and the Respondent, wilful negligence in performing any work which was his duty to perform or careless or improper performance of any work which was his duty to perform would lead to termination of the employment contract.

54. The Respondent states that the Claimant's services were not terminated for the actions committed by another person, as alleged, but due to his actions and omissions, which he does not deny being responsible for.

55. The Respondent avers that the mere fact of the existence of another culprit in the same fraud does not exculpate the

Claimant from wrongdoing, as were it not for his actions and omissions, the financial fraud would not have happened.

56. The Respondent avers further that the banking business is very sensitive and that deliberate or negligent ignorance of the set out procedures may have expensive consequences especially to the financial institutions. It avers that subsequent to the Disciplinary Committee's findings, the Respondent lost confidence in the Claimant, given the nature of the Respondent's business.

57. RW1 told the Court that the Claimant failed to check the account history before authorizing the transaction, and that the account had not had big deposits before. He avers that though cash was paid out at 9:30a.m, the Claimant only posted the transaction at 4:30p.m.

58. On cross-examination, RW1 told the court that the Claimant was not supposed to authorize a transaction that was over Kshs.1,000,000. He states that the Claimant did not authenticate the transaction and did not conduct due diligence on the account.

59. RW1 confirmed that the Claimant did not sign the disciplinary minutes. He states that the hearing was chaired by the Head of fixed distribution, who also issued the suspension letter. He further told the court that the time allowed for the Claimant to attend the hearing was sufficient, and that he did not complain about the timing.

60. RW1 confirmed that three employees of the Respondent signed the subject cheque including the Claimant.
61. RW2 told the court that the Claimant was not supposed to approve the transaction, but was instead to authorize which he failed to. He avers that the Claimant should have sought approval of the Branch Manager owing to the amount involved.
62. It is RW2's evidence that Kshs.6,500,000 was deposited into an account and that although it was not clear who approved, it must have been approved. He confirmed further that an amount that is locked cannot be accessed.
63. RW2 states that the investigations was completed on 23<sup>rd</sup> June, 2014 and the Claimant was dismissed on 30<sup>th</sup> June, 2014.
64. In re-examination, RW2 told the court that the finding of the investigation is that the transaction was a fraudulent scheme by an employee of the Respondent who approached different employees within the Respondent Bank, and that the Claimant was part of the chain.
65. It is RW2's position that if the amount was approved early, the fraudulent scheme would have been arrested early and the money would not have been lost.
66. The Respondent prays that the Claimant's claim be dismissed with costs.

## **Analysis and Determination**

67. I have considered the pleadings, the evidence adduced, the witnesses' testimonies, and the rival submissions. The issues for determination are:

- i. Whether the Claimant's dismissal from the service of the Respondent was lawful and fair.
- ii. Whether the Claimant is entitled to the declarations and remedies sought.

## **Whether the Claimant's dismissal from the service of the Respondent was lawful and fair**

68. An employer is considered to have fairly terminated/dismissed an employee where the employer adheres to the twin requirements of fair procedure and the substantive justification for the termination/dismissal espoused under Sections 41, 43, 45, and 47(5) of the Employment Act, 2007.

69. Articles 47 and 50(1) of the Constitution on Fair administrative action and fair hearing also come into play in a dismissal/termination process.

70. The Claimant contends that his dismissal was unfair on the basis that he was given short notice to appear for the hearing, that the disciplinary committee was improperly composed, that he did not sign minutes of the hearing and the person said to have taken the minutes did not actually

attend the hearing, and finally for reason that the Head of Human Resource did not participate in the hearing.

71. For starters, unsigned minutes do not in my view invalidate the hearing unless the Claimant proves they were inaccurate or fabricated. Further, the Claimant has not produced independent evidence of inaccuracies in the said minutes, hence nothing leads the court to the finding that the minutes of the hearing could have impaired the disciplinary process.

72. Section 41 of the Employment Act, 2007, sets the minimum standard of a fair hearing. It demands that the employee be notified of the allegations against him, an explanation of the grounds/charges, the right to be accompanied, and allowed an opportunity to respond.

73. In ***Postal Corporation of Kenya -vs- Andrew K. Tanui [2019] eKLR***, the Court of Appeal set out what has come to be known as the bare minimum standards of a fair process as follows: -

***“Section 41 of the Employment Act provides the minimum standards of a fair procedure that an employer ought to comply with. The Section provides for notification and hearing before termination on grounds of misconduct.***

***The court stated that four elements must be discernible for the procedure to pass muster: -***

- 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 the presence of another employer of his choice when the explanation of grounds of termination is made; and**
- d. hearing and considering any representation by the employee and the person chosen by the employee.”**

74. It is not disputed that the Claimant received notice on 14th May, 2014, for a hearing slated for 16th May, 2014. It is also not in dispute that the Claimant did attend the disciplinary hearing and was heard in his defence.

75. Section 41 of the Employment Act does not prescribe a fixed minimum number of days to prepare for a hearing; courts instead assess the reasonableness of the time allowed. In **Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Ltd [2013] eKLR**, it was held that an employee must be given a reasonable time to prepare his defence, and that what constitutes reasonable depends on the circumstances of each case.

76. Further in **Margaret A. Ochieng v National Water Conservation & Pipeline Corporation [2014] eKLR**, the court opined that even where notice is brief, an employer

must show that the Claimant had a fair chance to interrogate the allegations and respond.

77. In my considered view, the time allowed to the Claimant to prepare and attend the hearing was not reasonable considering that he was to travel from Mombasa, where he was stationed, to attend the hearing in Nairobi.

78. In the premise, I find and hold that the procedure adopted in dismissing the Claimant was unfair on account of the short time allowed to prepare for the disciplinary hearing.

79. In respect of the substantive justification test, also known as the test of reasonableness, Sections 43, 45 and 47(5) demand that the employer prove that the reasons for termination are valid, justified, and fair as understood by a reasonable employer.

80. The Respondent contends that the Claimant authorized a USD 70,000 cash transaction without conducting due diligence on the customer's account, that he posted the authorisation to the Respondent's system 7 hours after the cash had been paid out, and did not verify abnormal account activity. It is the Respondent's further assertion that the Claimant admitted that, indeed, the Respondent lost colossal sums of money through what looks like a negligent act or omission by the Claimant.

81. On his part, the Claimant maintains that another employee in Nairobi's Waiyaki Way branch was criminally

charged for the fraudulent transaction and that the fraud originated in Nairobi, not Mombasa where he was stationed.

82. Although the Claimant argued that his innocence is shown by the charging of another employee, the court returns that criminal liability and employee liability are two distinct issues. In ***Loice Otieno v KCB [2013] eKLR***, the Court held that an employer may dismiss on grounds of negligence even if no criminal charges are preferred.
83. It is also settled that an acquittal or charging of another person does not extinguish misconduct in employment.
84. The Claimant admitted that he reserved the USD for the customer subject of the fraudulent transaction, and that he posted authorisation at 4:30 p.m. when cash had been paid out to the customer at 9:30 a.m.
85. The Claimant has also, in my view, not contradicted the Respondent's evidence that he approved a high value transaction for which he had no authority to, and did not conduct AML checks.
86. In my opinion, given the Claimant's role as Team Leader Customer Service, handling high risk transactions, these omissions were no doubt sufficiently serious to justify disciplinary action and the subsequent dismissal.
87. In the upshot, I find and hold that the Respondent has shown valid and fair reasons for the summary dismissal in accordance with Section 43 of the Employment Act.

### **Whether the Claimant is entitled to the reliefs sought**

88. The Claimant sought various reliefs, the first one being a declaration that he was unlawfully terminated. The court has already held herein above that indeed the Claimant was unfairly dismissed, premised on the short time allowed to attend the hearing.
89. On the request for a declaration founded on the provisions of Article 35 of the Constitution of Kenya, 2010, that the Claimant was not involved in the loss of funds that triggered Criminal case No. 743 of 2014, the court has held that the Claimant did contribute to the loss, hence this prayer fails.
90. The prayer for 12 months' salary compensation for the unlawful dismissal succeeds on the finding that the Claimant's dismissal was unlawful on account of procedure.
91. The finding is premised solely on the short time that the Claimant was allowed to prepare and attend the hearing. The court, having found that the Claimant's dismissal was based on valid, fair and justified reasons, goes on to confirm that he indeed contributed to his own dismissal, and on this account, I deem an award of three months' salary sufficient compensation for the unlawful and unfair dismissal.
92. On the prayer for 26 days' pay on account of leave days, the Claimant admitted that his terminal dues were computed and paid, and that he was paid over and above

what he was entitled. This claim, therefore, fails on this account.

93. In conclusion, the Claimant's claim partly succeeds as follows:-

- a) A declaration that the Claimant's termination was unlawful on account of procedure.
- b) An order that the Respondent shall pay the Claimant 3 months' salary as compensation for the unfair and unlawful dismissal at Kshs.300,000/-
- c) The Respondent shall bear the costs of the suit and interest on (b) above from the date of this judgment until payment in full.

94. Judgment accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

N/A for the Claimant

Mr. Kiprotich present for the Respondent

Ms. Esther S- C/A