

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
ELRC NO. E073 OF 2023

(Before D. K. N. Marete)

MAUREEN AWUOR OGINA.....CLAIMANT

VERSUS

STANDARD CHARTERED BANK (K) LIMITED.....RESPONDENT

JUDGMENT

This matter came by way of a Claimant’s Statement of Claim dated 2nd February, 2023. The issue in dispute is herein cited as;

Unfair/Unlawful termination of employment of Maureen Awuor Ogina

The Respondent in a Memorandum of Reply dated 30th November, 2023 denies the claim and prays that it be dismissed with costs.

The Claimant’s case is that she was employed by the Respondent back on 23rd September, 2011 as an intern working in the Human Resources Department. Her role was that of interviewing employees who had left the bank for various reasons with a view to establishing why they did. This employment was on a fixed-term contract for six months with effect from 18th November, 2011 to 17th May, 2012.

The claimant’s further case is that the fixed-term contract was later renewed continually until 15th October, 2012 when she was placed on permanent and pensionable and employment. Thereafter, the claimant worked in several branches including T-Mall, Eastleigh, Green Span and Galeria. She

was later transferred to Kisumu branch in the year 2014 and again to Bungoma, Kericho and then back to Nairobi's Contact Centre on 23rd December 2019 as a Contact Centre Agent.

The Claimant's other case is that as a Contact Centre Agent their roles were receiving customer calls, from Kenya and Uganda, cross selling bank's products both in personal and business space and any other duties including service requests examples being Activation of both debit and credit cards. The claimant would also do digital education to the respondent's clients, when called upon so to do. She worked in this department until 2nd August, 2022 when she was unfairly and unlawfully terminated from the bank's employment after going through a disciplinary hearing process.

The claimant avers that their assignment as a Contact Centre Agent was to receive calls from customer who had issues with bank's service and or who wanted assistance for the bank in regard to customer service. She especially dealt with customers from Kenya and Uganda. This continued until 28th April, 2022 and 30th April, 2022 when the claimant was accused of being unpleasant and unhelpful to the bank's customers who contacted the call Centre looking for assistance

The Claimant was further accused of making disrespectful comments about a client by saying *"hawa wa UG wanakuanga na vichwa maji"* as the audio recording captured. This comment was allegedly made on 22 May 2022. The Respondent thereon advised the claimant that the review committee team will determine the outcome of the disciplinary hearing and if she would be found to have committed the misconduct, the disciplinary review team may decide to issue the claimant with a verbal warning (document via email) a first written warning, a final written warning or dismiss her from employment with notice or payment in lieu of notice APPS

That the claimant attended the disciplinary hearing meeting on Wednesday 15 June, 2022 at 1400 hours. That claimant's attempts to secure a representative during the hearing was futile since the respondent bank has no shop stewards and any other employee, she approached to represent her, declined to accompany her for fear of victimization. The claimant's services were ultimately terminated on 2nd August, 2022 for reasons that;

- (i) On 28th April, 2022 and on 30th April, 2022 you were unpleasant and unhelpful to SCB clients who contacted the call Centre specifically, you accused one client of being hateful and hang up on the client without solving their concern. In another call, you were unempathetic to the client and did not offer a solution for their concerns.*
- (ii) On 22 May, 2022 you were heard making disrespectful comments about a client by saying "hawa wa UG wanakuanga vichwa maji" APP6.*

She prays thus;

- 1. That it is the claimant's prayers that the Honourable Court do find and declare that the termination of the grievant herein was unfair and unlawful and therefore invalid.*
- 2. That the claimant prays to the Honorable Court to order for the unconditional reinstatement or re-engagement of the grievant back to her position in the bank without loss of her employment benefits and seniority in service and status.*
- 3. That the claimant further prays to the Honourable Court to order for the payment of 12 month's salaries of Ksh.183,502x12-Ksh2,202,024 (two million two hundred two thousand twenty-four only) to the grievant as compensation for having suffered unfair/unlawful loss of employment.*
- 4. That claimant again pray to the Honourable Court to order for payment of all the salaries and allowances of Ksh.2,206,128 (two million two hundred six thousand*

one hundred twenty-eight only) that the grievant has so far lost as a result of the unfair/ unlawful loss of employment.

5. *That claimant finally pray for payment of damages of Ksh.1,500,000 (one million five hundred thousand only) for having suffered unfair loss of livelihood (food, clothing, medicine and shelter) and inability to find alternative employment).*
6. *Costs of this suit.*

The Respondent case is that the claimant was lawfully terminated from employment after being taken through the requisite disciplinary process. They deny that there was a conciliation process by the Ministry of Labour but co-operated and attended all session before the conciliation. They posit that the Conciliation proceeded to completion and a Trade Dispute Report dated 25th January 2023 was issued by the Conciliator. The Respondent, by way of a letter dated 15 February 2023 to the Conciliator, expressed its disagreement with the recommendation for the Claimant's reinstatement and maintained that the termination was lawful and justified. The Claimant is therefore put to strict proof of the averments contained in the said paragraph.

The Respondent in furtherance of their case avers that whereas there was indeed a call from the Respondent's client as presented by the Claimant, this was not handled with the level of skill and professionalism expected of the officer which fact was accepted and admitted during the disciplinary hearing.

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 relief sought.

3. Who bears the costs of this cause?

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 submission dated 28th August, 2025 reiterate their case and submit a case of unlawful termination of employment.

The Claimant further submits that BIFU (Banking Insurance and Finance Union) had a subsisting CBA with effective 1st March, 2022 to 28th February, 2023 where the Respondent is listed as a member. The term of the CBA forms part of the employment contract of the Claimant. It is the Claimant's case that before the disciplinary hearing held on 15th June, 2022, they were neither served with a notice to show cause nor supplied with any statement of complains from her accusers. Again, Lorraine Oyombe, Anastacia Makeku and Leila Mwaura prosecuted the complains on behalf of the Respondent and also sat at the disciplinary committee. The Claimant posits that despite making unsupported allegations against the Claimant and in disregard of her past disciplinary record, the Respondent administered the most severe of punishment: dismissal from employment.

In further buttressing a case of unfair, unlawful and unprocedural termination of employment the Claimant seeks to rely on the provisions of section 45(1) of the Employment Act, 2007 which provides the standard requirement for a fair termination of employment as follows;

- (i) *The reason for termination must be valid.*
- (ii) *The reason for termination must be fair and*
- (iii) *The procedure followed in terminating the employment of the grievant must be fair.*

This is coupled with the provision of section 41 of the Act that set the standard for fair procedure as follows;

- (i) *An explanation of the grounds of termination in a language understood by the employees.*
- (ii) *The reason for which the employer is considering termination.*
- (iii) *Entitlement of an employee to the presence of another employee of their choice when the explanation of grounds of termination is made.*
- (iv) *Hearing and considering any presentation by the employee and the person chosen by the employee.*

On this, the Claimant further relied on the authority of **Postal Corporation of Kenya v. Andrew K. Tanui [2019] eKLR** where the court emphasized on the need to comply with the minimum standards of fair procedure as espoused under section 41 above.

The Claimant's case and submission is that they learnt of the reasons for termination through the letter of termination dated 2nd August, 2022. Notice to show cause setting out the allegations against the Claimant had not been served and therefore the Respondent merely relied on a invitation to disciplinary hearing referenced notification of disciplinary review hearing dated 9th June, 2022. It is at this point that the Claimant first interacted with the accusation levelled against her. She was accused of being unpleasant and unhelpful to the bank client who had contacted the call centre. This was included allegations of being heard making disrespectful comments about a client.

The Claimant's further case is that the Respondent concluded from onset before hearing the Claimant that her conduct during work and comments made by the Claimant are in violation of clause 9 of the Code of Conduct that requires use of care, skill and diligence during conduct of her duties or upon delegation thereof. Further, it is the Respondent's contention that the Claimant allegedly breached clause 18 of code of conduct that requires that complaints be handed in a friendly, fast, fair and effective way. These conclusions were arrived at by the disciplinary

committee without complaint from any customer yet they relate to unsatisfactory support of a customer of the bank. The Claimant therefore concludes that they were condemned unheard and that the hearing was just casual and an exercise to comply with formalities.

Another limb of the Claimant's submission is that the two charges were premised on audio evidence that was supplied to the Claimant. This audio recording formed the basis of the disciplinary proceedings. This evidence was electronic in nature and must therefore meet the requirements of section 106B (1) of the Evidence Act, Chapter 80, Laws of Kenya. On this the claimant's chose to rely on the authority of **Republic vs Barisa Wayu Matuguda [2011] eKLR** where the court observed that:

"... any information stored in a computer... which is then printed or copied shall be treated just like documentary evidence and will be admissible as evidence without the production of the original. However, section 1068 also provides that such electronic evidence will only be admissible if the conditions laid out in that provision are satisfied."

"This provision makes it abundantly clear that for electronic evidence to be deemed admissible it must be accompanied by a certificate in terms of section 1068 (4). Such certificate must in terms of 5.1068 (4) (d) be signed by a person holding a responsible position with respect to the management."

It is the Claimant's case and submission that Leila Mwaura's evidence at trial that Roselyn Mutunga had received and processed complains regarding the Claimants but had not been called to court to corroborate this statement. As a team leader, Voice and Virtual, she or a designate should have produced the recordings in satiation of section 106B(4)(d) of the Evidence Act. The certificate of authentication by Stacie Manani, an advocate from the Respondent's advocate is fatally defective for noncompliance with section 106B (4)(d) and therefore such recordings are

inadmissible. This is because the certificate of authentication does not disclose the source of the recording. She was not a staff of the Respondent bank to have primary access to the recording and therefore refers to her computer in her chambers used for her routine work. This disregards the provision of section 106B of the Evidence Act above.

Other aspects of the Claimant's submission are that the Respondent purports that the Claimant admitted all the charges levelled against them which is denied. This is supported by a perusal of the disciplinary hearing minutes which establish that an explanation was provided for all charges and the Respondent chose not to take this into consideration.

The Claimant further submit that the charge of violation of clauses 9 and 18 of the Code of Conduct required corroboration by way of a complains from a customer/client. These charges are that;

- i. *On diverse dates, she was accused of being unpleasant and unhelpful Standard Chartered Bank clients. Specifically, she was hateful and hanged up on a client without solving the problem. In addition, she unempathetic to the client and did not offer solutions to the problem.*
- ii. *Secondly, she made disrespectful comments about a client.*

It is their submission that these charges as presented lacked sufficient details to enable the Claimant give a satisfactory answer. They fall short of the threshold set out by section 50 (2)(b) of the Constitution of Kenya, 2010. They loudly raised the question as to who was the Claimant's accuser(s.)

The Claimant in further submission raised the issue of disciplinary committee having been constituted in violation of the rules of natural justice. This is as follows;

35. *Fair hearing in principle incorporates rules of natural justice which includes the concept of Audi Alteram partem (hear the other side or no one to be condemned unheard) and nemo judex in causa sua (no man shall be a judge in own cause) otherwise referred to as rule against bias.*
36. *In a concurring opinion. Njoki Ndungu, SCJ in the decision of Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others Petition No 18 of 2014 as consolidated with Petition No 20 of 2014 [2014] eXLR elaborated on the right to fair hearing as follows:*

Fair hearing, in principle incorporates the rules of natural justice, which includes the concept of audi alteram partem (hear the other side or no one is to be condemned unheard) and nemo judex in causa sua (no man shall judge his own case) otherwise referred to as the rule against bias. Peter Kaluma, Judicial. Review: Law, Procedure and Practice 2nd Edition (Nairobi: 2009) at page 195, notes that the rules of natural justice generally refer to procedural fairness in decision making. Further he analyses the two mentioned concepts of the rules of natural justice and states [at pages 176 and 177] that it is the duty of the courts, when dealing with individual cases, to determine whether indeed the rules of natural justice have been violated and noting that "although the necessity of hearing is well established, its scope and contents remain unsettled."

This is because Leila Mwaura and Lorraine Oyombe who were witnesses of the Respondent before this court also constituted the disciplinary committee hearing where no witnesses or complainant appeared against the Claimant. A look at the email correspondences and minutes of the proceedings shows that the Claimant was unduly influenced into signing the minutes of the disciplinary hearing. Moreover, this hearing was an interrogation and not an impartial body set out to determine a disciplinary case. This is a situation where the Claimant's accusers also sat at the disciplinary hearing. All this, coupled with the fact that no Notice to show cause letter or any

compliance with section 41 of the Employment Act, 2007 renders the termination wrongful, unfair, unprocedural and unlawful.

The Respondent in their written submission dated 25th September, 2025 elaborately brings out and sustains a case of lawful termination of employment but this is overshadowed by that of the Claimant. This is because the Claimant has through and through demonstrated the following anomalies in the case of the termination of their employment. These are;

- (i) No Notice to show cause was issued to the Claimant.
- (ii) The Claimant first heard of the accusation against her through the letter of invitation to the disciplinary vide an email dated 9th June, 2022.
- (iii) Leila Mwaura and Lorraine Oyombe were witnesses before the trial court beside being investigators and constituting the disciplinary committee alongside Anastasia Mukeku.
- (iv) The entire process constitutes a blatant violation of the rules of natural justice in any administrative action.
- (v) The electronic evidence adduced at trial was in violation of section 106B and particularly 106B(4)(d) of the Evidence Act afore cited and therefore inadmissible.
- (vi) The disciplinary process was a farce and violated section 41, 43 and 45(1) of the Employment Act, 2007.

I therefore find a case of wrongful, unfair, unprocedural and unlawful termination of the employment of the Claimant by the Respondent and hold as such.

The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- (i) A declaration be and is hereby issued that the termination of the employment of the Claimant by the Respondent was wrongful, unfair, unprocedural and unlawful.
- (ii) That the termination of the employment of the Claimant by the Respondent was therefore invalid.
- (iii) One month salary in lieu of notice Ksh.183,502.00
- (iv) Twelve months compensation for unlawful termination of employment
Kshs.183,502x12.....Ksh.2,202,024.00
- (v) **Total of awardKsh.2,385,526.00**
- (vi) Interest at court rate from the date of this judgment of court till payment in full.
- (vii) The costs of this cause shall be borne by the Respondent.

Delivered, dated and signed this **25th** day of **February** 2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Odero instructed by Banking Insurance and Finance Union(K) for the Claimant
2. Miss Manani instructed by Oraro &Company Advocates for the Respondent.