

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO E087 OF 2025

CAROLYN JUMA MUGWANG'A.....
.....CLAIMANT

VERSUS

AFYA CO-OPERATIVE SAVINGS AND CREDIT SOCIETY
LIMITED.....
RESPONDENT

JUDGEMENT

Introduction

1. This dispute centers on the legitimacy of the Respondent's decision to terminate the contract of service between the parties. The Claimant's case is that the decision was unlawful. Conversely, the Respondent asserts that the decision was lawful.

Claimant's Case

2. The Claimant asserts that the Respondent engaged her services as an Accounts Clerk with effect from 15th November 1999. She avers that she worked diligently for several years and rose through the ranks to the position of General Manager - Credit, a position she held until her contract of service was terminated on 11th September 2024.
3. The Claimant contends that the Respondent did not provide her with a Job Description for the position of General

Manager - Credit to provide specificity of her role and responsibilities. She contends that this state of affairs applied to other positions within the rank and file of the Respondent thus creating lack of clarity on the roles and limits of various officers. She contends that because of this lacuna, junior members of staff would sometimes be tasked with responsibilities which ought to have been performed by their immediate seniors resulting in poor co-ordination of tasks, lack of chain of command and teamwork.

4. The Claimant avers that by virtue of regulation 13 (d) and (l) of *the Sacco Societies Regulatory Authority Guidelines on Good Governance for Deposit Taking Sacco Societies, 2015*, the responsibility of formulating Job Descriptions in a Sacco vests in the Board of Directors of the Sacco. As such, she contends that the Respondent's General Manager - Human Resource and Administration was not responsible for this task.
5. The Claimant contends that the failure by the Respondent to address the issue of Job Descriptions for its employees and to convene senior management meetings for its General Managers to discuss and clarify what was expected of their respective dockets created a vacuum which resulted in poor oversight of its (the Respondent's) functions. She contends that these failures resulted in poor stewardship of the Respondent's activities.

6. The Claimant avers that on 6th August 2024, some of the Respondent's members congregated at its premises at Afya Centre for payments. She contends that the members had been informed by the Respondent's Finance Officers that they will access their money on this date.
7. The Claimant contends that despite this assurance by the Finance Officers, the Respondent's members were kept waiting at the banking hall for unduly long resulting in a built-up of frustration in them. She contends that this led to the said members demanding audience with the Respondent's Chief Executive Officer (CEO).
8. The Claimant avers that the CEO met the aggrieved individuals and referred them to the FOSA banking hall for further assistance. However, she contends that the assistance was not forthcoming. She contends that this resulted in further discontentment by the affected individuals.
9. The Claimant avers that in a bid to contain the situation, the CEO and other members of management met the aggrieved members once again and informed them that their payments had been delayed because of challenges of moving cash securely from the Co-operative Bank to Afya Centre FOSA to enable the payments. As such, she avers that the CEO asked the members to visit the office the following day for payments.

10. The Claimant contends that during the CEO's engagement with the aggrieved members, some of them recorded the session and shared it through social media. She avers that this caused the incident to attract wide publicity.
11. The Claimant contends that despite the fact that the incident of 6th August 2024 occurred within the Respondent's premises, only a few of its (the Respondent's) officers were made aware of it on the same day. She contends that she personally came to learn of the matter through her secretary the following day.
12. The Claimant avers that when she was informed about the incident, she immediately reached out to the CEO to seek clarification on what had transpired. She contends that the CEO informed her that the matter had been addressed and the Finance Committee had been tasked to attend to it.
13. The Claimant avers that the CEO subsequently sent her a text later that day informing her that they were required to attend a meeting called by the Sacco Societies Regulatory Authority (SASRA) the following day to explain the events of 6th August 2024. She contends that she heeded the call and attended the meeting in the company of other members of the Respondent's management.
14. The Claimant contends that during the session, SASRA demanded an explanation regarding the happenings on 6th August 2024 and asked the Respondent's management to explain how they planned to address the liquidity challenges

of the Respondent. She contends that the Respondent's CEO and Finance Controller were tasked to prepare a report outlining the proposed solutions to the aforesaid liquidity concerns. She further contends that in addition to the foregoing, SASRA conducted an on-site investigation at the Respondent's premises.

15. The Claimant contends that as these activities were going on, the Respondent issued her with a letter of show cause on 12th August 2024. She says the letter set out a number of accusations against her and informed her of the Respondent's intention to summarily terminate her services on account of alleged professional negligence and incompetence.
16. The Claimant contends that the Respondent directed her to respond to the accusations by midday on 14th August 2024 which she considered to have been inadequate to prepare a comprehensive response. She avers that this letter set in motion the events which led to the termination of her services.
17. The Claimant avers that the Respondent sent her another letter dated 26th August 2024 inviting her for a disciplinary hearing on 29th August 2024. She contends that although the letter informed her of her right to be accompanied by a workmate of her choice, it limited enjoyment of the right by prohibiting her from attending the session in the company of

a workmate who was either on interdiction or was facing a disciplinary case.

18. The Claimant contends that she was only comfortable attending the session in the company of one of her peers. Yet, she contends that all employees at her level had been interdicted effectively excluding them from attending the session.
19. The Claimant contends that the limitation which the Respondent imposed on the workmate who could accompany her to the hearing meant that she could only attend the session in the company of her junior colleagues, a matter which she says was going to subject her to embarrassment. As such, she contends that the restriction effectively deprived her of her statutory right to attend the disciplinary session in the company of an employee of her choice.
20. The Claimant further contends that the Disciplinary Committee was improperly constituted. She contends that her case ought to have been heard by the Staff Advisory Committee and thereafter by the Board on appeal. Yet, she avers that the Respondent allowed the matter to be handled by an outsourced Human Resource consultant.
21. The Claimant further contends that the former CEO who was intricately involved in the events which led to her dismissal and the Acting CEO who was appointed thereafter were allowed to participate in the disciplinary and appeal

hearings. It is her case that this created a perception of bias and conflict of interest.

22. The Claimant further contends that the Respondent introduced fresh accusations of insubordination against her in the course of the disciplinary hearing. She contends that she was subsequently convicted of this charge despite the fact that it was not included in the notice to show cause letter. She avers that inclusion of the charge at the disciplinary hearing stage deprived her of the right to effectively respond to it thus vitiating the disciplinary process.
23. The Claimant further accuses the Respondent of having deviated from the charges in the show cause letter during the trial. She contends that the letter of dismissal demonstrates that the Respondent relied on extraneous matters relating to her conduct during the disciplinary hearing rather than the infractions she had been accused of in the letter of show cause to dismiss her from service. It is her case that this violated her right to fair trial.
24. The Claimant makes other accusations relating to discrimination against the Respondent. She avers that whilst many of the members of management who were responsible for the failures of the Respondent were let off the hook by being allowed to either resign or retire with their full benefits, the Respondent singled out a few employees,

including her, for disciplinary action for the alleged infractions.

25. As a result, the Claimant contends that the Respondent's actions were in breach of *the Employment Act* and *the Constitution*. As such, she prays for the various reliefs which are set out in the Statement of Claim.
26. During trial, the Claimant reiterated her concerns about the way the Respondent was being managed. She referred to an internal memo dated 24th July 2024 by one of the General Managers to assert that the Respondent's financial woes were precipitated by management challenges.
27. The Claimant contended that the memo identified the Respondent's challenges to include: liquidity issues; complaints by members of staff and clients about poor service delivery; absence of clarity of roles by members of management; and duplication of responsibilities between internal staff and consultants hired by the Board.
28. The Claimant averred that these challenges had impacted on the morale of members of staff. She contended that the memo warned the Respondent that it was headed in the wrong direction because of the challenges.
29. The Claimant contended that the incident of 6th August 2024 had been forecasted by them but the Respondent ignored their advice. As such, she contends that the Respondent cannot legitimately blame her for the occurrence.

Respondent's Case

30. The Respondent affirms that the Claimant was indeed its General Manager – Credit. It avers that she used to report directly to its CEO. It further avers that prior to her aforesaid appointment, the Claimant had served in various other positions including that of General Manager – Human Resource and Administration.
31. The Respondent contends that its Board of Directors initially used to hold joint management meetings with the General Managers and Heads of Divisions. However, it avers that this practice was done away with after it was realized that it was not feasible and was not reflective of good corporate practice.
32. The Respondent contends that the General Managers are the ones who implement the policy decisions of the Board. As such, it asserts that it was inappropriate for them to sit in Board meetings at the same time.
33. In any event, the Respondent avers that all General Managers report to the CEO who sits in the Board. As such, it was unnecessary for them to sit in the Board meetings.
34. The Respondent contends that the General Managers were unhappy with the decision to discontinue the joint meetings with the Board because this deprived them of sitting allowance for the joint meetings. It contends that this resulted in disquiet among them.
35. The Respondent also contends that it realized that it was receiving very low rental income from a property which was

being managed by one of the General Managers. As such, it contends that it outsourced the function to an external service provider, a decision which resulted in improved rental income. However, it contends that this was not received well by the General Manager who had been managing the property.

36. The Respondent contends that because of the negative reaction to the aforesaid decisions, one of the General Managers issued it with a memo dated 24th July 2024 which he copied to the rest of the General Managers. It contends that the memo was followed by the incident of 6th August 2024.
37. The Respondent contends that the incident of 6th August 2024 triggered a rush for members' shares and an alarm by its regulator (SASRA). It contends that this precipitated a crisis which had the potential of bringing it down.
38. The Respondent contends that it was forced to take immediate action to contain the crisis. It avers that one of the measures it took was to institute disciplinary action against all the General Managers who were in charge of its day to day functions.
39. The Respondent contends that it issued all General Managers letters to show cause why disciplinary action should not be taken against them following the crisis. Further, it contends that it interdicted the aforesaid officers pending further disciplinary action. It avers that this was

necessary in order to provide room for investigations into the crisis.

40. The Respondent avers that it is in this context that it issued the Claimant with the show cause letter of 12th August 2024. It contends that as one of its General Managers, she bore both personal and collective responsibility for the events of 6th August 2024.
41. The Respondent alleges that the Claimant had failed to generate regular reports showing trends and comparisons on its credits and recoveries in order to give it a clear picture of its financial status and health. It further contends that the Claimant was required to provide it with evidence of the personal and professional interventions she had made to avert the crisis.
42. The Respondent avers that the Claimant responded to the show cause letter and admitted that there may be instances where she may have fallen short of meeting the expected standards. It further contends that she asserted that the work environment had become toxic and that some members of management had been excluded from key decision making meetings, a matter which left them feeling unrecognized.
43. The Respondent contends that the Claimant contended that these concerns were captured in the memo which was issued by one of the General Managers on 24th July 2024. It further contends that she alleged that its (the Respondent's)

management had been taken over by a cabal of managers and made other insulting comments against her seniors.

44. The Respondent avers that it invited the Claimant for a disciplinary hearing through its letter of 26th August 2024. It contends that it advised her to specify the employee representative she wanted to accompany her so that arrangements could be made to release the employee from duty for this purpose.
45. The Respondent avers that the disciplinary hearing was conducted on the appointed date. It avers that its Human Resource consultant and CEO attended the session but as observers.
46. The Respondent contends that the minutes of the session were circulated to all participants, including the Claimant. It further contends that the Claimant signed the said minutes confirming their correctness.
47. The Respondent avers that after considering the Claimant's defense, a decision was taken to summarily terminate her services. It contends that the decision was communicated to her by its former CEO.
48. The Respondent asserts that the letter of termination of the Claimant's services gave her the right of appeal. It contends that she exercised the right by lodging her appeal which was heard and rejected. In light of this, it prays that the Claimant's suit be dismissed.

Issues for Determination

49. After evaluating the pleadings, evidence and submissions by the parties, the following questions arise for resolution:-
- a) Whether the Claimant's contract of service was terminated fairly and lawfully.
 - b) Whether the Claimant is entitled to the reliefs which she seeks through this action.

Analysis

50. The law on termination of a contract of service is now settled. An employer who seeks to terminate an employee's services on account of misconduct, incapacity or incompetence/poor performance is required to have valid justification for the decision and to release the employee from service in accordance with fair procedure (see sections 41, 43 and 45 of *the Employment Act* and ***Walter Ogal Anuro v Teachers Service Commission [2013] KEELRC 386 (KLR)***).
51. The Respondent accused the Claimant of a series of infractions as set out in the notice to show cause letter which was issued to her. The accusations included: failure to advise management regarding its (the Respondent's) financial state of affairs to avoid the events of 6th August 2024; failure to provide professional advice to the Respondent in order to avoid the eventuality of 6th August 2024; and intentional sabotage of its (the Respondent's) business.

52. The Claimant gave a detailed response to the charges vide her letter dated 13th August 2024. On the first charge, she contended that contrary to the accusation, she had provided weekly and monthly reports to the Credit Committee and the Board of Directors respectively showing the trends of the Respondent's credits and recoveries. She tendered before court a sample Credit Report on Loan Processing and Disbursements for the period between November 2023 and February 2024 to back her contention.
53. The minutes of the disciplinary session demonstrate that the Claimant maintained this position when she appeared before the Disciplinary Committee. However, there is nothing in the minutes or otherwise to demonstrate that the Respondent provided material to controvert her position on the matter.
54. The Respondent further accused the Claimant of failure to provide professional guidance to it to enable it to avoid the financial pitfall it found itself in on 6th August 2024. In response, the Claimant refuted the claim and contended that she had acted professionally throughout her engagement with the Respondent. She produced a Turn Around Strategy advisory which was developed around 19th June 2024 which shows that the Respondent's management, which included her, had identified the financial challenges which the Respondent was facing and provided a roadmap to reverse the trend.

55. Despite this detailed rebuttal of the accusations against her and the absence of concrete data by the Respondent to rebut her defense, the Disciplinary Committee found her culpable of the charge of gross negligence. It is unclear from the minutes of the disciplinary hearing what informed the alleged culpability of the Claimant in respect of the accusation.
56. Quite evidently, the Respondent sought to punish the Claimant for its own institutional failures. As such, the court is unable to find that it (the Respondent) had justifiable grounds to terminate her contract on the basis of gross negligence.
57. Another critical matter is that although the Respondent blamed the Claimant for the institutional challenges it was experiencing, it is apparent that it did not provide her with a Job Description to clearly speak to what was expected of her. Further, there is no evidence that the Claimant was issued with Key Performance Indicators against which her performance was to be assessed.
58. In the Claimant's response to the notice to show cause, she observed that the failure to issue her with a Job Description left her to use her best endeavors to determine what was best for the Respondent. In the absence of these critical instruments, it is surprising that the Respondent could point an accusing finger at the Claimant for its institutional challenges.

59. The Respondent asserted that the Claimant should have developed her Job Description when she was in charge of the Human Resource Department. However, this assertion does not hold water because an employee cannot be expected to develop his or her own Job Description. It is the employer's duty to prepare the instrument.
60. The fact that this duty fell squarely on the Respondent's Board is captured in *the Guidelines on Good Governance of Deposit Taking Sacco Societies*, 2015 which were issued pursuant to section 50 (5) of *the Sacco Societies Act, 2008*. Guideline No. 13 (d) speaks to the matter in the following terms:-
- "The Board should ensure that such an enabling relationship is established by making available to each employee on appointment or employment a statement of roles and responsibilities and job description appropriate to the position they are elected/appointed to."*
61. Section 41 of *the Employment Act* entitles an employee who is facing a disciplinary case to attend the disciplinary proceedings in the company of a co-employee of his choice. The employer has no right to limit this right for whatever reason.
62. In the instant case, although the Respondent informed the Claimant of her right to attend the disciplinary session in the company of an employee of her choice, it placed limitations

on the employees who could accompany her. It denied her the right to call employees who were facing disciplinary cases or those who were on interdiction.

63. The Claimant contends that the Respondent had suspended all employees who were holding positions that were equivalent to her position. As such, she contends that the restriction it imposed on the employees who could accompany her to the hearing meant that she could only go to the session in the company of a junior employee, a matter she considered humiliating.
64. The Claimant's contention is legitimate. By the Respondent imposing limitations on the kind of employees who could accompany her to the disciplinary hearing, it restricted her enjoyment of the right to choose her accompanier freely. As such, the Respondent's actions effectively denied her the right to be accompanied by an employee of her choice.
65. The Claimant has also raised concerns with the fact that the Respondent re-characterized the charges against her during the disciplinary hearing to include a charge of insubordination. A perusal of the letter of dismissal shows that one of the charges in respect of which the Claimant was found culpable related to insubordination. Yet, the issue of insubordination was not part of the accusations she was charged with in the notice to show cause letter.
66. The decision to convict the Claimant on account of insubordination when the charge was not in the show cause

letter or an amended show cause letter violated section 41 of *the Employment Act* which obligates the employer to notify the employee of accusations against her beforehand. It also violated section 4 of *the Fair Administrative Action Act* which obligated the Respondent to give the Claimant prior adequate notice of the charges against her.

67. The Claimant further contends that instead of the Disciplinary Committee focusing on the charges which had been leveled against her, it went into extraneous matters involving her temperament and convicted her on this account. A perusal of the letter of dismissal gives credence to this contention. The letter shows that the Disciplinary Committee was more concerned about the fact that the Claimant had conducted herself in a manner it considered abusive to her seniors than establishing the charges she had been summoned to answer to.
68. It is unclear to the court how the Claimant's contention at the disciplinary hearing that decision making on critical matters for the Respondent had been taken over by a section of its management to the exclusion of others was insulting to the Respondent's management. The use of the word "cabal" cannot be said to have been abusive. It simply denoted "a clique in" or "section of" the Respondent's management.
69. From the letter of dismissal, it is apparent that the decision to terminate the Claimant's services was driven more by the

Respondent's belief that she had been abusive than anything else. In fact, the Respondent affirms this reality by acknowledging that the Claimant responses exhibited "great mitigation" but were allegedly in an abusive tone.

70. The Claimant also took issue with the Respondent's Human Resource consultant having sat in both the Disciplinary and Appeal Committees. In her view, this was improper as it created a sense of bias.
71. During trial, the Respondent's witness admitted that he sat in the Disciplinary Committee and also chaired the Appeal Committee. Although he contended that he sat in the Disciplinary Committee only as an observer, the court finds that it was improper for him to have subsequently chaired the Appeal Committee. His presence in the Disciplinary Committee in whatever capacity clouded his impression about the Claimant's case. It was therefore improper for him to preside over her appeal because this created an impression of bias.
72. In the court's view, the manner in which the Respondent conducted the Claimant's case contravened the dictates of section 45 (5) of *the Employment Act*. Her case was not handled in accordance with the dictates of justice and equity. As such, termination of her services was unfair and unlawful. It is so declared.

73. The Claimant has prayed for reinstatement to her position within the rank and file of the Respondent. However, this relief should be granted only in exceptional circumstances.
74. In ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR)***, the Court of Appeal observed that the court should consider the practicality of implementing an order for reinstatement before it can grant the relief. The court went further to observe as follows:-
- “...the traditional common law position is that courts will not force parties in a personal relationship to continue in such relationship against the will of one of them. That will engender friction, which is not healthy for businesses, unless the employment relationship is capable of withstanding friction like where the employer is a large organization in which personal contact between the affected employee and the officer who took action against him will be minimal.”*
75. During trial, it became apparent to the court that the Respondent no longer had trust in the Claimant. It is therefore unlikely that if an order for reinstatement is granted, the parties will be able to foster a harmonious working relationship. Having regard to this reality, the court declines to order reinstatement.
76. The Claimant also prayed for compensation for unfair termination of her contract. At the time her contract was

terminated in September 2024, she had served the Respondent for approximately 25 years which is a very long time.

77. The circumstances surrounding the closure of the Claimant's contract point to insensitivity on the part of the Respondent. Despite the many years of service, the Respondent terminated her employment on unsubstantiated grounds without regard for the financial liabilities she was servicing at the time. Further, the manner in which the disciplinary and appeal hearings were handled demonstrate a desire by the Respondent to shift blame for its failures onto an innocent employee.
78. If it were not for the reasons which have been cited earlier, this would have been a fit case for an order for reinstatement. However, owing to the fact that the relationship between the parties has been considerably strained, the court will grant compensation for unfair termination of the Claimant's contract in lieu of the remedy for reinstatement.
79. The circumstances which saw the Claimant released from employment make her case one which is deserving a considerable award of compensation for unfair dismissal from employment. Consequently, the court awards her compensation which is equivalent to her salary for ten months.

80. Neither of the parties produced either the Claimant's last contract of service or her pay slip to speak to her exit salary. However, in her prayers in the Statement of Claim, she sought compensation of Ksh. 6,121,920.00 representing her salary for twelve months. This suggests that her monthly salary was Ksh. 510,160.
81. The court has also established from the Claimant's loan application forms that her gross salary per month was Ksh. 510,160 (see page 124 of her consolidated trial bundle). As such, the court is satisfied that her exit salary was Ksh. 510,160 per month.
82. The foregoing being the case, her gross salary for ten months will be Ksh. 5,101,600.00. Accordingly, the court enters judgment for her for the aforesaid amount of Ksh. 5,101,600.00 as compensation for unfair termination of her contract.
83. This amount is subject to the applicable statutory deductions at the time the contract between the parties was terminated.
84. The court awards the Claimant interest on the amount awarded at court rates from the date of this decision.
85. The court awards the Claimant costs of the case.
86. Any other relief which was sought but which has not been expressly granted is deemed as having been declined.

Summary of the Findings and Orders

87. After evaluating the pleadings, evidence and submissions on record against the applicable law, the court makes the following findings and orders:-
- a) The court finds that the Respondent unfairly and unlawfully terminated the Claimant's contract of service.
 - b) The court declines to order reinstatement of the Claimant back into the Respondent's employment.
 - c) The court awards the Claimant compensation for unfair termination of her contract of service which is equivalent to her gross monthly salary for ten months, that is to say, Ksh. 5,101,600.00.
 - d) The court awards the Claimant interest on this amount at court rates from the date of the decision.
 - e) The court awards the Claimant costs of the case.
 - f) The award is subject to the statutory deductions which were applicable at the time the contract between the parties was terminated.
 - g) Any other relief which the Claimant sought but which has not been expressly granted is deemed to have been declined.

**Dated, signed and delivered on the 16th day of March,
2026**

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI