



**Mithano v Standard Chartered Bank of Kenya Limited (Cause E018 of 2021) [2026] KEELRC 191 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 191 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E018 OF 2021  
K OCHARO, J  
JANUARY 29, 2026**

**BETWEEN**

**CAROLYNE MITHANO ..... CLAIMANT**

**AND**

**STANDARD CHARTERED BANK OF KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

**Background**

1. Contending that at all material times, she was an employee of the Respondent, whose employment they terminated unfairly, the Claimant sued the Respondent herein, claiming the following reliefs;
  - a. Monetary compensation of at least 12 months' salary amounting to KShs. 7,020, 000.
  - b. General damages.
  - c. Costs of the suit.
  - d. Any other relief as this Court may deem fit to grant.
2. Upon being served with a summons to enter appearance, the Respondent entered an appearance on 30<sup>th</sup> August 2021, filed a Memorandum of Response dated 24<sup>th</sup> February 2023. In this pleading, they denied the Claimant's cause of action and her entitlement to the reliefs sought.
3. At the hearing, the parties in their respective cases adopted their witness statements filed herein as part of their evidence in chief.



## The Claimant's case

4. It was the Claimant's case that sometime in April 2013, she was offered employment by the Respondent as a Branch Manager of the Respondent's Retail Banking Operations in Nanyuki, with a starting gross monthly salary of KShs. 275,000/-
5. Her employment relationship with the Respondent encountered difficulties when her rapport with her supervisor, Mr Eric Onguru, the Regional Branch Manager, deteriorated. He maintained relationships within her branch that strained her relationship with some of her staff.
6. She further stated that around October 2017, she went on leave and formally transferred her docket to Mr. James Mwangi, the Acting Branch Manager, to ensure continuity. During her leave, an alleged incident of sexual harassment occurred, of which she was only informed via an email that was copied to her. The email originated from Mr Fred Kinyanjui, a Customer Service Officer, addressed to the Acting Branch Manager, and it contained a complaint regarding the conduct of Ms Terrine Kinyua, a Sales Officer.
7. She stated that she followed up with Mr James Mwangi before and after she returned from leave, and impressed upon him to finalise the issue, as it had been reported to him directly. She also kept tabs on the progress of the matter from time to time.
8. She further asserted that throughout her employment with Respondent, her performance was thoroughly evaluated and consistently rated very highly. The various monthly incentives the Respondent awarded her from time to time are testament to this. Furthermore, she was not only confirmed in employment but, by the time of separation, her monthly salary had risen to KShs. 335,000.
9. On or around 12 December 2017, while she was still on leave, Mr Eric Onguru sent her a letter summoning her to a disciplinary hearing. The letter stated that she was accused of receiving a sexual harassment complaint from a staff member and failing to act on it, in violation of the Bank's Code of Conduct, which required fair treatment of colleagues.
10. It was also claimed that she openly threatened a staff member and hit her with a phone. She created a toxic work environment at the branch. This included confronting and accusing staff of speaking out about issues affecting the branch and their performance, and even threatening them.
11. She was further falsely accused of sharing internal staff matters with clients, thereby breaching the bank's confidentiality position, and discussing the events with clients and sharing the same with other staff not privy to the matters.
12. The Claimant further stated that after the disciplinary hearing, she was placed on forced leave and called to another disciplinary meeting, at which she was again accused of violating the Respondent's Code of Conduct. The accusation was unfounded. She denied it.
13. On the 12th February 2018, her employment was terminated for the following reasons: failure to act on a reported sexual harassment report, issuing threats to staff, and sharing internal matters with clients. Before subjecting her to the disciplinary process and terminating her employment, the Respondent didn't conduct any investigations to establish the truth concerning the accusations against her.
14. The termination was contrary to the stipulations of the *Employment Act*, 2007, and in violation of her fundamental rights as enshrined in *the Constitution* of Kenya. She was not given a fair hearing. At the disciplinary hearing, she raised a concern that the accusers had been called to the proceedings.



15. The termination letter was served on her outside the premises of the Respondent Bank, in a restaurant.
16. The termination of her employment was ill-actuated as evidenced by the fact that the sexual harassment alleged suspect has never been disciplined or dismissed.
17. She claimed she hasn't been able to find alternative employment. This has led to financial difficulties, affecting her ability to meet her financial obligations and support her family.
18. Cross-examined by Counsel for the Respondent, the Claimant testified that the email inviting her to the disciplinary hearing did not set out the grounds on which the Respondent was contemplating action against her.
19. In her employment contract, she committed herself to, at all material times, act in the best interests of the Bank and comply with its rules and policies.
20. She stated that she was not made aware at any point of any complaints against her by any member of staff concerning her conduct at the place of work.
21. She admitted that, during the disciplinary hearing, after a question from one of the panelists, she stated that her relationship with JNNN was not good. Further, when JNNN was appointed as BBRM leader, she told her she wasn't ready for the role because she was careless. This was said during a call that was taken out of context.
22. She had a good relationship with the majority of the members of staff. The fact that, as a manager, she might have had one or two who weren't relating well with her wouldn't mean that she wasn't having a good relationship with all.
23. The suspension letter instructed her not to enter the bank premises at all. Following the suspension, she moved from Nanyuki town to her village. Later, she was summoned to a meeting on 16th January 2017, at which she was accused of being in the office on 22nd December 2018, a fact that wasn't true.
24. Questioned further, she stated that on that day, she was at the Branch to withdraw her cash, as the Branch was nearest to her, and to answer a query of a client..
25. She was paid her terminal dues. In her statement of claim, she has claimed leave allowance, yet the same wasn't a benefit provided for in his contract.
26. In her evidence under-reexamination, the Claimant stated that the sexual harassment complaint was not made to him but the Acting Manager, then.
27. The meeting rules required that phones not be used during the meeting. This was the reason she dismissed JNNN from her meeting.
28. The disciplinary hearing minutes clearly indicate why she held the view that JNNN was careless. In 2014, she had lost a title deed that was in her possession.
29. The Respondent did not carry out any investigations to establish the truth before it commenced disciplinary proceedings against her that culminated in the termination of her employment.

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

30. The Respondent presented Lorraine Oyombe, its Employee Relations Specialist, to testify on its behalf. She stated that the Respondent engaged the Claimant as a Branch Manager from 21<sup>st</sup> January 2013 to 12th February 2018, when her employment was terminated.



31. The claimant's terms of service were governed by her Employment Contract, the [Employment Act](#) of 2007, the Code of Conduct, policies, and any applicable laws.
32. Article 7(d) of the Claimant's employment contract required her to comply with any rules, regulations, policies, and procedures issued by the Company, the Bank, or any Group Company from time to time. The Claimant was aware that non-compliance with the Group Code of Conduct would result in disciplinary action.
33. The witness further stated that, in accordance with the Code of Conduct, the Claimant, in her capacity as a manager, was entrusted with the responsibility to establish an appropriate tone for her team by fostering an open environment and delivering clear and effective supervision.
34. The Claimant was also responsible for implementing effective conduct, management practices, and was vital in promoting an ethical culture.
35. Sometime in 2017, the Respondent received and investigated the following allegations against the Claimant.
  - a) An allegation that the Claimant, as Branch Manager of the Nanyuki Branch, received a complaint of sexual harassment from a staff member and neglected and/or refused to act on it, contrary to the Bank's Code of Conduct requiring the treatment of colleagues fairly.
  - b) An allegation that the Claimant openly harassed a staff member, a Business Development Officer, by issuing threats to hit the staff member with a phone, and that the Claimant occasionally issued threats and harassed staff, hence creating a bad work environment for the Branch staff.
  - c) An allegation that the Claimant shared internal staff matters with clients, thereby breaching the Bank's confidentiality position by discussing the events with clients and sharing them with other staff not privy to the matters.
    - 35A. The Respondent also received a complaint from a staff member alleging that she had been unjustifiably confronted by the Claimant after a visit by the Respondent's HR department, which was tasked with investigating the earlier complaint.
36. Upon receiving the allegations against the Claimant, and in compliance with its policies and rules, the Respondent, on 14th December 2017, issued the Claimant with a show-cause letter. The letter clearly set out the allegations against the Claimant, and a copy of the Group Disciplinary Policy and Procedure was forwarded to the Claimant for her benefit.
37. The Claimant was invited to a disciplinary hearing, clearly informed of the time and place, as well as the composition of the Disciplinary Panel and her right to be accompanied by a friend/colleague from the Bank or a Trade Union representative.
38. The Disciplinary Hearing took place on 18th December 2017, and the Claimant was suspended from work on 4th January 2018 as a precautionary measure to prevent her from acting against the Respondent's policies and best interests. The suspension letter set out the conditions for the suspension. The Claimant was also called to a follow-up meeting, which was held on 11 January 2018.
39. The Disciplinary Panel, after hearing representations from the Claimant and considering the facts and evidence, decided to terminate the Claimant's employment on 12th February 2018.
40. The reasons for termination were clearly set out in the termination letter, and the Claimant was informed of her right to appeal within 10 working days from the date of the termination letter.



41. The Claimant lodged an Appeal on March 1st, 2018, which was after the deadline to appeal. That notwithstanding, the Respondent considered the Appeal and invited the Claimant to an Appeal Hearing on 22nd March 2018.
42. A separate team reviewed the Appeal, and the decision to end the Claimant's employment was confirmed.
43. The Respondent had valid reasons related to the Claimant's conduct, warranting the termination of her employment, and the due termination procedure was followed before her employment was terminated.
44. The Respondent calculated the Claimant's terminal dues and paid her in full.
45. Cross-examined by Counsel for the Claimant, the witness testified that she was not involved in the investigations into the matter, as at the material time she had not joined the Respondent's employment.
46. She reiterated that there was an allegation of sexual harassment against one TXXX, and that the Claimant, as the manager, did nothing to address the matter. There were several other complaints by JNNN against the Claimant.
47. The witness stated that colleagues who had alleged that the Claimant divulged confidential information to clients were never summoned to testify before the Disciplinary Panel. The confidential information divulged was that the Claimant told the Respondent's Clients not to deal with JNNN.
48. The witness, upon cross-examination regarding the email dated 11th December 2017, authored by Eric Okoth and addressed to Chumba Edith with four others copied, acknowledged that the email was drafted in a manner indicative of a predetermined decision. The email predated the disciplinary hearing. It stated that the Claimant was not fit for her role.
49. She further testified that the notice for the disciplinary hearing was sent to the Claimant on 14th December 2017. She was required to attend the hearing on 18th December 2017. As she was based in Nanyuki and had to travel to Nairobi for the hearing, she had only two days to prepare for the hearing.
50. The members of the Disciplinary Committee were Eric Okoth, Carol Mulee and Hanna Ongwenyi, the same people to whom Eric sent the email indicating that the Claimant was unfit for her role. None of the colleagues who had made allegations against her were present at the meeting.
51. The letter inviting her to the disciplinary hearing informed her that she would have the right to ask questions. During the disciplinary hearing, the Claimant raised concerns that those who had complained against her were not called to testify, rendering the hearing one-sided.
52. One of the complainants, JNNN, is the current Branch Manager, Nanyuki.
53. In her evidence under re-examination, the witness testified that the Respondent's Code of Conduct provides for inappropriate conduct. Discussing colleagues with customers was inappropriate conduct.
54. The witness testified further that the Claimant did not complain that the notice given to her was short.

### **Analysis and Determination**

55. I have carefully considered the pleadings, evidence and submissions by the parties, and the following issues emerge for determination;
  - a. Was the termination of the Claimant's employment fair?



- b. Is the Claimant entitled to the reliefs sought?
56. The *Employment Act* 2007 sets out two aspects that must be considered whenever the court is called upon to assess the fairness of an employee's summary dismissal or termination of their employment. The aspects are procedural fairness and the substantive justification.
57. However, it should be stated here that in considering the two aspects, the Court is not enjoined only to look at the stipulations of the forestated Act. It should consider the relevant provisions of *the Constitution* of Kenya, 2010, the international labour standards which are part of our law by virtue of Article 2(5) of *the Constitution*, and the stipulations of the Human Resource Policy and Procedure Manual of an employer, which, in my view, often become part of the terms of the employment contract.
58. Indeed, in the case of *Judiciary & 2 others V LMN* [2025] KESC 53 [KLR], the Supreme Court of Kenya, neatly stated;
- “We begin this judgment by declaring that the fairness of any disciplinary process is today a constitutional imperative, irrespective of the status of the officer involved. The process must uphold all tenets of fair administrative action under Article 47 and the right to a fair hearing under Article 50 of *the Constitution*. In addition to these constitutional safeguards, by the provisions of the *Judicial Service Act* [JSA], and the Fair Administrative Actions Act, Cap 71, the disciplinary bodies, including the Judicial Service Commission [JSC], are bound to ensure that any disciplinary action against a judge, judicial officer and staff must strictly comply with both constitutional and statutory requirements.”
59. Section 41 of the *Employment Act* provides the structure for procedural fairness. It 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. (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1)”
60. Procedural fairness comprises three components as outlined in section 41 of the *Employment Act*. First, the notification component requires the employer to inform the employee against whom action is to be taken of the intent to act and the grounds prompting such action. The second component is the hearing, whereby the employer must provide the employee with an opportunity to present their representations regarding the grounds. Accompanying this is the employee's right to be accompanied; the employer shall permit the employee to be accompanied by a colleague or union representative, if applicable, during the hearing. Finally, the employer must consider the representations made by the employee or their representative before reaching a decision on the allegations.
61. The process is mandatory. Any failure to comply with any of its tenets renders termination or summary dismissal unfair under section 45 of the Act.



62. In the case of Lydia Moraa Obara vs Tusker Mattresses Limited [2021] KEELRC 1055[KLR], the court stated:

“In sum, in considering whether the procedure was fair, the test is whether there has been substantial compliance with the overall obligation to allow an employee an opportunity to, rebut the allegations of misconduct, or offer a representation on any ground[s] that the employer has indicated to be basis for his intention to terminate the employment, and bring to the attention of the employer any relevant information before a final decision is taken.”

63. The Claimant argued that the termination of her employment was procedurally unfair. The Respondent, on the other hand, insisted that due process was followed. The Claimant stated that the invitation notice for the disciplinary hearing was served on her on 14<sup>th</sup> December 2017. Given that she had to travel from her station to Nairobi for the hearing, she had only two days to prepare. The notice was too short. Indeed, the Respondent’s witness admitted in her evidence under cross-examination that the notice constituted two days’ notice.

64. Neither the Claimant nor the Respondent presented any workplace instrument from which the notice period that ought to have been given can be discerned. In the absence of such an instrument, the question that needs to be answered is whether the two days’ notice was adequate. In the circumstances as are in this matter, whether such notice was adequate or not will always depend on the circumstances of each case.

65. Considering the Respondent’s witness’s admission that the disciplinary process against the Respondent was not preceded by any investigations, the Claimant’s involvement, and the Claimant’s evidence that at the time of invitation she had not been given any evidence by his accusers, I hold that the notice was not reasonable and adequate.

66. The Respondent contended that the Claimant didn’t protest at any point that the notice was inadequate. In my view, affording an employee due process is a constitutional imperative and a legal obligation on the employer. The fact that an employee raised no complaint doesn’t diminish the imperative or lessen the obligation.

67. In the Judiciary case [supra], the Court stated:

“..... It is immaterial that the respondent proceeded without raising an objection. Failure to comply with a mandatory timeframe renders the proceedings procedurally unfair. This is a principle of constitutional due process. The Court of Appeal in Judicial Service Commission vs Mbalu Mtava stressed the importance of compliance with due process in disciplinary matters, especially where *the Constitution* and Statute so demand..”

68. Inarguably, the Claimant was not given the opportunity to meet her accusers during the disciplinary hearing. They were not present to explain their accusations against the Claimant and to be questioned about them. During the hearing, as reflected in the minutes and admitted by the Respondent’s witness, the Claimant raised a concern about this. Apparently, the Respondent did nothing about it.

69. In my view, this deprived the disciplinary proceedings of their character as being fair. It affronted the constitutional right to a fair hearing under Article 50 of *the Constitution*, and the tenets of natural justice.

70. The Claimant was summoned for a second hearing on 16th January 2018. During the proceedings, she was confronted with allegations that she had visited the Bank premises to threaten the Bank staff,



contrary to the instructions issued in the suspension letter by the Respondent. She maintained, and the Respondent did not contest, that no prior notice was provided to inform her of the allegations against her before the hearing. This situation constitutes, in my view, an independent accusation that necessitated a formal disciplinary process in accordance with the principles of procedural fairness. Given the absence of notification, the element of proper notification was not fulfilled.

71. In the upshot, the termination of the Claimant's employment was procedurally unfair.
72. Section 43 of the Act places a duty on the employer to prove the reasons for the termination of an employee's employment in a dispute regarding the termination of an employee's employment. Section 45 of the Act imposes a further burden on the employer to prove that the reason[s] for the termination were fair and valid. Where the employer fails to discharge the first burden, no doubt, it isn't possible for him or her to discharge the second one under section 45.
73. In *Ogueno v Karunja & another* [ 2023] KEELRC 2683 [KLR], cited by Counsel for the Claimant, the Court stated:

“The Respondents, being the employer in this case, had the heaviest responsibility in terms of proof. Therefore, they had the onus of proving that the reasons leading to the Claimant's termination were fair, valid and related to his conduct, capacity and compatibility. As it is, the Respondent did not adduce evidence in whatever form or manner, hence it did not discharge its burden to that extent.”
74. I have really agonised over this. On 11<sup>th</sup> December 2017, a week before the disciplinary hearing, the Respondent's Regional Branch Manager, Eric Okoth Onguru, wrote an email addressed to Mulee Carol, Wainaina Joan and Ongwenyi Hannah, telling them;

“From this kind of occurrences, clearly we have no option but as the BM seems not fit for the role.”
75. The wording of the email, in my view, was unambiguous. A predetermined decision was expressed. And this is the Respondent's witness admitted during cross-examination. The email, in tone, was intended to influence the other members who were to sit on the Disciplinary Panel, to the prejudice of the Claimant. These exhibited bad faith and malice on the part of the Regional Manager.
76. A decision that was seemingly predetermined prior to a disciplinary hearing, influenced by unfair means on the Panellists, and motivated by malice and bad faith on the part of the initiator of the disciplinary proceedings against an employee, cannot be substantively justified under the law.
77. This Court has not lost sight of the fact that the author of the email and those to whom it was written were panelists in the disciplinary hearing.
78. It is important to note that legal burdens are discharged only where sufficient evidence is adduced, not unless there is an admission of, or the Court takes judicial notice of, the matters that need to be proved by the party bearing the burden. This Court notes that, in an attempt to substantiate the justification for the termination of the Claimant's employment, the Respondent presented a witness who was not in the Respondent's employment when the Claimant's alleged infractions were committed, and who did not participate in the disciplinary hearing. Largely, her evidence was hearsay. As such, it would not establish that the reason[s] for the termination were fair and valid.
79. Given that there were no investigations preceding the disciplinary process that led to the impugned decision to terminate the Claimant's employment, the Claimant's assertion that her woes were a





result of the bad relationship between her and the Respondent's Regional Manager, the assertion that the decision was predetermined, unfairly influenced and actuated by the malice and bad faith of the Regional Manager, and that the accusers of the Claimant were not presented during the hearing, substantive justification would only be established by evidence sufficiently presented by persons who were at the centre of the matter, namely Mr. Eric Okoth and the accusers. Inexplicably, they did not testify before this Court. As such, the assertion that the Respondent had fair and valid reason[s] to terminate the Claimant's employment was not established. Further, I draw an adverse influence that had these vital witnesses been called, their evidence would have been prejudicial to the Respondent's case. The Court of Appeal's decision in *Hema Hospital vs Wilson Makongo Marwa* [2015] eKLR is instructive.

80. By reason of the foregoing premises, I hold that the termination of the Claimant's employment was without substantive justification.

### **Whether the Claimant is entitled to the reliefs sought or any of the reliefs.**

#### **81 months' compensation for the unfair termination.**

81. The Claimant sought compensation for unfair termination, being 12 months' gross salary. This Court is alive to the fact that 12 months gross wages or salary is the maximum awardable compensation provided for under section 49 (1) (c) of the *Employment Act* 2007. Granting the relief is discretionary. Whether maximum compensation is awardable, a portion thereof, or no compensation depends on the circumstances of each case.
82. Having noted, as I have hereinabove, that the Claimant's termination was both procedurally and substantively unfair; considered the length of time he served the Respondent; found that the termination was ill-founded; concluded that the Claimant didn't contribute to the termination in any proven manner; and noted that he has not obtained any employment, I am convinced that the Claimant is entitled to compensation under the provisions of section 49[1][c] to the extent of 8 (Eight) months' gross salary, KShs. 2,680,000.

#### **ii General damages.**

83. Having awarded the Claimant compensation for the unfair termination to the extent stated above, and considering that the Claimant has not adduced any material to justify the claim for general damages, and that the *Employment Act* 2007 does not provide for general damages as a remedy for wrongful termination, I am not persuaded to grant the relief.
84. In the case of *Kenya Broadcasting Corporation v Geoffrey Wakio* [2019] eKLR, the Court observed that:

“Courts have asserted that the damages payable to the employee for unfair dismissal or termination is that which is equivalent to salary in lieu of notice and that compensation awarded to the Claimant is not awarded to punish the employer. That therefore, taking the above into consideration and the Claimants confirming receiving their dues in full (including payment in lieu of notice), and which payments were over and above the requirements in law, the damages of Kshs. 1 million sought in the submissions (but not pleaded) for each of the Claimants has no basis in law and should be disregarded by the Honourable Court.”

85. In the upshot, Judgement is hereby entered for the Claimant in the following terms;



- I. Compensation pursuant to the provisions of Section 49[1][c] of the *Employment Act*, 2007, for unfair termination, eight months' gross salary, KShs. 2,680,000.
- II. Interest on the awarded sum from the date of this Judgement till full payment.
- III. Costs of the suit.

**READ SIGNED AND DELIVERED THIS DAY OF 29<sup>TH</sup> JANUARY 2026.**

**OCHARO KEBIRA**

**JUDGE**

