



**Okoth v Kenya Commercial Bank (Employment and Labour Relations Cause E355 of 2020) [2026] KEELRC 599 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 599 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E355 OF 2020  
DKN MARETE, J  
FEBRUARY 25, 2026**

**BETWEEN**

**CLARA OKOTH ..... CLAIMANT**

**AND**

**KENYA COMMERCIAL BANK ..... RESPONDENT**

**JUDGMENT**

1. This matter originated vide a Memorandum of Claim dated 3rd August 2020. The issues in dispute are therein cited as;
  - a. Unfair and unlawful termination of employment
  - b. Breach of contractual terms and intimidation/harassment by the employer.
2. The Claimant case is that she was an employee of the Respondent since 2014 and has served it in various capacities. On 30th March 2020, she was about her daily duties as a clerk at Industrial Area Branch when a customer came to her booth seeking to withdraw Kshs. 670,000. As per the bank regulations, she did the Know Your Customer (KYC) routine before she could further process the transaction.
3. It is the Claimant’s further case that the KYC routines are as per circulars issued by the management dated 11th March 2019 and 30th October 2019. This routine involves obtaining the following information from the customer seeking to make large cash transactions. These are, reasons why the large cash deposits/withdrawals cannot be done through electronic means, source of funds, purpose of the transaction, physical location of the beneficiary, and beneficiary ID number. Other necessary information required is the depositor’s full name and ID number. In the instant case, the Claimant posits that she followed the laid down guidelines and prepared requisite documentation before releasing the money to the customer.



4. The Claimant avers that the Respondent's circulars on KYC stipulated that for any transactions exceeding Kshs. 1,000,000.00 in addition to the KYC requirements. Further, the customer ought to fill the Large Cash Transaction Declaration Form (LCTDF).
5. In the instant transaction and for expediency purposes, the customer filled the LCDTF despite the fact that the amount that the customer sought to withdraw was way below the threshold of Kshs. 1,000,000.00
6. She prays as follows;
  - a. A declaration do issue that the letter of termination of the Claimant's employment was unfair and that the same amounts to unfair labour practices.
  - b. An order do issue that the termination of the Claimant's employment was in contravention of the CBA dated the 10<sup>th</sup> day of September, 2019 and therefore null and void.
  - c. An order do issue permanently restraining the Respondent from harassing, victimizing or any other way interfering with the employment of the Claimant on account of the issues raised herein.
  - d. Damages for unlawful and unfair termination of employment.
  - e. Costs of this Suit and interest thereto.
  - f. Any other award that the court may deem fit.
7. The Respondent's case is a denial of the claim. It is their case that the Claimant's employment was lawfully terminated with effect from 29th June 2020, following the due process of the law as set out. Save as admitted, all other allegations in the Memorandum of Claim are expressly denied.
8. The Respondent's other case is that it is a regulated institution under the oversight of the Central Bank of Kenya and that in compliance with regulatory obligations, it had formulated and implemented Guidelines to ensure adherence to the [Proceeds of Crime and Anti-Money Laundering Act](#) and the Know Your Customer (KYC) Regulations. These Guidelines were reinforced through internal circulars and staff human resource policies, all of which were duly communicated and accessible to employees. Employees were fully aware that non-compliance would expose the Respondent to regulatory sanctions.
9. The Respondent states that on 30th March 2020, the Claimant breached these express guidelines by processing a transaction of KES 1,140,000/= from Customer Account Number 11490223888 in violation of the procedures applicable to transactions exceeding KES 1 million. This violation of guidelines was admitted in a letter dated 6th April 2020. The transaction processing portal used by bank tellers enabled confirmation of recent transactions in any given account. In the same letter, the Claimant admitted negligence.
10. The Respondent states that it conducted investigations and the Claimant was notified of the allegations, accorded a reasonable opportunity to respond, granted a fair hearing, and that termination followed due process in compliance with the contract of employment and the law. It was the Respondent's case that the operative Collective Bargaining Agreement expressly provided for termination of employment in circumstances including breach of security affecting the employer's business, negligent or improper performance of duties, disobedience of lawful orders, and commission of a third offence within twelve months after issuance of two warning letters. Such breach of anti-



money laundering and KYC guidelines exposed the Respondent to regulatory risk and therefore constituted a security breach.

11. The Respondent further states that the Claimant had, in her letter of 6th April 2020 admitted failure to perform her duties carefully and properly and that by disregarding the guidelines she disobeyed lawful orders it was her duty to obey. Additionally, prior to termination, the Claimant had been issued with warning letters dated 27th August 2019, 2nd December 2019 and 2nd April 2020.
12. The Respondent admitted that the Claimant lodged an appeal against the termination by a letter dated 2nd July 2020 which appeal was considered on merit and dismissed on 21st July 2020 for lack of new or compelling grounds.
13. It is the Respondent's case that the Claimant is estopped, both in law and fact, from taking inconsistent positions, having expressly admitted wrongdoing, and was guilty of approbating and reprobating. The claim is therefore frivolous, vexatious, scandalous, unfounded and an abuse of the court process and urged that it be dismissed with costs. The Respondent further gave notice that allegations of harassment, victimization and interference with employment were fatally defective for want of particulars and substantiation and would be challenged at the appropriate time.
14. This matter came to Court variously until the 10th day of March 2025 when it was heard inter parties with the parties reiterating their respective cases.
15. The issues for determination therefore are;
  1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
  2. Whether the Claimant is entitled to the reliefs sought.
  3. Who bears the costs of this cause.
16. The 1st issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in their written submissions dated 27th March 2025 submits that her termination from employment was substantively unjustified, procedurally unfair, and therefore unlawful. She urged the Court to find in her favour and grant the reliefs sought in the Memorandum of Claim.
17. On substantive justification, the Claimant sought to rely on the authority of *Chumbe v National Bank of Kenya Limited* [2022] KEELRC 1113 (KLR): where the court provided thus;

Substantive justification entails proof of reasons that led to the termination of an employee. The same is addressed under Section 43(1) of the *Employment Act* (hereinafter the Act), which requires an employer to prove reasons for termination, and in absence thereof, such termination is deemed to be unfair. The reason for termination of contract is the matter that the employer at the time of termination of the contract, genuinely believed to exist and which caused the employer to terminate the services of the employee.....  
Simply put, the substance of the allegations against the claimant was not proved hence the respondent did not substantiate before court, the reasons for which it terminated his employment. In the end, this court finds that the respondent did not produce sufficient evidence to discharge its legal burden by proving the reasons for which the claimant's employment was terminated."

18. The Claimant submitted that here, the substance of the allegations levelled against her was never proved. The Respondent failed to place before the Court sufficient evidence to substantiate the reasons



upon which it relied to terminate her employment. Consequently, the Respondent did not discharge the statutory burden imposed by Section 43 of the *Employment Act* 2007. The Claimant submitted that this failure rendered the termination substantively unfair, as the Respondent neither proved the alleged misconduct nor justified the dismissal in accordance with the law. In the circumstances of non-compliance with Section 43 of the *Employment Act*, and that in the absence of proof of valid reasons for termination, the termination must be deemed unfair.

19. On procedural fairness, the Claimant submitted that her employment was governed by a Collective Bargaining Agreement (CBA), and specifically relied on Clause A5(b) thereof. This clause expressly and unequivocally sets out the circumstances under which an employee may be summarily dismissed; it allows dismissal only after due investigation and where an employee is found guilty of specific offences, including the use of abusive or insulting language towards a person in authority, absence from duty without lawful cause, neglecting or improperly performing assigned duties, or refusing to obey lawful orders.
20. The Claimant again submitted that Clause A5(b) further provides that dismissal can only be effected after an employee has received two (2) written warnings, and that dismissal may only follow upon commission of a third offence within a twelve (12) month period. She emphasized that the twelve-month period is critical, and that only offences committed within that period and preceded by two valid written warnings, can justify dismissal. The clause also guarantees the employee the right to a due investigation prior to any determination of guilt.
21. The Claimant submitted that the Respondent's disciplinary framework under Clause A5(b) of the CBA is as a structured and mandatory process under which dismissal is only lawful where three specific offences are committed within twelve months, after two written warnings, and following due investigations.
22. It is the Claimant's other submission that the Respondent violated Clause A5(b) of the CBA. During cross-examination, the Respondent's witness admitted that the first warning letter dated 2nd December 2019 was not served upon her. This was evidenced by the absence of her acknowledgment or signature on that warning letter, unlike the other warning letters. As a result, there were not two valid warning letters within any twelve-month period preceding her dismissal. The only valid warning letter was dated 2nd April 2020 and therefore the threshold for dismissal under the CBA was not met.
23. The Claimant further submitted that despite this, the Respondent improperly lumped together all alleged warning letters and treated them jointly and severally as serious infractions warranting summary dismissal, contrary to the express terms of Clause A5(b) of the CBA. The Claimant avers that no due investigations were conducted prior to her dismissal. This omission, she argued, constituted a further violation of the CBA and independently rendered the termination procedurally unfair.
24. On the issue of the Respondent's allegations that her conduct exposed it to regulatory sanctions, the Claimant submitted that the Respondent failed to produce any evidence demonstrating that it was penalized by the Central Bank of Kenya for failing to file a Suspicious Activity Report in respect of the transaction conducted on 30th March 2020. In the absence of such evidence, the Respondent's justification based on regulatory risk was speculative and unsupported.
25. In summation, the Claimant submits that overall, the Respondent failed to establish valid and fair reasons for termination as required under Section 43 of the *Employment Act*, 2007 and further failed to comply with the mandatory disciplinary procedure set out in Clause A5(b) of the CBA. The Claimant therefore submitted that her termination was both substantively unjustified and procedurally unfair within the meaning of Sections 43 and 45 of the *Employment Act* above cited and urged the Court to enter judgment in her favour as prayed in the Memorandum of Claim.



26. The Respondent in rebuttal submitted that the termination of the Claimant was not in contravention of Clause 5(b) of the Collective Bargaining Agreement. The dispute in this matter arises primarily from an alleged breach of Clause 5(b). This addresses dismissal following the issuance of two written warning letters, with dismissal triggered upon a third offence occurring within twelve months of the previous warnings.
27. It is the Respondent's further submission that Clause 5(d) of the CBA provides for notice of termination, while Clause 5(b) provides for dismissal after warnings. The Respondent invited the Court to distinguish between termination and dismissal, noting that the Claimant's separation was by way of termination and not summary dismissal. In support of this distinction, the Respondent relied on the Court of Appeal in authority of *Bamburi Cement Limited v William Kilonzi* [2016] KECA 546 (KLR) where the Court observed as follows;

The *Employment Act*, 2007 makes a distinction between termination and dismissal. It distinguishes unfair termination and wrongful dismissal.”

28. The Respondent's case is that the Claimant had received four warning letters: 4th March 2019, 27th August 2019, 2nd December 2019, and 2nd April 2020, the last of which constituted the third warning letter preceding termination on 29th June 2020. The two warnings immediately preceded the third, thereby satisfying the requirements under Clause 5(b) of the CBA.
29. It was further submitted that even if the Claimant denied receiving the warning letters, evidence of service through demand letters and acknowledgement by the Claimant refuted any such denial. Therefore, the Claimant's allegation that the Respondent failed to comply with clause 5b of the CBA fails and bearing in mind that the Claim by the Claimant is grounded on alleged non-compliance with clause 5b of the CBA, the entire claim for unlawful and unfair termination flatly fails.
30. It is the Respondent's submission that the termination was fair and lawful. The Claimant's duties required a high degree of integrity, professionalism and compliance with regulatory obligations. This included the Proceeds of Crime and Anti-Money Laundering Regulations. The Claimant negligently processed a second cash withdrawal transaction of Kshs 1,140,000.00 on 30th March 2020 without obtaining or submitting the required supporting documentation. This was in a split transaction of Ksh670,000.00 and Ksh470,000.00. This failure denied the Bank the opportunity to file a Suspicious Activity Report under the AML guidelines thereby exposing the Bank to potential regulatory penalties of up to Kshs five (5) million.
31. It was further submitted that the Claimant's negligence, admitted in a letter dated 6th April 2020, cast doubt on her integrity and professionalism and resulted in a loss of confidence by the Respondent in her ability to perform her duties. The Respondent relied on Section 43(2) of the *Employment Act*, 2007 which provides that the reason or reasons for termination are those genuinely believed to exist by the employer at the time of termination, and which caused the employer to terminate the employee's services.
32. The Respondent submitted that the “range of reasonable responses” test applies in determining the validity of the employer's reasons, and the Claimant's conduct exposed the bank to compliance risk therefore justifying the termination. It sought on the authority of *Kenya Revenue Authority v Reuvel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR) which provides thus;

The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist, causing if to terminate the employee's services.”



33. It was submitted that even if no financial loss was incurred, the Claimant's negligence alone constituted a breach of her duties and justified termination.
34. The Respondent's other submission is that it employed the tenets of procedural fairness in the termination of the employment of the Claimant. They were issued with a memo dated 31st March 2020 requesting an explanation for the transaction and to show cause why disciplinary action should not be taken. The Claimant responded on 6th April 2020, admitting to negligence. She was thereafter issued with a notice dated 17th June 2020, outlining charges and inviting her to a disciplinary hearing on 23rd June 2020, at which she was represented by one, Bryne Omboga Isoe. The disciplinary hearing was conducted fairly and the minutes of proceedings were signed by both the Claimant and her representative. The Claimant's appeal was subsequently considered and responded to on 21st July 2020.
35. The Respondent in the penultimate submitted that the Claimant in toto failed to adduce evidence of any procedural irregularity. The documents in issue such as the LCTDF form were not produced during the hearing for consideration by the Respondent and any possible cross examination. They only surfaced at the submission stage of these proceedings. Submissions cannot take the place of evidence and as a result, the alleged form does not form part of the evidence produced in Court. This is supported by the celebrated authority of *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] eKLR where the Court of Appeal observed as follows:
- Submissions cannot take the place of evidence. The 1<sup>st</sup> respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented. In any event all the 1<sup>st</sup> respondent would claim and prove as loss could only relate to the shares in the companies and not the properties of the companies. And even that he did not do."
36. It was submitted that the requirement under the said LCTDF form is that only one (1) form is to be used per transaction. It is not disputed that the Claimant carried out two distinct transactions and both transactions are recorded on the said single form. This was an outright act of negligence on the part of the Claimant and contrary to the operational guidelines by the Respondent.
37. The Respondent's case overwhelms that of the Claimant. With a litany of failures and massive negligence on the part of the Claimant in the performance of her duties, she rendered herself good material for termination of employment. This is expressed throughout the Respondent's case and submissions. I therefore find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.
38. The 2nd issue for determination is whether the Claimant is entitled to the reliefs sought. She is not. Having lost on a case of unlawful termination of employment, she becomes disentitled to the reliefs sought.
39. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF FEBRUARY 2026.**

**D. K. NJAGI MARETE**

**JUDGE**



Appearances:

Miss Nyaga holding brief for Mr. Okatch instructed by Okatch & Partners Advocates for the Claimant

Ms. Wangui instructed by KM&M Advocates for the Respondent

