



**Kiplagat v Family Bank Limited (Cause E058 of 2024)
[2026] KEELRC 87 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 87 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E058 OF 2024
MA ONYANGO, J
JANUARY 22, 2026**

BETWEEN

MARK KIPLAGAT CLAIMANT

AND

FAMILY BANK LIMITED RESPONDENT

JUDGMENT

1. Vide a Statement of Claim dated 24th July 2024, the Claimant sought compensation for alleged unfair, unprocedural and unlawful termination of his employment by the Respondent.
2. The Claimant averred that he was employed by the Respondent as a Customer Service Officer on permanent and pensionable terms on the 17th January 2005 and rose through the ranks to the position of Branch Manager.
3. It is the Claimant's case that he performed his duties as a Branch Manager with full dedication, loyalty, selflessness and without any warning or lawful warning in his employment records until on 27th October 2023 when the Respondent unlawfully and unfairly terminated his employment.
4. The Claimant further pleaded that at the time of the unlawful termination, he was earning a monthly salary of Kshs 318,000. He contended that the official working hours were 8am to 6pm but due to the nature of work, he worked overtime. It is his case that he was denied overtime payment despite working beyond the stipulated timelines.
5. The Claimant further stated that he was denied leave days for the entire duration of his employment and that he was subjected to discrimination and ridicule undeserving of an employee in an attempt to force him out of the said work place.



6. It is the Claimant's case that having worked for the Respondent for 18 years, he had legitimate expectation that he would be treated fairly throughout his career, be given opportunities to go for trainings and be treated with truth and fairness.
7. According to the Claimant, the decision to dismiss him from employment was unfair and unlawful on the following grounds: -
 - a. Failure to give any valid reason for termination of employment contrary to section 45 of the Employment Act.
 - b. Failure to give any prior warnings
 - c. Failure to give prior notice of termination of employment
 - d. Acting in flagrant disregard of justice both in the process of and the decision to terminate the Claimant's contract of employment within the meaning of section 45 of the Employment Act
 - e. Subjecting the Claimant to unfair and unconscionable working conditions
 - f. Terminating the Claimant's employment without any due consideration and reasons.
 - g. Failing to pay overtime and public holidays worked contrary to Regulation 5 of the Regulation of Wages Order, 1982
 - h. Failing to issue a termination notice and to follow due procedure in terminating the Claimant's employment contract.
 - i. Failure to accord the Claimant a fair hearing or at all.
8. The Claimant contended that owing to the unfair and unlawful termination, he is entitled to terminal benefits which he itemized to be: -
 - i. Two months' salary in lieu of notice Kshs 636,000
 - ii. Leave dues Kshs 4,623,230.77
 - iii. Holidays dues Kshs 3,082,153.84
 - iv. Gratuity..... Kshs. 21,293,280
 - v. Severance pay.....Kshs 3,302,307.68
 - Total Kshs 32,936,972.30
9. The Claimant prayed for orders as follows:
 - i. An Order unconditionally reinstating the Claimant to his position of employment with the Respondent with backpay of all his benefits and allowances from the date of the unlawful termination.
 - ii. In the alternative to prayer (a) and without any prejudice to the foregoing, the Respondent be ordered to fully compensate the Claimant for illegal, unfair, unlawful and wrongful termination of the employment services of Claimant with all attendant benefits at the rate of Kshs. 32,936,972.30 as particularized in paragraph 8 above
 - iii. Compensation at the rate of twelve (12) months for unlawful termination.
 - iv. Damages for breach of his constitutional rights



- v. Costs and interest of this suit
 - vi. Any other award as the honourable court deems fit to grant
10. The Respondent filed a Response to the Statement of Claim dated 4th November 2024, denying the averments made by the Claimant. The Respondent contended that the Claimant's employment was marred by numerous instances of gross misconduct for which he was issued with warning letters and accorded sufficient opportunities to improve his performance.
 11. According to the Respondent, sometime in September 2023, it discovered that the Claimant had orchestrated serious violations of the bank's operational policies by authorizing irregular transactions in various customer accounts in breach of the established cash management procedures, thereby exposing the Respondent to significant financial, reputational and legal risks.
 12. The Respondent asserts that, owing to the gravity of the offences, the Claimant was issued with a Notice to Show Cause vide a letter dated 4th September 2023, requiring him to explain why disciplinary action should not be taken against him. That upon consideration of the Claimant's response, he was subsequently invited to attend a disciplinary hearing held on 6th October 2023.
 13. It is contended that the disciplinary hearing was conducted in accordance with the Respondent's disciplinary procedures, during which the Claimant failed to satisfactorily rebut the allegations levelled against him. Consequently, his employment was lawfully terminated vide a termination letter dated 26th October 2023.
 14. The Respondent maintained that the Claimant was paid one month's salary in lieu of notice and that he had exhausted his leave entitlement save for eight (8) accrued leave days, which were duly paid in lieu. The Respondent further averred that the claim for payment in respect of public holidays is without merit, as the Respondent remained closed on all public holidays. Additionally, it is averred that severance pay is not payable as the Respondent consistently and lawfully remitted NSSF contributions on behalf of the Claimant.
 15. The Respondent urged the Court to strike out the Claimant's Statement of Claim and dismiss the same with costs.

The Evidence

16. The Claimant testified on 30th April 2025 as CW1 and adopted his witness statement and documentary evidence. He testified that his termination was based on flimsy allegations relating to the authorization of irregular inter-account transfers.
17. He stated that the transactions alleged to be irregular were authorized not only by him but also by the operations manager, supervisors, and tellers. He further testified that although he was served with a Notice to Show Cause and invited for a disciplinary hearing, he was denied the right to attend with a witness, rendering the process unfair.
18. The Claimant further testified that all other employees implicated in the alleged irregular transactions were issued with warning letters while he alone was terminated, which action, he alleged amounted to discrimination.
19. On cross-examination, the Claimant denied receiving a warning letter in 2017 relating to loan processing.



20. He admitted that bank staff are governed by internal policies and operational manuals. He testified that cash transfer policies existed and that as Branch Manager, his approval authority was approximately KShs 10 million, subject to notifying regional management. He stated that customers were required to be physically present with identification and that in the impugned transaction, one spouse was present at the Eldoret Branch while the other was at the Busia Branch, with consent executed manually.
21. He agreed that no transaction could be authorized solely by phone and stated that all transactions he approved complied with bank policy.
22. He stated that during the disciplinary process he requested to call witnesses but was restricted to internal staff only. He stated that the charge against him was authorizing transactions without the physical presence of the customer.
23. He testified that he did not receive terminal dues apart from pension. He however confirmed ownership of the account appearing at page 162 of the Respondent's bundle, into which the Respondent avers it paid the Claimants terminal dues.
24. On re-examination, the Claimant reiterated that no warning letters were ever served upon him and that consent for the transaction alleged to have been irregular was duly signed and transmitted prior to execution.
25. The Claimant called Mercy Cherotich Rugut who testified as CW2. She introduced herself as a director of Evaro Investments Limited.
26. CW2 testified that she had never lodged any complaint regarding irregular transactions on the company account and that she routinely gave consent for transactions.
27. On cross-examination, she stated that while the Claimant assisted with account management, no indemnity existed authorizing him to transact independently, and that she physically attended the bank to authorize transactions.
28. Vincent Kiprotich Rugut testified as CW3 and stated that he co-ran Evaro Investments Limited with CW2 but was not a signatory to its account with the Respondent.
29. On cross-examination, CW3 maintained that instructions to the Claimant were issued through manual debit forms and not by phone.
30. The Respondent called Joseph Gitau Karanja, its Human Resource Business Partner, who testified as RW1. He adopted his witness statement dated 4th November 2024 and relied on the documents filed by the Respondent in support of its case.
31. RW1 told the court that the Claimant was subjected to a disciplinary process for flouting bank regulations in about seven occasions, thereby exposing the bank to risk. According to RW1, CW2 and CW3, who are the Bank's customers, issued instructions over the phone and the Claimant complied with those instructions contrary to the provisions of the Respondent's operations manual which requires that instructions are not to be given over the phone, as this poses a significant risk since payment would be made without formal written instructions from the customer.
32. The Respondent's witness explained that the proper procedure would have required the customer to visit the nearest branch or to use internet banking or bank transfer services. RW1 further stated that although the Respondent had embraced the "Know Your Customer" initiative, this did not override the bank's regulations. He added that other employees involved in the irregular transactions were also subjected to disciplinary action, and that the Claimant, being the Branch Manager and responsible



for ensuring compliance with the operations manual, was terminated from employment. He further stated that the Claimant acknowledged and signed for his final dues.

33. On cross-examination, RW1 stated that he did not have evidence showing that the instructions from the transfer were given by the customer via phone, but asserted that the customers admitted to having done so. He also contended that no complaints from the said customers were produced in court. RW1 further stated that the minutes of the disciplinary hearing were not produced to show what transpired during the hearing. However, he maintained that the Claimant was paid his terminal dues as reflected in the Claimant's bank statement attached to the Respondent's documents.
34. On re-examination, RW1 stated that a customer's complaint was not necessary for disciplinary action to be taken against an employee for flouting operations manual processes and that the bank's actions were informed by breaches of the operations manual which exposed the bank to risk. He stated that the issue was flagged by the bank's investigations department.
35. At the close of the Respondent's case, parties were directed to file written submissions. The Claimant's submissions are dated 26th September 2025 while the Respondent's submissions are dated 14th October 2025.
36. By and large, the submissions reiterated the positions taken by the respective parties.

Determination

37. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are: -
 - i. Whether the termination of the Claimant's employment was justified.
 - ii. Whether the procedure followed was in accordance with the *Employment Act*.
 - iii. Whether the reliefs sought are merited

Whether the termination of the Claimant's employment was justified

38. Section 45(2) of the *Employment Act* prohibits an employer from terminating the contract of an employee except for valid reason and upon compliance with fair procedure.
39. Section 43(1) of the *Employment Act* places the burden to prove the reasons for termination on the employer. Where the employer fails to do so, such termination is deemed unfair within the meaning of Section 45 of the Act. The section provides:

“In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.”

40. The Respondent's reason for terminating the Claimant's employment was that he authorized transactions in breach of the bank's operations manual by acting on instructions that were not compliant with the prescribed procedures, thereby exposing the Respondent to operational and reputational risk.
41. The Claimant, on the other hand, maintained that no transaction was authorized solely through phone instructions and that all transactions were supported by duly executed manual debit forms.
42. Notably, from a perusal of the Claimant's response to the show cause letter, appearing at page 159 of the Respondent's bundle of documents, the Claimant admitted that the customers involved in the



impugned transactions were well known to him and to the bank, and that all their business accounts are with the Respondent. The Claimant also indicated that CW2 subsequently appended her signature on all the relevant debit receipts, a fact that was corroborated by CW2's testimony in court.

43. Further, in his testimony before court, the Claimant mentioned that in transacting for the customers, he was guided by the Respondent's "Know Your Customer" initiative. While the Court appreciates that the "Know Your Customer" initiative is intended to enhance risk management and customer familiarity, RW1 correctly testified that "Know Your Customer" does not override mandatory operational procedures. While the initiative is designed to strengthen customer familiarity and risk assessment, it does not dispense with or override the mandatory operational procedures of the bank.
44. In the court's view, as a Branch Manager, the Claimant bore the ultimate responsibility of ensuring strict compliance with the Respondent's operational manuals and internal controls. Even where customers were known and consent was eventually reduced into writing, the Claimant was required to ensure that all procedural safeguards were complied with before authorizing the transactions.
45. The Claimant did not deny that he authorized transactions based on telephone calls. What he stated was that all the transactions were eventually signed for, meaning that the signing was done after the transaction.
46. As pointed out by the Respondent, the Bank's operation manuals do not authorize transactions based on telephone approvals. The Bank customer is required to be physically present and to sign for the transactions.
47. The Respondent further pointed out that there were options available to the Bank customers including online transactions which RW2 and RW3 could have opted for.
48. By authorizing transactions before signature by the client, the Claimant not only flouted the provisions of the operation manuals but also exposed the Respondent to risk. His position as Branch Manager in charge of ensuring compliance with bank processes and procedures aggravated the situation.
49. The Court therefore finds that the Respondent had a valid and fair reason to subject the Claimant to disciplinary action and ultimately to terminate his employment, within the meaning of sections 43 and 45 of the *Employment Act*.

Whether the procedure followed was in accordance with the *Employment Act*.

50. Section 41 of the *Employment Act* provides: -

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”

51. It is not disputed that the Claimant was issued with a Notice to Show Cause dated 4th September 2023 and that he responded to the same in writing. He was thereafter invited to a disciplinary hearing held on 6th October 2023.
52. Although the minutes of the disciplinary hearing were not produced in court, the Claimant admitted that he attended the hearing and was given an opportunity to explain himself. The absence of minutes, in the circumstances of this case, does not of itself invalidate the disciplinary process.



53. The Claimant's complaint that he was denied a fair hearing as he was not allowed to appear with witnesses of his choice does not amount to noncompliance with the law by the Respondent as Section 41 does not confer unfettered right to call external witnesses. In any event, the evidence of RW2 and RW3 would not have changed the decision of the court as they had no filed any compliant with the bank and the issues against the Claimant were procedural matters discovered during the banks due diligence investigations,
54. The Court therefore finds that the Respondent substantially complied with the procedural requirements under section 41 of the *Employment Act*.
55. In light of the foregoing, the Court finds that the Respondent has demonstrated both a valid and fair reason for termination and substantial compliance with the procedural requirements of the law.
56. The Claimant has therefore failed to prove that his termination was unfair or unlawful within the meaning of section 45 of the *Employment Act*.

Whether the reliefs sought are merited

57. Having found that the termination of the Claimant's employment was both substantively and procedurally fair, the court must now consider if he is entitled to any of the remedies sought in his claim.
58. In his Statement of Claim, the Claimant prayed for an Order unconditionally reinstating him to his position of employment with the Respondent with backpack of all his benefits and allowances from the date of the unlawful termination. Having made a finding that the termination of the Claimant's employment was not unfair, he is not entitled to this prayer.
59. In the alternative, the Claimant sought two months' salary in lieu of notice, leave dues, holiday dues, gratuity, and severance pay. Regarding payment in lieu of notice, the Claimant's appointment letter at page 145 of the Respondent's bundle provides for a notice period of two months or two months' salary in lieu. The Claimant is therefore entitled to two months' salary in lieu of notice based on his gross salary. This is expressly stated in the letter of termination as part of the Claimant's terminal dues. The Claimant sought a sum of Kshs. 636,000 on this head. His final dues computation indicates that he was paid 2 months salary in lieu of notice in the said sum. He is thus not entitled to further payment on account of the same.
60. On the claim for leave dues, the final dues computation at page 162 of the Respondent's bundle indicates that the Claimant was paid Kshs 83,638.40, which was included in the final dues credited to his bank account on 20th December 2023. He is therefore not entitled to any further payment for leave dues as he did not adduce any evidence to prove that he had more outstanding leave days than what he was paid for.
61. On the claim for holiday dues, no evidence was tendered to show that the Claimant is entitled to this relief.
62. With regard to the prayer for gratuity, the court notes that the Claimant's appointment letter does not expressly provide for gratuity. Further, he admitted that he was paid pension. In the absence of a contractual or statutory entitlement, no gratuity is payable.
63. On the prayer for severance pay, the Claimant was not declared redundant. He is thus not entitled to severance pay.



64. On the prayer for compensation at the rate of twelve (12) months for unlawful termination, this claim is not merited, since the termination was substantively and procedurally fair.
65. As regards the claim for general damages for breach of his constitutional rights, the Claimant did not establish any violation of his rights to justify award of the same.
66. Consequently, the court finds that the Claimant did not prove that his employment was terminated unfairly or that he was not paid any terminal dues that he was entitled to. The result is that the entire claim fails and is accordingly dismissed.
67. Each party shall bear its costs of this suit.
68. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY

THIS 22ND DAY OF JANUARY, 2026.

M. ONYANGO

JUDGE

