



Taracha v Access Bank PLC (Formerly)Transnational Bank Limited (Employment and Labour Relations Cause 435 of 2016) [2026] KEELRC 374 (KLR) (16 February 2026) (Judgment)

Neutral citation: [2026] KEELRC 374 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 435 OF 2016
MN NDUMA, J
FEBRUARY 16, 2026**

BETWEEN

TABITHA NASIPWONI TARACHA CLAIMANT

AND

**ACCESS BANK PLC (FORMERLY) TRANSNATIONAL BANK
LIMITED RESPONDENT**

JUDGMENT

1. The suit is premised on amended memorandum of claim dated 14th June 2021 seeking the following reliefs against the Respondent bank, Access Bank Kenya PLC, formerly Transnational Bank Kenya Limited: -
 - i. A sum of Kshs. 1,956,000.00 being her salary of Kshs. 163,000.00 x 12 months.
 - ii. One month's salary in lieu of notice – Kshs. 163,000.00
 - iii. Leave not taken – Kshs. 163,000.00.
 - iv. Interest on the above from the time of termination to payment thereof.
 - v. Exemplary damages for unlawful, humiliating, embarrassing terminal process to be proved at the hearing hereof.
 - vi. Particulars of exemplary damages for unlawful, humiliating, embarrassing terminal process caused to the Claimant:
 - i. Loss of anticipated income being (Kshs. 163,000.00 x 12 x 24 years = 46,944,000.00) as the Claimant would have retired at 60 years old.
 - vii. Costs of this suit.



2. CW1, the Claimant adopted a witness statement dated 14/6/2021 as her evidence in chief.
3. CW1 testified that she was employed by the Respondent on 30/11/2006 as a clerk. That she was promoted to a supervisor in 2008 and had further promotions to officer grade I in 2012 and to officer grade 3 in 2016. That she worked diligently and competently at all material times.
4. The Claimant produced a pay slip for January 2016 which indicates the Claimant earned a gross salary of Kshs. 163,000.00 and the Respondent had placed her on a pension scheme and also contributed NHIF; NSSF and P.A.Y.E for her.
5. The Claimant also produced a letter of termination of employment dated 1/3/2016 vide which her employment was terminated for gross misconduct, that constituted: -
 - i. Fraudulent payments credited to her bank account and other bank customers running into millions of shillings.
 - ii. That the Claimant had freely and voluntarily accepted in writing full responsibility for the fraudulent transactions.
 - iii. That the said fraudulent transaction had violated sections 22.0 (vi); 22.0 (ix) and 22.0 (xii) of the Bank's Human Resource Policy.
6. The Claimant was to be paid terminal benefits including salary for days worked and in lieu of accrued leave days and pension benefits less outstanding liabilities with the bank.
7. The Claimant denied the charges and testified that the termination was unlawful and unfair in that the Respondent did not follow a fair procedure in arriving at the decision to summarily dismiss her from employment. That her previous good work and conduct was not taken into account and that there was not sufficient evidence that she was guilty of the fraudulent transactions that could not be actualized without full authorization of her superior officers and managers.
8. That on 9th February 2016, the Claimant was harassed, intimidated and forced to sign a statement admitting allegation of fraud without being given a chance to defend herself.
9. Under cross-examination by M/s. Odongo for the Respondent, CW1 stated that she was an ICT Officer and trained and supported users of the Respondent's ICT networks among other duties. CW1 admitted that she wrote the letter dated 9/2/2016 produced by the Respondent in which she took full responsibility and admitted the offences committed against the Respondent. Under re-examination she however, stated that she wrote the said letter under duress and was not given opportunity to appear before a disciplinary committee to defend herself. She also said she had no previous warnings. She also insisted that the reasons for termination were not valid. That her reputation was ruined and so cannot get another job.

Defence

10. The Respondent called RW1, Jayne Silamoi to testify in defence of the case. RW1 told the court that she was a Human Resource Business partner of the Respondent and adopted a witness statement dated 20/9/2022 as her evidence in chief. RW1 produced exhibits '1' to '15' in support of the defence case. The Respondent relied also on an amended statement of response.
11. RW1 stated that the Respondent appointed the firm of Deloitte and Touche to conduct a forensic investigation on specific general ledger accounts after certain anomalies had been noted in the statutory audit of December 2014. That the Audit firm made a report that indicated that the Claimant had



withdrawn cash from the bank totaling Kshs. 11,600,607.49 (eleven million, six hundred thousand, six hundred and seven and forty-nine Kenya shillings over a period of time.

12. That the Human Resource Office invited the Claimant to clarify the alleged fraudulent transaction and informed her to attend a meeting scheduled for 9/2/2016 for that purpose. That at the meeting, the Head of Finance Mr. Laban Muloka gave Claimant opportunity to explain the unauthorized transactions that she posted to her account and also withdrawals made thereof. That other officers were present at the meeting including Mr. Jeremiah Makawuondo. That the Claimant stated that she was aware of the matters raised by the Respondent and conceded that she had received irregular cash credits in her account and that she had made withdrawals from that personal account upon receiving the said deposits. RW1 stated further that the Claimant also conceded that she did not report the said transactions to the Respondent.
13. RW1 said after the meeting the Claimant submitted a hand written letter dated 9/2/2016, produced before court to the Human Resource Office which she had voluntarily written in which she confirmed that she had acted fraudulently.
14. On the same date, being 9/2/2016, the Human Resource Office explained to the Claimant that by virtue of her admission of the offences she was in breach of her employment contract and Respondent's Human Resource policy and her actions amounted to gross misconduct which was punishable by summary dismissal from employment.
15. RW1 stated that the Respondent subsequently called the Claimant to collect the letter of summary dismissal dated 1/3/2016. The Claimant was also informed that the Respondent would report her gross misconduct to the Banking Fraud Investigation Department (BFID) of the Central Bank of Kenya. The Claimant was also given a copy of the letter of admission dated 9/2/2016.
16. RW1 said that the Claimant was entitled to payment of her outstanding dues including 28 days in lieu of leave days not taken. That the Claimant did not clear with the bank and so had not been paid her final dues. That the Claimant could also collect her certificate of service upon clearance.
17. RW1 produced letter dated 29/2/2016 written to the Director Banking Fraud Investigation Department of Central Bank of Kenya by the Respondent and the letter of termination. RW1 also produced statement of accounts showing the reported fraudulent deposits and withdrawals by the Claimant from the Respondent Bank vide her personal account which is part of the Respondent's bundle from page 25 to 107 showing a total debit amount of Kshs. 11,600,607.49.
18. RW1 also produced the Respondent's Human Resource Policy dated 2014 whose provisions were referred to in her testimony.
19. Under cross-examination by Advocate Tom Wachakana for the Claimant, RW1 said Claimant had not yet received her final dues. RW1 said forensic audit found that the Claimant was guilty of performing fraudulent bank transactions through her bank account and that she had admitted the offence. RW1 said that Claimant gave a verbal explanation of the transaction at a meeting held on 9/2/2016 and that she had also written a letter explaining that she was involved in those deposits and withdrawals through her personal accounts. That she had admitted that the transactions were irregular. RW1 insisted that the Claimant misused her ICT knowledge to commit the fraudulent transactions overtime without detection by the management. RW1 denied that Claimant was coerced to write the letter of admission dated 9/2/2016 which was before court.



DETERMINATION

20. The parties filed written submission which the court has carefully considered together with the evidence adduced by CW1 and RW1 and has delineated the following issues for determination: -
 - a. Whether the Respondent had proved that it had a valid reason to summarily dismiss the claimant.
 - b. Whether the Respondent had followed a fair procedure in dismissing the Claimant.
 - c. Whether the Claimant is entitled to the reliefs sought.
21. The facts of the employment of the Claimant by the Respondent are not in dispute. The fact that a forensic audit of the Respondent bank had revealed irregular deposits and withdrawals of money totaling Kshs. 11,600,607.49 done through personal account of the Claimant is not in dispute.
22. The Claimant does not also dispute that on 9/2/2016 she wrote a letter, in her own handwriting admitting that she had deposited and withdrawn the said amounts of money irregularly through her account.
23. The Claimant however stated that she was coerced by the senior managers of the Respondent to write the said letter of admission without being given opportunity to defend herself.
24. The court finds that the Claimant was not given any notice to show cause but was verbally invited to a meeting with the senior managers in which upon being given the particulars of her misconduct, she orally explained that she had overtime deposited cash in her account and had withdrawn the same amounts overtime.
25. The court finds that an employer is obliged in the least to let the employee know the charges he/she is faced with and the consequences that are likely to befall the employee if he/she does not offer sufficient explanation of the allegations made against them by the Respondent.
26. The court also finds that in a matter like this one where the misconduct alleged by the Claimant is of such serious and gross nature, the employer is obliged to avail time to the employee to prepare for the hearing of the case they face. It is also incumbent upon the Respondent to inform the employee her rights to request any document that may assist her in her defence; the right to call any witness in her defence; the right to explain herself in writing in answer to the charges she faces and if Respondent is not satisfied with the explanation, the right to be given opportunity to explain herself at a hearing before a disciplinary committee; the Respondent must also explain to the employee, the right to be accompanied by a fellow employee or a union official in the event, she is a member of the union or pay agency fees to the union. In *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] e KLR the court stated: -

“ But even where there exists substantive ground(s) to justify a termination, the law obligates the employer to observe certain procedural strictures to ensure the upholding of the broad principles of natural justice in processing the separation between him/her and the affected employee. The employer has to: provide the employee with details of the accusations against the employee; allow the employee an opportunity to respond to the charges; allow the employee to be accompanied by a shop steward or co-employee of his choice during the process; and finally provide the employee with a decision either terminating or saving the contract of service. Where the employer fails to do the foregoing, the resultant termination is deemed unlawful. And in law, the burden of justifying the lawfulness of the termination



both in terms of whether there was a substantive ground to terminate and whether procedure for release of the employee was adhered to lies with the employer.”

27. In the present case, the Respondent admitted not to have framed the charges in a notice to show cause and did not give any notice to the Claimant to respond to the charges facing her. Instead, the Respondent summoned the Claimant to a meeting without prior notice of the purpose of the meeting and ambushed the Claimant to explain the grave charges she was faced with. The Respondent did not demonstrate how and by who the charges were presented to the Claimant at the meeting before she was given opportunity to explain herself. The Respondent did not provide any minutes recorded at the meeting but only produced the alleged letter of admission written under the hand of the Claimant.
28. The admissions made by the Claimant in the said letter are corroborated fully by the bank statements of her personal account in which large deposits were made followed by withdrawals over a long time. The Claimant did not offer any explanation as to the source of the large deposits made in her account and withdrawals apparently by her over a long period of time. The other collaborative evidence is her admitted ICT skills which enabled her to deposit, withdraw and conceal the transactions from immediate detection. It took a thorough forensic investigation to unveil the fraudulent transactions and loss to the Respondent. The factors considered together negate the possibility that the details contained in the letter were a result of coercion and intimidation and not voluntarily detailed by her and in her handwriting.
29. The evidence by the Claimant that she was coerced to sign the letter which she had authored in her own hand appear more likely untrue than the version made by the RW1 which is more credible and therefore more likely true especially in view of the collaborative evidence adduced by RW1.
30. Accordingly, the Claimant has failed to discharge the onus placed upon her in terms of section 107 and 108 of the [evidence Act](#), Cap 80 laws of Kenya that the summary dismissal for her employment was unlawful and unfair.
31. On the contrary, the Respondent has discharged the onus placed on it by section 43,45 and 47 of the [Employment Act](#), 2007 by adducing sufficient evidence that it had a valid reason to summarily dismiss the Claimant from employment.
32. Furthermore, the court finds that the admission by the Claimant mitigated the need for a full hearing upon notice which was not neatly conducted by the Respondent. Accordingly, the suit lacks merit and is dismissed.
33. The Claimant however is entitled to payment of all her terminal benefits admitted by the Respondent including payment for days worked and not paid for the month of February 2016 in the sum of Kshs. 163,000.00. in lieu of leave not taken in the sum of Kshs. 163,000.00 and provision of certificate of service upon clearance.
34. In the final analysis, the Claimant be paid by the respondent terminal benefits in the sum of Kshs. 326,000.00 being unpaid salary for the month of February 2016 and payment in lieu of 28 days leave not taken. Interest at court rates from date of filing suit till payment in full. The Claimant to be given certificate of service within 30 days of this judgment.
35. Due to the nature of this case, each party to bear their own costs to the suit.

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. Namada for claimant

Ms. Muchiri for Respondent

Mr. Kemboi – Court assistant

