



**Kelwon v Kenya Commercial Bank Limited (Cause E135 of 2024)
[2026] KEELRC 380 (KLR) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 380 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E135 OF 2024
AK NZEI, J
FEBRUARY 13, 2026**

BETWEEN

SAMSON YATICH KELWON CLAIMANT

AND

KENYA COMMERCIAL BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 20th February, 2024 and pleaded, inter-alia:-
 - a. that the Claimant joined the Respondent as a graduate trainee in June 2009, and was retained on permanent and pensionable basis after six months, and served in several branches which included Kerugoya, Isiolo and Olkalou; rising through the ranks and being given several roles.
 - b. that at the time of termination, the Claimant was in charge of Agent Banking at Olkalou Branch, supervising 84 Agents; and was earning a consolidated salary of Kshs.218,000/=.
 - c. that on 27th June, 2022, the Claimant was called by the Manager to explain the opening of accounts by one of bank's agents, Samuel Mwaura Ngogoyo, and that the Claimant explained appropriately. That the Manager later followed up with a memo, to which the Claimant responded on 28th June, 2022.
 - d. that the Claimant was issued with a letter to appear before a disciplinary meeting on 4th and 31st January, 2023, and attended the meeting on 2nd February, 2023.
 - e. that the charges levelled against the Claimant were:-
 - i. opening 214 M-Benki accounts without the consent of the individuals [involved] between 21st June, 2022 and 23rd June, 2022.



- ii. misappropriation of Kshs.185/= from the Bank Agent to facilitate opening of the M-Benki Accounts.
- iii. that the Claimant's actions exposed the bank to reputational risks.
- iv. that the Claimant used unscrupulous means to exaggerate his performance ratings.
- f. that on 1st February, 2023, the Claimant requested, via email, for the following documents to help him to prepare his defence, but the Respondent did not give him the documents. That the documents requested for was as follows:-
 - i. certified copies of correspondence with Samuel Mwaura Ngogoyo.
 - ii. certified copy of GL Dated 13th April, 2022 to terminal No. 83231121.
 - iii. Certified copy of POS delivery register .
 - iv. Certified copy of set up form for terminal No. 82506715.
 - v. Received copy of the Claimant's response form.
- g. that the charges were incorrect, based on the bank's laid down procedure on the issues raised.
- h. that the Claimant testified that the POS Machine [in issue] was in possession of the Agent at all material times.
- i. that the Claimant was issued with a termination letter on 17th February, 2023, and subsequently lodged an appeal on 23rd February, 2023, but which the Respondent never acted on, despite a demand by the Claimant's advocate; hence the suit herein.
- j. that at the time of termination, the Claimant was servicing 3 loans, which the Respondent converted to commercial rates on 28th February, 2023.
- k. that termination of the Claimant's employment was unfair in that:-
 - i. The Respondent failed to consider the Claimant's defence and responses, and to provide the Claimant with the documents requested for to assist in preparation of the Claimant's defence.
 - ii. Failure to accord the Claimant an appeal.
 - iii. Failure by the Respondent to consider the laid down bank procedures on operation of POS Machines.
 - iv. Apportioning blame to the Claimant when all facts exonerated him.
 - v. Failure to issue a certificate of service.
 - vi. Failure to accord the Claimant an opportunity to defend himself by failing to give him information and material on the charges levelled against him to enable him to mount his defence.

2. The Claimant sought the following reliefs:-

- a. A declaration that termination of his employment was unfair, unprocedural, wrongful and illegal.



- b. Compensation for unfair dismissal as per Section 49(1)(c) of the *Employment Act* Kshs.2,616,000/= or, in the alternative
 - c. Reinstatement and payment of salary from the date of termination.
 - d. Reversal of loans to staff rates.
 - e. Compensation for additional cost over and above the loans issued calculated at Kshs.5,622,154/=.
 - f. Certificate of service.
 - g. Costs of the cause.
 - h. Any further compensation as may subsequent hereto come to light during the hearing of the cause hereof.
3. Documents filed alongside the Statement of Claim were the Claimant's written witness statement dated 20th February, 2024 and a list of documents dated 19th February, 2024, listing 15 documents. The listed documents included the Claimant's payslip for January 2023, a memo dated 27th June, 2022, reply to memo dated 28th June, 2022, invitations for a disciplinary hearing dated 4th January, 2023 and 31st January, 2023 respectively, the Claimant's letter dated 1st February, 2023 requesting for documents, a disciplinary hearing form dated 2nd February, 2023, a termination letter dated 17th February, 2023, and an appeal dated 23rd February, 2023, among others.
4. The Respondent entered appearance on 12th March, 2024 and subsequently defended the suit vide a Memorandum of Response dated 28th March, 2024. The Respondent denied the Claimant's claim and further pleaded, inter alia:-
- a. that the Claimant's terms of employment were subject to a termination clause in the contract of employment which stated that the contract could be terminated by either party giving one month notice or paying one month's salary in lieu of notice.
 - b. that the Claimant's basic salary in January 2023 was Kshs.206,091/= and a net of Kshs.75,433.45/=.
 - c. that the Claimant gave an unsatisfactory explanation on the opening of the accounts in question by one of the bank's agents, necessitating further probe into the issue; which led to initiation of a disciplinary process.
 - d. that the Respondent's Olkalou Branch Manager sought explanation vide a Memo dated 27th June, 2022, to which the Claimant responded with a vague and unsatisfactory explanation.
 - e. that the Claimant was in a position to access, control and use the POS machine in his capacity as the Agent's Supervisor.
 - f. that the Claimant was issued with a termination letter dated 17th February, 2023 after being subjected to a proper disciplinary process where his response to the charges made against him was considered.
 - g. that the Claimant's conduct cast doubt on his integrity, trustworth and professionalism as a bank employee; and his termination was based on adequate evaluation of the case against him.
 - h. that the interest rates to which the Claimant's loans were formerly subjected are applicable only to persons in the Respondent's employment.



- i. that termination of the Claimant's employment was substantively and procedurally lawful, and complied with both the law and the bank's policies.
5. Documents filed alongside the Respondent's Memorandum of Response were a written witness statement of Judy Njuguna dated 4th July, 2024 and a list of documents dated 19th April, 2024; listing 21 documents. The listed documents included the Claimant's letter of employment dated 20th January, 2016, the memo dated 27th June, 2022 and the Claimant's response thereto dated 28th June, 2022; invitations to a disciplinary hearing dated 4th January, 2023 and 31st January, 2023 respectively, disciplinary meeting minutes dated 2nd February, 2023, a termination letter dated 17th February, 2023, a certificate of service dated 13th July, 2023, Employee Final Dues Advice dated 4th April, 2023, Agent POS Set Up Form approved by the Claimant, and a letter to POS technical dated 13th April, 2022, among other documents.
6. Trial opened before me on 17th October, 2025. The Claimant adopted his filed witness statement as his testimony, and produced in evidence the documents referred to in paragraph 3 of this Judgment. The Claimant further testified:-
 - a. that upon disciplinary hearing, the Respondent upheld one charge, and relied on documents which had not been supplied to the Claimant.
 - b. that the charge that was upheld was that relating to opening of M-Mbenki Accounts, which are accounts opened using either a POS Machine or by a customer using his mobile phone. That such accounts will not be active until the customer goes to the branch (bank) and activates the same by presenting his original Identity Card and being photographed.
 - c. that the POS Machine generates the account number. That the customer can only make deposits into the account, but cannot withdraw money from the account until the account is activated.
 - d. that the bank's Agent, having entered into a contract with the bank, acts on the bank's behalf, and uses a POS Machine to transact or to open accounts. That the Agent has access to the password of the POS Machine, and that no one else has access to the password except the bank's department at the head office which generates the passwords. That when a POS Machine was not in the hands of an Agent, it was in the bank's vault, to which only the Manager had access.
 - e. that an Agent who opens an account is not required to keep the customer's documents.
 - f. that the Claimant was accused of falsifying accounts opened by an Agent in order to raise his rating; and that this was not possible. That opening of accounts by Agents was just one of the 19 parameters/targets that the Claimant was supposed to meet.
 - g. that the Claimant appealed, but was not granted an opportunity to be heard (on the appeal).
 - h. that the Claimant's gross salary was Kshs.218,599/=.
7. Cross-examined, the Claimant testified:-
 - a. that Agents at the branch were under his charge.
 - b. that on 27th June, 2022, the Claimant received a memo from the Branch Manager to the effect that an Agent under his supervision had engaged in irregular transactions, to which the Claimant responded on 28th June, 2022 and stated that the Agent had opened the accounts



for random customers who were construction workers. That the Claimant got this position from the Agent.

- c. that the Claimant was never interviewed over the said accounts, and that he learnt that there had been an investigation during the disciplinary hearing.
 - d. that the Claimant was invited for a disciplinary hearing and was informed that he could bring a witness, and attended a disciplinary hearing and had a witness.
 - e. that the accounts in issue are alleged to have been opened between 22nd and 23rd June, 2022; which allegation the Claimant could not confirm.
 - f. that an Agent, Samuel Mwaura, had reported on 20th June, 2023 to the Claimant that one of the P.O.S Machines was faulty, that the Machine was repaired, and the Agent collected the same on 23rd June, 2022. That the irregular accounts were not opened using the machine while it was in the Claimant's possession.
 - g. that the Respondent arrived at a decision to terminate the Claimant's employment, and did not pay his dues, though it had indicated that the dues would be paid.
 - h. that an internal memo exhibited by the Respondent (dated 7th November, 2022) contained what the Claimant had told forensic interviewers, but the memo was not a forensic report. That he was never issued with any forensic report.
 - i. that the Claimant was not issued with a certificate of service, but saw one among the documents served by the Respondent on his lawyer.
 - j. that upon the Claimant's termination, interest on his loans was charged at market rates.
8. Re-examined, the Claimant testified:-
- a. that he had never been interviewed by any investigators or notified of any such process. That in the course of his work, people routinely came from the head office on routine audit, and that the management asked employees to co-operate with them. That the Claimant only heard of a forensic report during the disciplinary hearing.
 - b. that the routine auditors audited different departments.
 - c. that the Claimant did not have possession of the POS in issue (No. 82506715) between 21st and 23rd June, 2022. That the Claimant did not have access to the banks system, in view of his position. That it was an Agent, the bank's Branch Manager, the Operations Manager and the bank's head office who had access to the POS system.
 - d. that the Claimant was a designated clerk to the bank; and his duty was to facilitate the bank's Agents under the branch manager's supervision; and that whatever he did had to be authorised by the branch manager.
 - e. that the management can always retrieve information and know who had the POS Machine.
 - f. that the Claimant has been unable to pay back his loans because he is not in any meaningful employment, and was depended on his salary.
9. The Respondent called one witness, Judy Njuguna (RW-1), who adopted her filed witness statement as her testimony and produced in evidence the Respondent's documents referred to in paragraph 5 of this Judgment.



10. Cross-examined, RW-1 testified:-

- a. that the Claimant was earning a gross salary of Kshs.218,599/=.
- b. that the Claimant did an appeal, but was NOT given a chance to appear before the appeals committee.
- c. that the charge upheld after the disciplinary hearing was the one of opening 214 M-Benki Accounts.
- d. that the 214 M-Benki Accounts were in the Respondent's systems, and were mentioned in the show cause and termination letters; but had not been listed on the Respondent's (filed) list of documents.
- e. that the Respondent had not received any complaints from customers to the effect that they had not been aware of the accounts.
- f. that to open an M-Benki Account, one only needed a customer's identification number, and that the customer would only go to the bank if he wanted to withdraw money, at which point the customer would present his actual documents.
- g. that the accounts in issue had been opened using POS (Machine) No. 82506715 (mentioned in the termination letter) which had been allocated to Samuel Mwaura Ngogoyo, an Agent of the bank, who had not been called as a witness in the case herein.
- h. that an Agent gets commission for every account opened and funded.
- i. that Samuel Mwaura Ngogoyo signed for the aforesaid POS on 9th June, 2022 and took it.
- j. that there was a register which an Agent signed on returning the POS Machine, which was not among the documents produced in Court.
- k. that the Claimant requested to be furnished with some documents, including the POS delivery register, and that the Respondent had not given those documents.
- l. that the bank's technology department can tell who logged into the POS Machine, and that the Respondent had not produced any documents showing that it was the Claimant who logged into the POS Machine in issue.
- m. that no forensic report had been produced in Court by the Respondent, and that there was no proof (in Court) that any was given to the Claimant before the disciplinary hearing.
- n. that the bank (branch) had recommended that the Claimant be issued with a first warning. That this was before the disciplinary hearing.

11. Re-examined, RW-1 testified:-

- a. that recommendation by the branch that the Claimant be given a first warning was before the disciplinary hearing. That termination of the Claimant came after the disciplinary hearing. That it was only the disciplinary committee that was mandated to recommend the Claimant's termination.
- b. that the POS register was kept by the Universal Channel Consultant (the Claimant) because he was the Agent's Supervisor.



- c. that the Information Technology Staff of the bank confirmed in the forensic report that the Universal Channels Consultant (the Claimant) had logged into the POS Machine and opened the accounts in issue.
 - d. that the Respondent went through the grounds of appeal raised by the Claimant and did not find any grounds to necessitate the convening of an appeals committee.
 - e. that the 214 accounts opened were technology accounts, and that the customers avail their documents to the bank to necessitate actual opening of the accounts.
12. Answering a question by the Court, RW-1 testified that a record of the 214 technology accounts could be downloaded and printed. That she (RW-1) had basic expertise in information technology and was not part of the investigative team that prepared the forensic report.
13. Having considered the pleadings filed herein by both parties and evidence adduced thereon, issues that present for determination, in my view, are as follows:-
- a. Whether termination of the Claimant’s employment by the Respondent was unfair.
 - b. Whether the Claimant is entitled to the reliefs sought.
14. On the first issue, for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination. (Walter Ogal Anuro – vs – Teachers Service Commission [2013] eKLR).
15. Section 43(1) of the [Employment Act](#) provides as follows:-
- “(1) In any claim arising out of a 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.”
16. Under Section 45(2)(a) of the [Employment Act](#), a termination of employment by an employer is unfair if the employer fails to prove that the reason for the termination is valid.
17. Section 45(4)(b) of the said Act provides as follows:-
- “(4) A termination of employment shall be unfair for the purposes of this part where –
- a. . . .
 - b. it is found that in the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.”
18. The Claimant’s letter of termination from employment, dated 17th February, 2023, stated in part:-
- “ . . . The Bank has established that:-
- 1. You were responsible for the irregular opening of 214 Mbenki accounts that was done using POS Machine No. 82506715 and the account Bank Agent,



Samuel Mwaura Ngogoyo in contravention of the policy on Ethical Business Conduct.

2. The above accounts were opened using the personal information of inua jamii beneficiaries without their knowledge or consent, in contravention of the Bank Policies on Ethical Business Conduct, Staff Confidentiality and Data Privacy regulations.
3. You exposed the Bank to reputational risk by your actions in the irregular opening of the Mbenki accounts.

Your conduct has cast doubt on your integrity, trustworthiness and professionalism as a Bank employee, hence rendering your continued employment with the Bank impracticable.

In view of the above actions, the Bank has lost confidence in you, and your services are hereby terminated with effect from today's date . . .”

19. Although evidence on record shows that POS Machine No. 82506715 was on 20th June, 2022 reported by the Bank Agent (Samuel Mwaura Ngogoyo) to the Claimant as having been faulty, a fact that was confirmed by the Respondent's testimony (RW-1), no delivery register was produced in Court to show that the POS Machine was within the bank where the Claimant worked and that the Claimant himself had received it and retained it in his custody, and that he had such custody as on 21st to 23rd June, 2022 when the alleged 214 Mbenki accounts are alleged to have been opened.
20. Further, it was not demonstrated that the Claimant had access to, or knowledge of the password to the POS Machine alleged to have been used to open the 214 accounts in issue. The Claimant's evidence that the only people with access to the password were the Bank Agent allocated the machine, the Branch Manager, the Operations Manager and the Bank's Head Office department responsible for generating the passwords was not rebutted by the Respondent. No evidence was adduced by the Respondent to suggest that the Claimant had access to the POS Machine password.
21. Although RW-1 testified that the Bank's Information Technology Personnel could log into the bank's POS system and tell who had logged into the system and opened the accounts, and that information on the M-benki technology accounts could be downloaded and printed, no witness (Information Technology expert) was called by the Respondent to testify on the said accounts, and no evidence was presented in Court to demonstrate that the accounts actually existed, in the first place. No particulars of the accounts (account numbers and holders thereof) was adduced by the Claimant. None of the alleged customers in whose names the accounts had allegedly been opened was called to testify on the existence and alleged illegality of the alleged accounts.
22. Although it was alleged in the Claimant's termination letter that personal information of inua jamii beneficiaries had been used by the Claimant to open the alleged 214 M-benki accounts, such information was not presented before the Court for juxtaposing with particulars of the alleged holders of the said M-benki accounts, which particulars were also not presented in evidence.
23. It was not demonstrated that the Claimant accessed the POS system and opened those accounts. RW-1 testified that the Respondent's information technology personnel can get information on who logged into the system and opened the accounts. No such witness testified in Court, and no evidence was presented in that respect.
24. No forensic report on the alleged accounts was produced in evidence. RW-1 alleged that a reduced copy of a forensic report had been given to the Claimant during the disciplinary proceedings. No



- evidence was presented in this regard. The Claimant denied having been furnished with any forensic report.
25. The Bank Agent, Samuel Mwaura Ngogoyo, was not called as a witness by the Respondent, yet the POS Machine allocated to him by the Respondent Bank was alleged to have been used to open the impugned accounts.
 26. I return a finding that the Respondent did not prove, on a balance of probabilities, that the Claimant “was responsible for the irregular opening of 214 Mbenki accounts that was done using POS No. 82506715”; the reason given by the Respondent for terminating the Claimant’s employment. The validity of the alleged reason for terminating the Claimant’s employment was not proved. The termination was therefore substantively unfair.
 27. On procedural fairness, it was a common ground that although the Claimant wrote to the Respondent on 1st February, 2023 requesting to be furnished with documents regarding the charges levelled against him, no documents were furnished to the Claimant, and that disciplinary hearing proceeded on 2nd February, 2023 without the Claimant being furnished with the documents; and that no documents had been attached to the show cause letter.
 28. It was also a common ground that although the Claimant was given a right of appeal, and indeed appealed against the decision to terminate his employment, he was not given an opportunity to be heard on his appeal. RW-1 testified that the Respondent went through the appeal and saw no need to convene an appeals committee. This was a procedural injustice, and was unfair. The Claimant had a right to be heard on this appeal.
 29. Termination of the Claimant’s employment was procedurally unfair. There was both substantive and procedural unfairness in terminating the Claimant’s employment, and I so declare.
 30. On the second issue, I will first deal with the prayer for reinstatement. The Claimant prayed for reinstatement and payment of salary from the date of termination. Section 49(1)(a) provides that where summary dismissal or termination of employment is found to have been unfair, the employee may be reinstated and treated in all respects as if his employment had not been terminated. Section 12(3)(vii) of the *Employment and Labour Relations Court Act* provides that an order for reinstatement can only be made by the Court within three years of dismissal, subject to such conditions as the Court finds fit to impose under the circumstances contemplated under any written law.
 31. The suit herein was filed on 20th February, 2024, which was within the statutory period for filing of employment suits, and the case has now been heard and determined within three years of the Claimant’s dismissal. The only question here is whether a reinstatement order can issue, in the circumstances of the instant case.
 32. As already stated elsewhere in this Judgment, the Respondent herein, which is a commercial bank, stated as follows in the Claimant’s termination letter dated 17th February, 2023:-

“ . . . Your conduct has cast doubt on your integrity, trustworthiness and professionalism as a Bank employee, hence rendering your continued employment with the Bank impracticable.”
 33. Yes, termination of the Claimant’s employment by the Respondent Bank was unfair, but can the two work together again? Are the two still compatible? Integrity and trustworthiness are some of the major pillars that hold an employment relationship together, and in particular in a sector as sensitive as the banking sector where money is the stock in trade. The Claimant’s integrity and trustworthiness may



have been dented, in the eyes of his employer (the Respondent), by perceived facts and/or matters whose validity could not be evidentially proved by the employer, but it is evident from the wording of the termination letter that the Respondent Bank has no trust in the Claimant. When trust between an employer and an employee has broken down, for whatever reason, the two cannot be forced to stick together.

34. Unlike other contracts within the sphere of the law of contract, a contract of service between an employer and an employee creates a contractual/legal personal relationship known as employment.
35. The Court of Appeal stated as follows in the case of Kenya Revenue Authority – vs – David Mwangela [2025] KECA 262 (KLR):-

“37. . . . as correctly observed by Counsel for the Appeal, KRA is a public body bestowed with the important duty of collecting revenue for running government service which activity must attract public scrutiny. As such, employees of KRA must have the utmost trust and integrity. When trust has irretrievably broken down due to the omission of the Respondent, it would be foolhardy to force the employer and employee to stick together . . .

40. Reinstatement of an employee is not an automatic remedy in wrongful dismissal cases. It is a rarity to be ordered in exceptional circumstances rather than a common place pronouncement. The appropriateness of reinstatement depends on the specific circumstances of the case. It is a possible remedy but not always the best one. The learned Judge did not express herself on the exceptional circumstances that moved her to order for reinstatement of the Respondent.

41. We find that the learned Judge fell into error in reinstating the Respondent and failing to consider other remedies available, or to consider that the relationship between the Appellant and the Respondent was strained.”

36. Further, the Court of Appeal stated as follows in the case of Kenya Power & Lighting Company Limited – vs – Aggrey Lukorito (Civil Appeal No. 79 of 2016):-

“This court has spoken on this subject in several Judgments and we do no more than reiterate the same. In KENYA AIRWAYS LTD Case (Supra), Githinji, JA expressed himself thus:-

“27. The remedy of reinstatement is discretionary. However, the Industrial Court is required to be guided by factors stipulated in Section 49(4) of the EA which includes the practicability of reinstatement or re-engagement and the common law principle that specific performance in a contract for employment should not be offered except in very exceptional circumstances. The Court should also balance the interest of the employees with the interest of the employer.”

37. In view of the apparent breakdown of trust in the relationship between the Claimant and the Respondent, and there being no exceptional circumstances demonstrated by the Claimant in moving the Court to order his reinstatement, the prayer for reinstatement is declined.
38. On the claim for compensation for unfair dismissal, and having made a finding that the Claimant’s termination/dismissal was unfair, and taking into account the fact that the Claimant was not evidentially shown to have contributed to the termination of his employment, I award the Claimant the equivalent of eight (8) months gross salary as compensation for unfair termination of employment.



Both parties testified that the Claimant's gross salary at the time of termination was Kshs.218,599/=. The Claimant, however, pleaded that his consolidated salary was Kshs.218,000/=. Parties are bound by their pleadings. The equivalent of eight months' salary is therefore Kshs.218,000 x 8 = Kshs.1,744,000/=, which I award the Claimant.

39. On the prayer for reversal of loans to staff rates, it is apparent from the pleadings filed by both parties and the evidence adduced that both the loans advanced by the Respondent to the Claimant during his employment and the staff interest rates charged thereon were anchored in the Claimant's employment by the Respondent. Any change in the interest rates chargeable on the said loans based on a dismissal or termination of employment which the Court has already found did not meet the fairness test must attract the Court's intervention. Upward review of loan interest rates against an unfairly dismissed employee (the Claimant) will only aggravate the unfairness already visited on the Claimant, and will amount to double jeopardy on the part of the Claimant.
40. The Respondent did not tell the Court what damage and/or prejudice it will suffer if the interest charged on the staff loans advanced to the Claimant during his employment but reviewed upon the Claimant's dismissal is reverted to staff rates. I allow the prayer for reversal of interest rates charged on the loans advanced to the Claimant by the Respondent during the subsistence of the employer/employee relationship to staff rates; to the date of the Claimant's dismissal.
41. Section 12(3)(viii) of the *Employment and Labour Relations Court Act* provides that in exercise of its jurisdiction under the Act, this Court shall have power to make any other appropriate relief as the Court may deem fit to grant. The Claimant invoked that Jurisdiction in the reliefs sought in his Statement of Claim. I order that any extra amounts paid by the Claimant in interest as a result of the higher interest charged on his staff loans since the date of his dismissal be applied by the Respondent towards the ongoing repayment of the loans in issue. The Claimant testified that he was yet to pay the loans as he was not in any meaningful employment. This Court is within its jurisdiction to make the foregoing order.
42. It was stated as follows in the case of *Mulinge – vs – Co-operative Bank of Kenya Limited* [2023] KEELRC 847 (KLR):-
- “ 19. In the present case, I agree with the Claimant that the loan agreement by which he was granted the loan facilities that are the subject of this application, was inextricably tied to his employment contract. For this reason, I find and hold that the Jurisdiction to adjudicate on the terms of the loan agreement, including the applicable interest rate, resides in this Court.”
43. Further, it was stated as follows in *Abraham Nyambane Asiago – vs – Barclays Bank of Kenya Limited* [2013] eKLR:-
- “ 19. In the case before me, it is not in contest that the Claimant was granted a staff housing loan because he was an employee of the Respondent. It is also factual that the reason why the Respondent has recalled the loan is that the Claimant's employment has been terminated, which termination is contested by the Claimant. It cannot therefore be that the Employment and Labour Relations Court has no jurisdiction to adjudicate on a matter arising from the staff housing loan. . . .”
44. The Claimant testified that he was not issued with a Certificate of Service, and only saw one among the documents served on his Advocate. The Respondent did not demonstrate that it had issued the



Claimant with a Certificate of Service pursuant to Section 51(1) of the Employment Act. The prayer for issuance of a Certificate of Service is allowed.

45. In sum, and having considered written submissions filed by both parties, Judgment is hereby entered for the Claimant against the Respondent as follows:-
- a. Compensation for unfair dismissal ... Kshs.1,744,000/=.
 - b. Interest on staff loans advanced by the Respondent to the Claimant during the subsistence of the employer/employee relationship between the two shall be reverted to staff rates, and any additional interest paid as a result of higher interest rates charged since the Claimant's dismissal shall be applied towards repayment of the loans.
 - c. The Respondent shall issue the Claimant with a Certificate of Service, pursuant to Section 51(1) of the Employment Act, within thirty days of this Judgment.
46. The sum awarded herein shall be subject to PAYE (Pay as You Earn) pursuant to Section 49(2) of the Employment Act.
47. The Claimant is awarded interest on the awarded sum, to be calculated at Court rates from the date of this Judgment.
48. The Claimant is awarded costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2026

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Moses Mwangi for the Claimant

Mr. Rotich for the Respondent

