



**Ong'onge v SBM Bank (Kenya) Limited (Cause E318 of 2024)
[2026] KEELRC 85 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 85 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E318 OF 2024
S RADIDO, J
JANUARY 23, 2026**

BETWEEN

EMILY AWINO ONG'ONGE CLAIMANT

AND

SBM BANK (KENYA) LIMITED RESPONDENT

JUDGMENT

1. On or around October 2021, SBM Bank (Kenya) Ltd (the Respondent) put in place a Voluntary Employment Separation Scheme. The Respondent also notified the staff of branch mergers the same month.
2. The Voluntary Employment Separation Scheme did not yield the numbers the Respondent expected, and on 6 December 2021, it issued a general notice to all the staff on intended redundancies. The Respondent notified the Ministry of Labour of the intended redundancies the same day.
3. The same day, the Respondent notified the Claimant that her role was affected with effect from 7 December 2021.
4. On 14 December 2021, the Respondent wrote to the Claimant to inform her that her last day of service would be 15 January 2022.
5. The Claimant was aggrieved, and she sued the Respondent on 23 April 2024, asserting unfair termination of employment.
6. The Respondent filed a Response and Counterclaim on 2 August 2024, and the Claimant filed a Response to the Counterclaim on 18 December 2024.
7. The Court gave directions on 12 March 2025 and 20 May 2025, with a hearing fixed for 5 November 2025.



8. When the Cause was called for hearing on 5 November 2025, the Claimant's advocate informed the Court that the Claimant was undergoing treatment for a terminal disease and that he had agreed with the Respondent that the Cause be determined in terms of Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
9. The Court directed the parties to file and exchange affidavits of evidence and submissions.
10. The Claimant filed her affidavit of evidence and submissions on 4 December 2025, and the Respondent on 21 January 2026.
11. The Court has considered the pleadings, affidavits of evidence and submissions.

Unfair termination of employment

Procedural fairness

12. Termination of employment on account of redundancy is primarily guided by section 40 of the [*Employment Act*](#).
13. The Respondent issued a general notice to the staff, followed by a specific notice dated 6 December 2022.
14. The Respondent notified the Ministry of Labour as well on 6 December 2022.
15. The notice dated 6 December 2022 notified the Claimant that the effective date was 7 December 2022. Later on, 14 December 2022, the Respondent informed the Claimant that the last working day would be 15 January 2023.
16. The notices dated 14 December 2022 appeared inconsistent with the notice dated 6 December 2022. The law required at least 30 days written notice.
17. What is of substance is that the Claimant did not stop offering her services on 7 December 2022. She worked until and was paid up to 15 December 2023.
18. The Respondent put in place a selection criterion. The parameters included disciplinary history, performance record, academic and professional qualifications and attendance. Nearly 170 employees were affected.
19. The Claimant did not suggest that the criteria were not objective, and the Court cannot fault the criteria used by the Respondent.

Valid and fair reasons

20. The Claimant assailed the validity and fairness of the termination of employment on the ground that she was targeted while on maternity leave.
21. The Respondent contended that the redundancies were informed by several factors, including its taking over Chase Bank Ltd (in Receivership) and Fidelity Commercial Bank Ltd, which resulted in overstaffing and duplicated roles.
22. The Respondent further contended that due to the evolving nature of the business and technology, it was forced to close and or merge some branches, and its attempt at the Voluntary Employment Separation Scheme did not yield the expected results.
23. The Claimant did not deny that the Respondent took over two banks and ended up with surplus staff.



24. It was not disputed that the Claimant was on maternity leave at some point during the restructuring process.
25. However, the notices to the staff were shared through email. The Claimant did not deny that she received the notices.
26. The Claimant did not establish any undue nexus between her being on maternity leave and the redundancy.
27. The Court is unable to accept her argument that she was targeted because of her pregnancy or maternity situation.
28. The Court finds that the Respondent had valid and fair reasons to declare the Claimant's position superfluous.

Counterclaim

29. The Respondent counterclaimed for outstanding loan balances owing from the Claimant, totalling Kshs 1,697,339/- as of 23 July 2024.
30. The Claimant denied owing the Respondent the outstanding loans. She rather contested the Court's jurisdiction to entertain the Counterclaim on the basis that it was a commercial dispute not envisaged under section 12 of the *Employment and Labour Relations Court Act*.
31. The Claimant cited Maisha Mapya Kenya Foundation Limited v Shikuku & Ar (2025) KEELRC 761 (KLR) (7 March 2025). In the decision, the Court found that it had no jurisdiction over the action for monies allegedly stolen by the employees in the course of employment after the termination of the employment relationship.
32. The Respondent advanced the loans to the Claimant because of the employment relationship. Without the employment relationship, the Respondent would not have advanced the staff loans to the Claimant.
33. The circumstances obtaining herein are therefore different from those in the decision cited by the Claimant. The decision rested on alleged theft by the employees.
34. Since the Claimant did not deny owing balances on the staff loan, the Court will allow the Counterclaim.
35. The delivery of this judgment has been brought forward with notice to the parties.

Conclusion and Orders

36. The Court finds no merit in the Claimant's Cause, and the same is dismissed with no order on costs.
37. The Court finds merit in the Counterclaim and enters judgment for the Respondent in the sum of Kshs 1,697,339/80 as of 23 July 2024.
38. The award to attract interest at staff rates until payment in full.
39. The Respondent to have the costs of the Counterclaim.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 23RD DAY OF JANUARY 2026.

RADIDO STEPHEN, MCI Arb



JUDGE

Appearances

For Claimant Githongori & Harrison Associates LLP

For Respondent Walker Kontos Advocates

Court Assistant Wangu

