



**Ongoro v Stanbic Bank Kenya Limited (Cause E059 of 2023)
[2026] KEELRC 382 (KLR) (16 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 382 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E059 OF 2023
MN NDUMA, J
FEBRUARY 16, 2026**

BETWEEN

DOREEN LIZ ONGORO CLAIMANT

AND

STANBIC BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed amended statement of claim on 18/11/2024 against the Respondent bank seeking the following reliefs: -
 - a. A declaration that the Claimant’s employment was unlawfully and unfairly terminated as the Respondent did not give the Complainant reasonable accommodation as she had severally requested and as advised by DOSH.
 - b. A declaration that the Claimant’s right to equality and freedom from discrimination, right to dignity and the right to privacy have been violated by the Respondent contrary to the provisions of Articles 27(1), (2) and (64), Article 28 Article 31(c) and (d) and Article 41(1) of *the Constitution* as read together with sections 5 of the *Employment Act*.
 - c. An order that the Respondent pays the Claimant 12 months’ salary for unfair/unlawful termination of her employment (Kshs. 122,341.00 x 12 = Kshs. 1,486,092.00).
 - d. An order do issue that the Respondent pay the Claimant the sum of Kshs. 48,324.05 being the total amount of money illegally deducted from the Claimant’s salary in the months of September and October 2022 and March 2023.
 - e. An order do issue that the Respondent pay the Claimant the sum of Kshs. 283,681.00 being costs incurred on travel, physiotherapy sessions and other payments not covered by insurance.



- f. This Honourable Court to be pleased to adopt as a judgment of this court the work injury award of the Director of the Occupational Health and Safety Office dated 8th September 2023
 - g. An order do issue that the Respondent pay the Claimant the sum of Kshs. 2,459,260.00 being the amount assessed under the [Work Injury Benefits Act](#).
 - h. General damages, costs of the suit and interest;
 - i. Any other relief that the Honourable Court shall deem fit to issue.
2. The Claimant adopted witness statement dated 26/1/2023 and further witness statement dated 4/11/2024 as her evidence in chief. The facts of the case were adduced by CW1, that the Claimant was employed by the Respondent on 1st April 2016 in the position of Marchant Support Analyst in the Card Acquiring Department. She had a written contract of employment. CW1 stated that her job entailed moving out and about to deliver and train clients on how to use PDQ (Process Data Quickly) machines which devices merchants use to take card payments among other duties including distributing thermal rolls (receipts) to the clients. Rolls were packed in boxes with 200 pieces of rolls until clients requested that they be packed in 100-piece rolls. Therefore 80% of Claimants work was in the field and 20% in the office.
 3. The Claimant would load and unload the boxes into and from her vehicle and deliver to the clients. That PDQ machines weighed approximately 4.2 kg while a box of thermal roll weighed about 5 kilograms. Claimant says that she diligently conducted her work. However, sometimes in 2017, while in the course of duty, and riding on a motorbike, on her way to deliver PDQ machines, the Claimant was involved in an accident. She reported the accident to the employer. The Claimant was placed on crutches for two months due to a nerve injury on her left foot upwards. The employer ignored the accident and did not compensate the Claimant despite several requests.
 4. On 31/5/2022, while at work, the Claimant fell sick and was rushed to hospital. On 21st June 2022 the Claimant was admitted again. Claimant remained in hospital under medication until 26/6/2022.
 5. On 18/7/2022, tests were performed on the Claimant due to her regular sickness including severe back pain. The Claimant was given various treatment including physiotherapy and it was discovered that the Claimant had suffered Herniated Lumbar disc (4, LS-SI) dislocation.
 6. The Claimant has described the nature of her sickness extensively in the witness statement which necessitated her to request her line manager to place her on light duties on 19/8/2022 and put it in writing on 23/8/2022.
 7. On 24/8/2022, the Human Resource Manager informed the Claimant that there were no other available positions and that she would be declared redundant.
 8. The Claimant attended meetings where her medical records were exposed to strangers by the Respondent. The Claimant was on 23/1/2025 requested to resume her normal duties. The Claimant could not resume her normal duties due to her health condition and this was a meeting to constructively dismiss the Claimant from employment.
 9. On 26/10/2022 the Claimant raised a complaint with the Director of Occupational Safety and Health Services (DOSHS) and an investigation was carried out and a report issued details of which are set out under paragraphs 39 and 40 of the witness statement. The Respondent failed and or neglected to take responsibility for the work injury suffered by the Claimant and provide a more friendly work environment and compensate the Claimant for the injuries suffered as stated in the suit.



10. The employment of the Claimant was terminated by a letter dated 10/7/2023. The Claimant has not found alternative employment and has periodic bouts of pain on the lower back.
11. The DOSH on 8th September 2023 assessed the work injury at Kshs. 2,459,260.00 via DOSH Form 4 of the same date which remains unpaid to-date.

The Claimant prays for the reliefs sought.

Defence

12. The Respondent filed a statement of defence dated 24th January 2025 in which it admits the particulars of the employment under paragraphs 3,4 and 5 of the amended memorandum of claim but denies all the particulars of claim and the reliefs sought by the Claimant.
13. The Respondent called RW1 Winfred Kyalo to testify in support of the defence. In a ruling of this court dated 31/7/2026, the court adopted the award of the Director DOSH in partial settlement of this suit in the sum of Kshs. 2,459,260.00 as against the Respondent.
14. The only issue therefore pending hearing and determination by the court is whether the dismissal of the Claimant from employment of the Respondent was lawful and fair and whether the Claimant is entitled to the reliefs sought.
15. In this respect it is not in dispute that the Claimant earned a salary of Kshs. 122,341.00 as at the time of dismissal.
16. RW1 Winfred Kyalo adopted a witness statement filed on 24/1/2025 as her evidence in chief. She told the court that she was employee relation manager of the Respondent. That the Claimant was employed on 1/4/2016 as a Merchant Support Analyst in the card Acquiring Department. That her employment was subject to Respondent's internal policies, including the Human Resource Policies. That the Claimant's duties included delivering PDQ machines to clients and provided the clients with training on their use.
17. That the Claimant was bound by the Respondents Travel Guidelines which provides as follows: -

“Taxis will be used for business intra-town (travel within the same town), while car hire services will be used for inter-town travel. It is the responsibility of all employees to exercise prudence and judgment to ensure that there is no misuse of the taxi and car hire services.”
18. The Respondent had approved use of taxi services for business purposes for the Claimant. That use of motorbike was a contravention of the Respondent's transport policy. That the Claimant had in the year 2022 been charged with misuse of taxi services and found guilty.
19. The Claimant in the year 2020, contracted COVID-19 and was granted 41 days of paid sick leave in the year 2020. In 2021, the Claimant took additional sick leave from 4/3/2021 to 11/3/2021; 13/3/2021 to 19/3/2021; 19/7/2021 to 19/8/2021 amounting to 46 days of full paid sick leave.
20. That around mid-May 2022, the Claimant further proceeded on sick leave from 16/5/2022 to 18/5/2022, the Claimant fell ill and was hospitalized. The Claimant was again re-admitted on 21/6/2022 and discharged on 26/6/2020 with a follow-up appointment on 29/6/2022.
21. The Claimant thereafter proceeded on sick leave for 6 days from 30/6/2022 to 5/7/2022. The Claimant again proceeded on sick leave for 14 days from 6/7/2022 to 19/7/2022.



22. On 18/7/2022, the Claimant was admitted to the Nairobi Chest Clinic and was diagnosed with various illnesses. A breakdown of the leave days for the year 2022 taken by the Claimant were 54.
23. On 19/8/2022, Dr. Elan Ekwom recommended the Claimant be given light duties and a desk job.
24. While on leave the Claimant requested a change of role at the Respondent's Buruburu branch. The Respondent invited the Claimant to a meeting on 28/9/2022 to discuss the request and her health condition by a letter dated 22/9/2022.
25. At the meeting the Respondent explained the role of Merchant Support Analyst is a centralized position based at the head office and there was no suitable desk position available at the Buruburu branch. The Respondent informed the Claimant that in light of her doctor's recommendation it was best for her to continue recuperating at home.
26. Before the meeting, the Claimant sought another medical opinion from Prof. George Omondi Oyoo who recommended that the Claimant should be assigned tasks she would be able to carry out without undue pain
27. During the meeting on 28/9/2022, with the Claimant and her line manager, Human Resource Business Partner, Chief Whip Steward and Dr. Hafswa Mohammed, Senior Medical Officer, they focused on assessing the Claimant's fitness to work and her ability to perform duties. The Claimant was informed of the purpose of the meeting in advance and consented to the review of her medical report. There was no breach of confidentiality.
28. Following the meeting Dr. Mohammed issued a medical report on 4/10/2022 recommending that the Claimant remain on sick leave until her next review.
29. On 11/10/2022, the Respondent requested the Claimant to undergo a medical examination with its appointed medical practitioner Dr. Anne Njuguna. The report dated 14/10/2022 by Dr. Njuguna indicated that the Claimant suffered from chronic low back pain and recommended that she be assigned to a desk job requiring minimal physical exertion.
30. In October 2022, the Respondent became aware that the Claimant had filed a complaint with DOSHS. The DOSHS conducted an assessment on 26/10/2022 and issued a report recommending that the Claimant be assessed for permanent disability under *Work Injury Benefits Act* (WIBA) and be compensated accordingly.
31. The Claimant was assessed by the Bank Doctor, Dr. John Ong'echi a DOSHS designated health practitioner on 23/12/2022 and further reviewed by Dr. Ombachi R. B. consultant spine surgeon on 9/1/2023. Dr. Ombach's report dated 13/1/2023 indicated that the Claimant's lumbar spine was normal for her age and the MRI findings were in consistent with the magnitude of the pain described. Dr. Ongechi's report dated 14/1/2023, concluded that it was not possible to link the Claimant's back injuries to her work duties and the Claimant did not require surgery as previously recommended. The Claimant further served the Respondent with WIBA Form DOSH I. The Respondent reported to its insurance service provider who would pay out the WIBA compensation under its insurance policy. The insurance requested the Claimant be assessed by its medical doctor in order for it to pay out the said amount but the Claimant declined.
32. Based on the medical assessments, the Respondent requested the Claimant to resume work by a letter dated 20/1/2023. The Claimant acknowledged receipt of letter but indicated that she required time to consider the position.



34. The Respondent again wrote to the Claimant requesting her to resume her duties by an email sent on 19/12/2023. The Claimant informed the Respondent that she could not return to her designated role. Previously, she had been advised to contact the line manager for temporary re-assignment.
35. The Respondent stated that it had made every necessary effort to accommodate the Claimant aforesaid. Due to the absence of suitable position that matched the Claimant's qualifications and medical restrictions, the Respondent had no choice but to terminate her employment on 4/7/2023. The Claimant was invited to a meeting by a letter dated 27/6/2023 to discuss her incapacity. At the meeting, the Claimant admitted she had been absent for 70 days out of the 120 days of work in 2022 and it was not practical to indicate when the Claimant would be able to put in 8 hours of work a day as expected. Consequently, the Claimant's employment was terminated on 10/7/2023 due to her inability to perform duties.
36. The Claimant appealed the decision. Her appeal was considered and the decision to dismiss her was upheld by a letter dated 14/8/2023.
37. That the decision was lawful and fair and the Respondent had provided reasonable accommodation to the Claimant including in February 2023 the Respondent assigned the Claimant duties such as: -
- a. Management of credit card arrears, in conjunction with the card merchant system;
 - b. Co-ordination and follow-up on any outstanding instructions with the card operations team including spooling details on outstanding instructions, engaging card operations for any items above 5 working days and providing feedback in form of an email report to the team;
 - c. Archiving of merchant on boarding documentation, including capturing of onboarding documentation on CIMSASO and preparing original documentation for archiving and
 - d. Management of document merchants by obtaining management information on dormancy and contacting merchants to drive activation.
38. The Respondent further accommodated the Claimant by procuring an orthopedic seat, a dossut cushion and compression socks for her use as advised by her doctor and Respondent had authorized modified work hours to allow her to attend physiotherapy sessions on Mondays, Wednesdays and Fridays.
39. That due to the absence of suitable position that matched the Claimant's qualification and medical restriction the Respondent had no choice but to terminate her employment. That the Claimant was paid her final dues.
- That the suit be dismissed for lack of merit.

Determination

40. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1 and the issues for determination are: -
- a. Whether the termination of the employment of the Claimant was for a valid reason and whether the Respondent followed a fair procedure in terminating the employment.
 - b. Whether the Claimant is entitled to the reliefs sought.
41. It is not in dispute that the Claimant worked for the Respondent from 2010 to 10th July 2025 as a Merchant Support Analyst which work included travel and lifting of heavy material to take to the bank clients. From the reports placed before court by Dr. Alfred Odhiambo on 29/7/2022, the Claimant



- had developed herniated lumbar disc L4/L5 and L5/S1 which arose in the course of her work. It is not in dispute that Claimant was hospitalized and treated for prolonged periods as an outpatient until the 29th June 2023 when the Respondent summoned her to a meeting to discuss her continued absence from work due to the chronic sickness and the Respondent's capacity to accommodate the Claimant at work doing lighter duties.
42. It is the Claimant's case that the Respondent never made any genuine effort to accommodate her at work on lighter duties as recommended by Dr. Etan Ekwon, Dr. Thomas M. Adagala and Prof. Omondi Oyoo who were her personal doctors and had recommended that the Claimant be accommodated on duties that did not involve movement, carrying of material but she be placed on desk work with lighter duties.
 43. The Respondent obtained the opinion of one of its doctors, Dr. Hafswa Mohammed who arranged for the Claimant to see another Dr. John Ongechi; who was a gynecologist and not fit to examine her. Dr. Ongechi then referred the Claimant to Dr. Ombachi a spine specialist who opined that the pain experienced by the Claimant was not work related and could not be associated with alleged injury and nature of work and recommended that the Claimant returns to work. The Respondent then went ahead to recall the Claimant back to her normal work as a merchant support analyst and when the Claimant declined to return on the basis that she was not in a position to perform the field work involved in delivery of materials, the Respondent proceeded to terminate her employment on the basis that the Respondent was unable to provide the Claimant with any alternative job based on her qualifications and so the Respondent had no alternative but to let go the Claimant. Dr. James Kabora Mogire who had examined the Claimant towards the end and upon the Claimant's collapse at work on 31st May 2025 had recommended that the Claimant could return to work on as can tolerate basis.
 44. The issue to be answered is whether the Claimant has in terms of section 47(5) of the Employment Act, 2007 proved that the Respondent unreasonably and unlawfully failed to accommodate the Claimant back to her employment.
 45. The Respondent on the other hand bears the burden of justifying the decision to end the employment relationship. The Respondent stated the injury suffered by the Claimant was caused by a motorbike accident, when the Claimant without authorization from the Respondent and in the course of her employment was involved in a motor cycle accident while going to see a client. The Respondent secondly said that the Claimant had stayed out of employment while admitted in different hospitals and/or undergoing treatment as an outpatient and on sick leave for a period of 70 days out of the possible 120 days of work during the period between July 2022 to June 2023. The Respondent's testimony is that the Respondent had bent backwards to accommodate the Claimant by providing her with all necessary equipment to cause her stay at the work place including provision of an orthopedic chair inter alia, had tried to give the Claimant alternative lighter tasks but due to her continued pain and medication and the fact that the Respondent did not have alternative job that fitted the education and qualification of the Claimant and given that the Claimant declined to return to work to continue with her normal job, the Respondent was justified to terminate her employment.
 46. The court in weighing the scales of justice in this matter is cognizant of the assessment made by DOSHS and that the Claimant had been awarded compensation by the director, under Work Injury Benefit Act (WIBA) dated 8/9/2023 in the sum of Kshs. 2,459,260.00 upon determining that the Claimant had suffered work injury due to the nature of her work.
 47. Key in this consideration is whether, given the qualification of the Claimant, the nature of work the Claimant performed and the vacancies available at the Respondent's place, the Respondent had in terms of section 43 and 45 of the Employment Act, a valid reason to terminate her employment and if



this was the case, whether this could be considered as a normal termination or a redundancy in terms of section 40 of the *Employment Act*, that would guide the procedure and terminal benefits payable thereof.

48. The other consideration is whether the Respondent gave the Claimant a fair hearing in terms of section 41 of the *Employment Act*, to explain herself with a view to determine if indeed there was suitable alternative work that the Claimant could perform in her present state of health without undermining the operations of the Respondent.
49. In Nairobi ELRC No. 1983 of 2011 Kennedy Nyanguche Omwenga versus Bob Morgan Services Limited, Justice Linnet Ndolo, (as she then was) held at page 16-17 as follows:

“While employers are entitled to terminate employment on the ground that an employee is too ill to work, they must exercise due care and sensitivity. First, the employer must show support to the employee to recover and resume duty. Second, once the employer begins to consider termination, they must subject the employee to a specific medical examination aimed at establishing the employee’s ability to resume work in the foreseeable future. Treatment notes and sick off sheets do not qualify as medical reports for purposes of termination of employment on medical grounds. Third, the employer must give the employee specific notice of the impending termination. Failure to follow this procedure even where there is overwhelming evidence of an employee’s inability to work amounts to unfair termination for want of procedural fairness.

In the case before court, this procedure was clearly not followed and I therefore find the termination of the Claimant’s employment on medical grounds unfair for want of due process. Consequently, I award the Claimant the equivalent of 10 months’ salary as compensation for unfair termination of employment. I also award him one month’s salary in lieu of notice. The claim for uniform deposit is also allowed.”

50. The court has also considered the case of Juma (suing as the personal representative of Maurice Otieno Tengu – Deceased) versus Kibos Sugar and Allied Industries Ltd (Cause 239 of 2017 [2024] KEELRC 1352 (KLR 96 June 2020) (Judgment) where Hon. Baari (J) held;

“Ill health is without doubt a valid reason for termination of employment contract subject only to an employer following due process.”

51. The issue for determination in this particular case is what could be considered as reasonable procedure and/or reasonable accommodation to constitute a fair procedure before terminating an employee on grounds of ill health?

The following considerations in the court’s view are pertinent: -

- i. Inability to work due to ill health is not the doing of the employee but is for reason(s) beyond his/her control.
- ii. The employee must take all reasonable steps within the time permissible to be out of work to get well so as to return to work.
- iii. The employer must avail the employee all reasonable treatment, within the terms and conditions of employment for the employee to recover from the illness and get back to work.
- iv. The employee must obtain all relevant medical reports to enable herself and the employer make a rational decision on her ability to continue working.



- v. The employer must obtain competent independent medical reports to evaluate the medical state of the employee so as to make a rational decision on whether or not the employee has the capacity to continue working in the present position or a different position.
 - vi. All reasonable steps must be taken by the employer upon considering the medical state of the employee and recommendation by the medical officers to avail alternative employment position suitable for the employee in the present health situation.
 - vii. Whether or not the employer has alternative suitable positions to retain the employee in the present state of health.
 - viii. The productivity of the enterprise, is important consideration in determining whether to retain the employee or not.
 - ix. Where the employee must leave, consider that the failure to work was not of her own doing, and therefore consider suitable exit package
 - x. consider the contribution of the employer in the sickness of the employee and to take care of the employee's well-being post-employment.
52. These are not conclusive but should serve as a suitable guide in the conversation in terms of section 41 of the [Employment Act](#) before exiting an employee on grounds of ill health.
53. The court has considered the definition of the term redundancy under section 2 of the [Employment Act](#) 2007 as follows: -
- “ means the loss of employment, occupation, job or career by involuntary means through no fault of an employee involving termination of the employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.” (Empasis added)
54. Key consideration in determining if an exit amounts to a redundancy or is equivalent to a redundancy are therefore: -
- i. loss of employment
 - ii. by involuntary means by an employee
 - iii. constitute termination of employment at the initiative of the employer
 - iv. where the services of an employee are superfluous leading to loss of employment.
55. The claim before court has not been brought on the basis of redundancy but the above are valid considerations of a case-by-case basis especially in determination of whether the employer should pay gratuity or severance pay to the exiting sick employee.
56. In the present case, the court finds that the employer went to a great extent to get the employee treated and allowed her up to 70 days of sick leave while undergoing treatment in a period of one year. The employer considered the medical reports from the personal doctors of the Claimant. The employer instructed its own doctors to provide alternative employment. The employee invited the Claimant for discussions on what she could be able to do and actually made flexible her working hours.
57. The employer even on the last minute invited the Claimant to return to work with a view to accommodate the Claimant at the work place within the available positions. The Claimant was invited



to a meeting to discuss the options available but due to the nature of her qualifications the Respondent was limited in availing alternative jobs.

58. The court is of the considered view and finding that the Respondent adhered to the provisions of section 41, 43 and 45 of the *Employment Act*, 2007 in terminating the employment of the Claimant. The Respondent has proved on a balance of probabilities that it had a valid reason to terminate the employment of the Claimant on grounds of ill health regard having been had also on the cited case below.
59. The issue of accommodation was addressed in the case of *Munyili versus Carbacid (C0²) Limited (Cause 1860 of 2017) [2024] KEELRC 3810 (KLR) (19 August 2022) (Judgment)* citing the South African case of *Trident Steel (Pty) Ltd versus metal and Engineering Industries Bargaining Council and other (DA 14105) [2007] ZALAC 3L (1 January 2007)* where the Court of Appeal in South Africa held: -
- “In a case such as this an employer’s obligation to try and accommodate the employee does not require the employer to do more than what can reasonably be expected from it in the circumstances. If the employer is shown to have acted reasonably to try and accommodate the employee, it can be said that it has discharged its obligations...In any view appellant acted reasonably throughout the entire period. I cannot find any acceptable basis for the second Respondent to have found that there was unfairness in the Appellant’s conduct in this regard.”
60. Accordingly, the case for unlawful and unfair termination is without merit and is dismissed.
61. The Claimant was not discriminated nor was her dignity violated by the Respondent. The Respondent acted at all material time reasonably, with empathy and was accommodative of the Claimant in her ill health within the possible limits of the Respondent at the enterprise. The court ordered for the payment of the WIBA award in the sum of Kshs. 2,459,260.00 in its ruling dated 31/7/2025 and so this matter has been overtaken by events provided the respondent fully pays that award.

Refund

62. There was no justification for the Respondent to deduct the sum of Kshs. 48,344.05 from the Claimant’s salary in the month of September and October 2022 and March 2023 on account of absence. The Claimant has proved that she is entitled to a refund of the said amount and the same is awarded accordingly.
63. Costs of travel, physiotherapy sessions and other payments not covered by insurance.
64. The claim for compensation of the Claimant under WIBA was finalized by the Director WIBA. The Claimant has not proved special damages outside the award granted to her under WIBA. Accordingly, the claim for payment of special damages in respect of travel, physiotherapy sessions and other payments not covered by insurance have not been proved and fall without the jurisdiction of this case in the first instance other than in an appeal from a decision of Director WIBA. The claim has no merit and is dismissed.
65. In the final analysis judgment is entered in favour of the Claimant against the Respondent only in the sum of Kshs. 48,324.05. being a refund of deducted salary. The award is payable with interest at court rates from the date of deduction till payment in full. The rest of the claim is dismissed in its entirety with no order as to costs.

DATED AT NAIROBI THIS 9TH DAY OF FEBRUARY 2026.



MATHEWS NDUMA

JUDGE

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF
FEBRUARY 2026**

J. W. KELI

JUDGE

In the presence of:

Mr. Makau for Claimant

Mr. Bett for Respondent

Mr. Kemboi – Court Assistant

