

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
CAUSE NUMBER E059 OF 2021**

BETWEEN

ROSE NALIAKACLAIMANT

VERSUS

DIAMOND TRUST BANK
LIMITEDRESPONDENT

*Rika J
Court Assistant: Emmanuel Kiprono*

Momanyi Gichuki & Company Advocates for the Claimant

Oraro & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim dated 12th November 2021, while the Respondent filed its Statement of Response, and Counterclaim, dated 17th December 2021.

2. The principal facts, as disclosed in the pleadings and evidence of the Parties, are not contentious.

3. The Claimant was employed by the Respondent Bank, in the year 2015. She worked as a banking teller. She was dismissed by the Respondent on 15th November 2018.
4. The letter of termination, states that the decision was taken against the Claimant by the Respondent, after she approved a cheque payment for the sum of Kshs. 1,033,753. The cheque was paid to the customer's unverified agent. It was unsigned. It was a crossed cheque. The letter states that this was in violation of the Respondent's cash handling policies and procedures.
5. It is common evidence and pleading that the Claimant was issued a letter to show cause dated 23rd October 2018, and was heard on 6th November 2018.
6. It is not disputed, that the Claimant was advanced staff loan by the Respondent, which had not been repaid, by the time of termination.
7. The Claim was initially heard in the absence of the Respondent, and a Judgment dated 11th July 2024, made in favour of the Claimant, in the sum of Kshs. 1,538,786, including terminal dues and compensation for unfair termination.
8. The Respondent applied successfully for setting aside of the default Judgment. The Ruling setting aside the Judgment, is dated 28th February 2025.

9. The Claimant subsequently gave evidence and closed her case, on 3rd July 2025. The Respondent's Legal Manager Francis Kariuki, gave evidence on 3rd July 2025, and 24th September 2025, closing the hearing. The Claim was last mentioned on 31st October 2025, when the Parties confirmed filing and service of their closing submissions.
10. The Claimant restated the contents of her Statement of Claim and Witness Statement, adopting her Documents as exhibits [1-5], in her evidence-in-chief.
11. On cross-examination, she confirmed that she was issued a letter to show cause; she replied; she was invited to disciplinary hearing; she was heard; a decision was made and communicated to her, to terminate her contract; she was given the opportunity to appeal; and did appeal. She stated however, that she did not receive communication on the outcome of her appeal.
12. She conceded that she processed an unsigned cheque. She released the money. The customer was well-known to the Respondent. She released the money to an appointed agent. It was not risky to do so. She understood banking policy well.
13. The Claimant conceded that she had an outstanding loan with the Respondent, at the time of termination. The loan was approximately Kshs. 1.5 million. She had not been paying the loan, after termination. She did not know what was the exact outstanding amount.

14. Redirected, she told the Court that the customer, George Kimani, later went to the Bank and confirmed that he had entrusted the transaction to his agent.
15. Legal Manager Francis Kariuki similarly adopted the contents of the Statement of Response and Counterclaim, his Witness Statement and Documents filed by the Respondent [1-12] in his evidence-in-chief. He emphasized that the customer, had not introduced his agent to the Respondent prior to the transaction. The cheque was unsigned. It is a criminal offence to pay money to another person, other than the payee. The Claimant paid a crossed cheque to a 3rd party.
16. On cross-examination, Kariuki told the Court that the Claimant did not discharge her role properly. She could not explain why a crossed cheque was paid out, to a 3rd party. The cheque was not signed. The Respondent was exposed. The customer came later and confirmed that he had authorized withdrawal of the cash. If the customer denied issuing the cheque, the Respondent would have been liable for the irregular transaction. Kariuki confirmed details of the Respondent's Counterclaim.
17. Redirected, Kariuki underlined that the cheque was unsigned and unauthorized. Payment was made to a 3rd Party. The customer's ratification after the fact, did not absolve the Claimant. The Claimant has not cleared her loan balance.

18. The issues are whether termination was unfair; whether the Claimant is entitled to the remedies sought; and whether the Counterclaim is merited.

The Court Finds: -

19. As concluded at the outset, the principal facts in this dispute are not contested.
20. **Procedural fairness:** The Court has not found any defects, that would result in a finding that procedure was not in conformance with the minimum statutory standards of fairness, under Sections 41 and 45 of the Employment Act.
21. The Claimant concedes that she received a letter to show cause; she responded; she was invited for disciplinary hearing; she attended and was heard. A decision to terminate her contract was made and communicated to her. The reasons were stated in the letter of termination.
22. She was advised on her right of appeal which she exercised. Her complaint about not receiving communication on the outcome of the appeal, bears no weight. She did not show that the Respondent used the wrong address in communicating the outcome. She did not show that she made any effort, to obtain the decision on appeal, before filing her Claim, if indeed, it was not communicated to her.

23. Procedure was fair.
24. **Validity of reasons:** There was valid reason to justify termination. The Claimant admitted that she paid out an unsigned cheque, to a 3rd party. It was a crossed cheque. There was no written authority to the agent, at the time of payment. The agent had not been formally introduced to the Respondent, prior to the irregular payment. His appointing in writing as an agent, was unknown to the Respondent.
25. The Claimant's conduct was irregular and contrary to banking policy and law. It left the Respondent critically exposed. The Claimant was an Assistant Manager at the time. She had a duty to protect the Respondent and its customers. She ignored the Respondent's and her own fiduciary duty, to the Respondent's customers. It is a criminal offence to pay out a crossed cheque. The cheque was unsigned. If the customer denied issuing the cheque, it is clear that the Respondent would have been held liable for breach of banking law and regulations.
26. The ratification of the transaction by the customer Kimani, did not absolve Claimant from her act of gross misconduct.
27. The Claimant's role as an Assistant Manager, required her to perform her role carefully and properly. Section 44 [4] [c] of the Employment Act, makes it an act of gross misconduct, where an Employee, wilfully neglects to perform any work, which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature, it

was his duty, under his contract to have performed carefully and properly.

28. Beyond this explicit duty of care under statute, banking staff have an implied term, to perform their roles with reasonable care and skill, avoiding conduct that is likely to be injurious to the bank and its customers.
29. There is no doubt in the mind of the Court that as a banker, the role the Claimant discharged, required her to perform her responsibility carefully and properly. She did not do so, by paying out an unsigned and crossed cheque, to a stranger.
30. She ought to have at the very least called the customer, and asked for authorization, or even contacted the customer, through an SMS, or e-mail. Why make presumptions, and transact with a stranger? She exposed the Respondent to stiff sanctions by the banking sector regulatory authorities.
31. Proof of the reason of termination, under Section 43 of the Employment Act, entails demonstration by an Employer, that 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.
32. The Respondent discharged this evidential burden, which is also a requirement under Section 47 [5] of the Employment Act.

33. The Claimant was offered terminal benefits, which were set off against her loan obligation.
34. The Court is persuaded that termination was fair, on all fours, under Sections 41, 43 and 45 of the Employment Act. **The Claim is therefore declined.**
35. **The Counterclaim** is largely conceded by the Claimant, in her evidence before the Court. She concedes that she was advanced staff loans, which she had not cleared, by the time of termination. She told the Court that she had ceased redressing the loan obligation, after termination. Although she did not know how much she owed the Respondent, she does not dispute the sum claimed by the Respondent. She worked on contract in an accounting firm at the time of giving evidence. She has an income, but did not inform the Court, if she has made any arrangement to settle her obligation with the Respondent.
36. **The Counterclaim is allowed at Kshs. 1,427,464.**
37. The Court does not however, allow the Counterclaim with interest on commercial rates, from 2nd December 2021 as prayed by the Respondent. A loan granted to an Employee by her Employer, with repayment pegged on monthly payroll check-off, must not be allowed to continue accruing interest indefinitely, where the Employee has lost her job, and monthly income. The loan was granted on the strength of an employer-employee relationship, and parties intended that it would be

repaid, from the Claimant's monthly salary. The Employee lost her job, and her monthly salary, which was her security for repayment. The grant of an order of accrued interest, on commercial rate, would likely result in violation of *in duplum* rule. It would be in breach of consumer protection. It flies in the face of social protection floors. It would be a distortion of the unique employer-employee relationship. Banking, must not be turned into loan sharking, in particular, where the loan involves an employer-employee relationship.

38. **There shall be no order on the costs.**

39. **No further interest shall accrue on the amount granted by way of Counterclaim, at Kshs. 1,427,464.**

IN SUM, IT IS ORDERED: -

- a. ***The Claim is declined.***
- b. ***The Counterclaim is allowed at a frozen sum of Kshs. 1,427,464.***
- c. ***No order on the costs.***

Dated, signed and delivered electronically at Nakuru, pursuant to Rule 68 [5] of the E&LRC [Procedure] Rules, 2024, this 19th day of December 2025.

James Rika
Judge

