

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET

CAUSE NO. E011 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

SOLOMON KIPKEMBOI

KIRISWO.....CLAIMANT

VERSUS

COOPERATIVE BANK OF KENYA.....

RESPONDENT

JUDGMENT

1. The Claimant instituted this suit against the Respondent through a Memorandum of Claim dated 26th February 2025 alleging that his employment was unfairly terminated.
2. The Claimant's case is that he was employed by the Respondent on 10th December 2012 as a Personal Banker, a position in which he served diligently with the highest degree of diligence and integrity. That due to his good performance, he earned promotions.
3. The Claimant avers that on 20th September 2023, he received a letter of suspension from the Respondent pending

investigations. Subsequently, on 4th October 2023 he was issued with a Notice to Show Cause, requiring him to respond to the allegations leveled against him.

4. It is the Claimant's case that on 5th October 2023, he duly responded to the Notice to Show Cause letter and thereafter, vide a letter dated 6th October 2023, the Respondent issued him with an invitation to a disciplinary meeting.
5. The Claimant avers that he attended the disciplinary hearing but no evidence arising from the alleged investigations was availed to him. He states that he was required to answer questions based on documents and statements he had not been furnished with, including a statement allegedly submitted to Audit and allegations relating to a third party named Dinah purportedly sending him cash, none of which was substantiated.
6. The Claimant further avers that on 28th October 2023, he received a letter summarily dismissing him from employment. According to the Claimant, the reasons cited in the dismissal letter were not part of the issues raised in the Notice to Show

Cause letter or the issues addressed during the disciplinary hearing.

7. The Claimant states that he lodged an appeal against the dismissal but the same was never heard. That instead, the Respondent vide a letter dated 20th November 2023 denied him the opportunity to appeal.
8. The Claimant avers that his dismissal was unlawful, unconstitutional, illegal and actuated by malice and ill will. He particularized the malice as follows: -
 - a. Sourcing and securing false evidence and/or witnesses with the sole aim of justifying a summary dismissal
 - b. Relying on hearsay to unlawfully and illegally dismiss the Claimant without a valid reason
 - c. Using doctored and fabricated allegations to incriminate the Claimant
 - d. Deliberately failing to supply the Claimant with evidence and information in support of the allegations against him

- e. Failing to provide the Claimant with adequate information and evidence sufficient to enable him to defend himself
 - f. Deliberately failing to consider or hear the Claimant's appeal, thereby infringing his rights
 - g. Placing the Claimant in an uncertain and precarious position with the intention of frustrating and discriminating against him
 - h. Knowingly and deliberately breaching the Claimant's constitutional rights to fair administrative action, access to information, fair labour practices and a fair hearing.
9. The Claimant seeks the following reliefs against the Respondent: -
- a. A declaration that the termination process was unlawful
 - b. Compensation for unlawful termination
 - c. Payment of November salary and 20 unpaid leave days
 - d. Issuance of Certificate of Service
 - e. Costs of this claim and interest.

10. In response, the Respondent filed a Statement of Response and Counterclaim dated 23rd May 2025. In its defence, the Respondent denied the Claimant's averments that his dismissal was unlawful. The Respondent further denied the Claimant's assertion that he was not provided with evidence, stating that the charges were read out during the disciplinary hearing, including particulars of suspicious transactions captured in the audit report and the mobile number to which the funds were allegedly sent.
11. The Respondent maintained that these particulars were contained in the Notice to Show Cause and as such, the disciplinary process was fair and lawful.
12. In response to the allegation that the Claimant's appeal was not heard, the Respondent avers that the appeal was considered and the outcome communicated to the Claimant vide a letter dated 20th November 2023.
13. In sum, the Respondent in denying the Claimant's claim averred that:
 - i. The Claimant breached the provisions of the Respondent's Code of Conduct and Ethics

- ii. The Claimant contravened the provisions of the Respondent's Operating Manuals and Staff Manual
- iii. The Claimant committed a breach of security relating to matters affecting the Respondent's business
- iv. The Claimant engaged in a behavior in conflict with his roles assigned by the Respondent
- v. That on various dates between October 2022 and September 2023 while working as a Personal Banker, the Claimant received kickbacks from the Respondent's customers after processing their personal loans and flexi loans to the tune of Kshs 180,030.00
- vi. That the investigations revealed that the kickbacks were sent to mobile number +254724160271 which either belonged to the Claimant directly or a proxy and was operated by the Claimant.
- vii. That the investigations further revealed transactional correspondence between the Claimant's staff current account number 01125127269600 and mobile number +254724160271 which received the funds and which transactions the Claimant could not explain.

- viii. The investigations also established that the Claimant would view the customers' accounts using his system user, skiriswo on numerous occasions immediately personal loans were disbursed with an aim of demanding kickbacks even from customers where he had not processed the facilities.
 - ix. That the Claimant's actions amounted to gross misconduct and contravened provisions of the Bank's Staff Manual and Business Code of Conduct & Ethics and put his integrity as an employee of the Bank into question as well as exposed the Bank to disrepute and possible litigation.
 - x. That the dismissal was for a valid and fair reason and that the termination was procedural.
2. The Respondent thus maintained that the prayers sought in the Claim were unmerited as the Claimant was terminated for valid reasons following due process and his terminal dues were paid less outstanding liabilities.
3. In its Counterclaim, the Respondent averred that during his employment, the Claimant applied for and was granted

various loans, which fell into arrears upon his dismissal, as follows: -

- i. Construction loan account
no. 0110127269003.....Kshs. 4,097,174.47
- ii. Personal loan account
no. 01101272696004.....Kshs. 112,830.10.
- iii. Property loan account
no. 01101272696005.....Kshs. 2,169, 137.
17.
- iv. Car loan account
no. 01101272696006..... Kshs. 1,712,059.68.
- v. Service Provider loan account
no. 01101272696002.....Kshs. 54,973.86
- vi. Overdrawn account
no. 0110127269600.....Kshs. 45,502.95.

Total.....Kshs

8,191,678.23/-

4. The Respondent avers that cumulatively, the Claimant owes the Respondent Kshs. 8,191,678.23 which he has refused to repay.
5. The Respondent asserts that unless this court intervenes, the Respondent stands to suffer an accruing financial loss to its detriment on account of the Claimant's refusal to pay.
6. Consequently, the Respondent prayed for judgment against the Claimant for:
 - a. Loan balance in the sum of Kshs. 8,191,678.23
 - b. Costs of the counterclaim
 - c. Interest on (a) and (b) above

The Evidence

7. The Claimant testified on 1st October 2025 as CW1. He adopted his recorded witness statements and relied on the documents filed in support of his case as his evidence in chief.
8. It was the Claimant's testimony that he was unfairly dismissed from employment. He testified that he had been servicing a mortgage loan granted by the Respondent

through salary deductions, which he could no longer service due to unemployment.

9. Upon cross-examination, the Claimant admitted that he was served with a Notice to Show Cause, responded to it, attended a disciplinary hearing, received a dismissal letter and lodged an appeal which was rejected. He also confirmed that he was issued with a Certificate of Service when he left the Respondent's employment.
10. He further stated that he had outstanding loans with the Respondent at the time of leaving employment.
11. The Respondent called David Wamuti, its Security Officer and Investigator, who testified as RW1. RW1 adopted his witness statement recorded on 19th June 2025 as his evidence in chief and relied on the documents filed by the Respondent in support of its case.
12. RW1 testified that investigations revealed the Claimant received money from customers after loan disbursements via a mobile number registered in the name of Paul Kibet, which was believed to have been operated by the Claimant. He further stated that the Truecaller application identified

the number as belonging to Solomon Coop Eldo. RW1 testified that the Claimant admitted knowing the number and its alleged operator, whom he stated worked at a petrol station he frequented at Moi Barracks, and that he had visited the station to fuel his vehicle during periods of fuel shortage.

13. RW1 further testified that during the investigations, he established that a staff member, Dinah Kirokich, had sent money to the said number. Upon interrogation, she stated that when she was transferred to Kakamega, she requested the Claimant's assistance in organizing transportation for her luggage and the Claimant allegedly provided her with the number in question to pay for the services rendered.
14. RW1 testified that the total amount received from several customers was Kshs. 180,000 which, according to the investigations, was sent to the number after the customers received loans from the Bank. The Respondent's witness stated that from the investigations, it was believed that these payments constituted kickbacks, contrary to the Respondent's Code of Conduct. It was the evidence of RW1

that the Claimant, when interviewed, stated that he could not recall the nature or purpose of the transactions.

15. RW1 maintained that from the investigations, it was established that the mobile number belonged to the Claimant and was registered through a proxy.
16. On cross examination by Counsel Khayo, RW1 stated that he did not contact the customers allegedly affected by the issue as he did not want to raise alarm. He also admitted that he did not interrogate Dina in the presence of the Claimant. RW1 told the court that out of the Kshs. 180,000 allegedly received Kshs. 15,370 originated from the Claimant's own account.
17. RW1 stated that while viewing customer accounts prior to loan disbursement is permissible, there was no business justification for accessing the accounts after disbursement as was the case herein.
18. RW1 further stated that no customer was contacted to confirm whether they had been solicited for kickbacks.
19. Brenda Munyuki, the Respondent's Employee Relations advisor testified as RW2 in furtherance of the Respondent's

case. She adopted her witness statement recorded on 23rd May 2025 as her evidence in chief.

20. During cross-examination, RW2 stated that the CCTV footage mentioned in the dismissal letter was an error as there was no CCTV footage. She stated that during the disciplinary hearing, the issue of CCTV footage being an error was not brought to the Claimant's attention. She stated that the Claimant's appeal raised the issue of CCTV which issue was not dealt with. RW2 however maintained that the dismissal of the Claimant was not entirely on the issue of CCTV but on the issue of conflict of interest.
21. Dinah Kirokich, the Respondent's Service Desk Auditor, testified as RW3 and adopted her witness statement dated 18th June 2025.
22. RW3 stated that she worked with the Claimant in Eldoret before she was transferred to Kakamega. She stated that the Claimant organized for her luggage transportation from Eldoret to Kakamega at her request and that the Claimant gave her the number to send the transportation costs to.

23. On cross examination, RW3 stated that when she talked with the Claimant over transportation of her luggage, she used the Claimant's number which is different from the number she sent the money to. RW3 stated that she did not personally meet the transporter and that the payment was sent to a number registered in the name of Paul Kibet.
24. At the close of the Respondent's case, parties were directed to file written submissions. The Claimant's submissions are dated 4th November 2025 while the Respondent's submissions are dated 7th November 2025.
25. By and large, the submissions reiterated the positions taken by the respective parties, and I need not repeat them.

Determination

26. Upon considering the pleadings herein, the evidence of the respective parties as well as the submissions, I find that the issues that fall for this court's determination 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 Claimant is entitled to the reliefs sought in the Statement of Claim,
- iv. Whether the Respondent is entitled to the reliefs sought in the counterclaim.

Whether the termination of the Claimant's employment was justified

- 27. 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.
- 28. The Claimant was suspended and subsequently terminated on the allegation that he solicited and received kickbacks from customers following loan disbursement, through a mobile number alleged to belong to him or to have been operated on his behalf via a proxy.
- 29. The Respondent, in the show cause letter dated 4th October 2023 issued to the Claimant, which culminated in his summary dismissal, indicated that the suspension followed an internal audit which allegedly revealed that the Claimant

had breached the Bank's Business Code of Conduct and Ethics.

30. Further, the show cause letter stated that the internal audit report revealed that the Claimant had received kickbacks from customers amounting to Kshs. 180,000 after processing personal loans. The funds were said to have been sent to a mobile number registered in the name of Paul Kibet, though the Truecaller application allegedly indicated that the number was operated by the Claimant.
31. The reasons for summary dismissal are stated in the summary dismissal letter as reproduced below:

PF:5381

27th October 2023

Solomon Kipkemoi Kiriswo

Thro'

The Manager

Uganda Road Eldoret Branch

RE: SUMMARY DISMISSAL - CONFLICT OF INTEREST & RECEIPT OF KICKBACKS FROM CUSTOMERS AT UGANDA ROAD ELDORET BRANCH

We refer to our previous correspondence on the above matter culminating in your appearance before the Staff Disciplinary Hearing Panel on 12th October 2023 and have

to inform you that your explanation did not exonerate you from the charges preferred against you. It was established that you committed a breach of security relating to matters

affecting the Banks business in that you engaged in behavior which is in conflict with your position in the Bank and breached the provisions of the Bank's Business Code of Conduct and Ethics. It was established that on various dates between October 2022 and September 2023, while working as a Personal Banker at Uganda Road Eldoret Branch, you received kickbacks from customers after processing their personal loans and flexi loans to the tune of Kshs.180,030.00. It was established that several Customers, on receiving personal loans and flexi loans which you processed would immediately send money to a mobile number

+254724160271 registered in the name of Paul Kibet which investigations revealed belonged to you either directly or through a proxy and was operated by yourself as evidenced in the CCTV footages. Further, the Bank noted various transactions between your staff current account 01125127269600 and the mobile number

+254724160271 which was used to receive the kickbacks from customers.

Your actions as above amounted to gross misconduct, contravened the provisions of the Bank's Operating Manuals, Staff Manual, Business Code of Conduct and Ethics and put your integrity to question.

Consequently, the Bank has summarily dismissed you from service with immediate effect in accordance with the provisions of Clause A6 of the Collective Bargaining Agreement. You are notified of your right of appeal within 21 days from the date herein in accordance with provisions of Clause A6 of the Collective Bargaining Agreement.

You are required to handover all Bank inventory and/or documents that are under your control, together with the staff identification card to the Manager-Uganda Road Eldoret Branch immediately upon receipt of this letter.

Note that the Loan facilities accorded to you by virtue of your status as a staff member in the Bank become repayable immediately and will start attracting interest at the prevailing Commercial rate 30 days from the date of this letter until the same is fully repaid. Also note that your staff current account number will be retained as is but will be classified as ex-staff account. In this regard, you are advised to liaise with the Head-Remedial management Department on email address ex-staffrecoveries@co-oopbank.co.ke within 30 days from the date herein to further discuss on the repayment of your outstanding liabilities below: -

<i>Car Loan</i>	<i>- Kshs. 1,359,184.28</i>
<i>House Loan</i>	<i>- Kshs. 3,167,049.17</i>
<i>Commercial Loan</i>	<i>- Kshs. 1,672,422.06</i>

Personal Loan -Kshs. 84,520.06

Any monies due to you less liabilities shall be determined and paid to you as soon as possible on receipt of the duly completed Form HRD/2.

Please note that your Certificate of Service is available for collection from this office.

Signed

SAMUEL BIRECH:

DIRECTOR

32. The Claimant, on his part, denied the allegations and averred that the Respondent's action of summarily dismissing him from employment was actuated by malice.
33. From the evidence on record, it is clear that the evidence relied upon by the Respondent to justify the dismissal of the Claimant was largely circumstantial. No customer was contacted to confirm whether the Claimant had solicited for kickbacks from them. RW1 admitted under cross-examination that customers were deliberately not contacted

so as not to “raise alarm.” This omission is significant, as the alleged kickbacks was the ground for dismissal and therefore central to the Respondent’s case.

34. Further, the evidence regarding the ownership and operation of the mobile number in question was not proved. While it was alleged that the number belonged to the Claimant or was registered through a proxy, no evidence from the service provider or the alleged registered owner was produced to conclusively establish ownership or control.
35. Section 43 of the Employment Act provides that, in a claim arising from termination of employment, the employer bears the burden of proving the reason or reasons for dismissal. Where the employer fails to discharge this burden, the termination is deemed unfair under section 45(2) of the Act.
36. In this case, the Respondent did not discharge the burden of proving that it dismissed the Claimant for a valid and fair reason. The evidence relied upon which was circumstantial evidence, did not conclusively establish gross misconduct justifying summary dismissal.

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

37. 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 unit present.”

38. It is not in dispute that the Claimant was suspended, then issued with a Notice to Show Cause which he responded to and thereafter invited and attended a disciplinary hearing.

39. The Claimant, however, faulted the disciplinary process alleging that the reasons cited in the dismissal letter were not part of the issues raised in the Notice to Show Cause letter, nor were they the issues addressed during the disciplinary hearing.

40. I have perused the show cause letter, the summary dismissal letter, and the Claimant's appeal letter. Evidently, the dismissal letter introduced the issue of CCTV footage, which was alleged to implicate the Claimant in misconduct but RW2, in her evidence stated that the reference to the CCTV footage was erroneous.
41. Although from the evidence on record, the dismissal was not solely based on the CCTV footage which arose after the disciplinary hearing, the inclusion of this is material as the dismissal letter shows a lack of clarity and consistency in the reasons communicated to the Claimant undermining the fairness of the disciplinary process. The Respondent had an opportunity to clarify if this was indeed an error, upon the Claimant raising the issue in his appeal. As the evidence stands, the reasons for dismissal in the letter of dismissal included evidence that was never brought to the attention of the Claimant during the hearing of his disciplinary case. The hearing of this case cannot be the forum for correction of the alleged "error".

42. Section 41 of the Employment Act requires that an employee be informed of the reasons for termination in a language they understand and be given an opportunity to respond. The erroneous reference to CCTV footage created a misleading impression in the dismissal letter.
43. Based on the foregoing, I find and hold that the Claimant's dismissal was not in accordance with fair procedure.

Whether the Claimant is entitled to the reliefs sought in the Statement of Claim

44. Having found that the Respondent failed to establish a valid reason and that the termination process was procedurally unfair, the Court finds that the Claimant's dismissal was unfair within the meaning of Section 45 of the Employment Act. The Claimant is therefore entitled to appropriate remedies under Section 49 of the Employment Act.
45. In his Memorandum of Claim, the Claimant prayed for several reliefs which I address in separate heads as hereunder:

i. A declaration that the termination process was unlawful

In view of the finding that the dismissal of the Claimant was not based on valid reason and that fair procedure was not followed, I make a declaration that the dismissal was unfair and therefore unlawful.

ii. Compensation for unlawful termination

Section 49(1)(c) of the Employment Act empowers the Court to award an employee compensation not exceeding twelve months' gross salary where termination is found to be unfair. I award the Claimant 12 months' salary as compensation having taken into consideration the length of his service of over 10 years, the circumstances and reasons for the termination of his employment.

iii. Payment of the Claimant's November salary and 20 unpaid leave days

The Claimant did not lead evidence through production of bank statements or any other documentary evidence

to show that his November salary was not paid or that he had accrued leave days. The Court finds that the Claimant failed to discharge the burden of proof. These claims are dismissed.

iv. Issuance of Certificate of Service

The Claimant admitted during cross examination that he was issued with a Certificate of Service upon the termination of his employment. Accordingly, this claim has no basis and is dismissed.

Whether the Respondent is entitled to the reliefs sought in the counterclaim

46. The Respondent, in its Counterclaim, sought the refund of Kshs. 8,191,678.23 being the outstanding balance of loan facilities advanced to the Claimant during the course of his employment.
47. In his testimony, the Claimant admitted that he had outstanding loan obligations at the time of his summary dismissal. He further stated that he had been unable to

service the loans following the termination of his employment due to unemployment.

48. Based on the Claimant's own admission, and there being no dispute as to the existence of the loan facilities or the outstanding balance, the Court finds that the Respondent has proved its Counterclaim on a balance of probabilities.
49. In the upshot, judgment is entered in the following terms: -
- i. A declaration that the termination of the Claimant's employment was unfair and therefore unlawful.
 - ii. The Claimant is awarded 12 months' salary as compensation for unfair termination.
 - iii. The Respondent's Counterclaim is upheld, and judgment is entered against the Claimant in respect of the outstanding loan owed to the Respondent in the sum of Kshs. 8,191,678.23.
 - iv. Each party shall bear its own costs
50. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THIS 12TH DAY OF FEBRUARY, 2026.**

M. ONYANGO

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JUDGE