

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**ELRC CAUSE NO. 2212 OF 2016**

**GEORGE WEKE JABA.....CLAIMANT**  
**VERSUS**  
**NATIONAL BANK OF KENYA LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit was brought vide a statement of claim dated 31<sup>st</sup> October 2016 in which the claimant seeks the following reliefs: -
- a) A declaration that the termination/dismissal of the Claimants employment was unfair.
  - b) An order that the Respondent does pay the Claimant 3 months' salary, being Kenya Shillings Two Million, Fifty-Seven Thousand Five Hundred and Fifty (Kshs.2,057,550/-) in lieu of notice.
  - c) Compensation for unlawful termination
  - d) Costs and interest
  - e) Any other relief that this Honourable Court may deem fit to grant.

The Claimant (CW1) testified in support of the suit and adopted witness statement dated 31<sup>st</sup> October 2016 as his evidence in chief and produced exhibits 1 to 9 of even date in support of the claim.

The Claimant testified that he was employed by the Respondent on or about 25th July 2014 as the Chief Risk Officer, at a consolidated salary of Kshs. 1,000,000/-. His appointment was confirmed via a letter dated 16th February 2015. The Claimant's title was changed to Chief Credit Officer on 16th November 2015. The Claimant's responsibilities included: overseeing overall credit management; analysing possible loans or other credit facilities and their viability; approving or declining credit facilities; and people management in the credit division.

The Claimant's performance of his duties was regulated by amongst others, the Central Bank of Kenya Prudential Guidelines for Institutions licenced under the Banking Act, Central Bank of Kenya Risk Management Guidelines and the Respondent's own internal Credit Risk Management Policies. The claimant earned consolidated salary of Ksh. 1,000,000.00 per month. The claimant was summarily dismissed by a letter dated 13/4/2016.

The events that led to the dispute between the parties were that in January 2016, as per common practice, with the approval of the Chief Executive Officer, the Respondent's Finance department forwarded the Respondent's unaudited financial results to the Central Bank of Kenya. Normally, since an audit is carried out which could potentially result in different results, the Respondent is expected to send an amended report to the Central Bank of Kenya after the audit.

After the audit and prior to submission of the amended results, the external auditors would meet with the management team for the management to explain any differences in their position to that of the auditors, in order to reconcile the Respondent Bank's internal position with that of the external auditors to ensure that the final position is presented to the Board. In the alternative, both parties are informed and prepared to defend their position to the Board. The need for reconciliation or separate defences to the Boards arises as the numbers are always different on account of discretion rightfully exercised by either party under the relevant financial and accounting standards.

In line with the above, on 23<sup>rd</sup> and 24<sup>th</sup> March 2016, meetings were held between the Respondent's Board, management staff and external auditors, one Deloitte and Touché, for the external auditors to present their position to the Board. Contrary to the usual practice, the external auditors had not had a prior meeting with the management team, since they were racing against deadlines. The Claimant explains that despite not having previously seen or reviewed the report by the external auditors, he made his best efforts to elaborate on the report and figures to the Respondent's Board. At one point, for undisclosed reasons, the management team was requested to leave the meetings.

In response to the Respondent's claim that the Claimant was culpable for the Respondent Bank's inaccurate financial reporting, the Claimant denies that it was one of his responsibilities to ensure that the Respondent's books reflected its correct financial position. He insists that this was actually a role of the Board's Credit Committee as set out in Clause 4.1 of the Respondent

Bank's Credit Risk Management Policy, to the effect that the Committee should assist the Board with discharging its responsibility to review the Bank's loan portfolio, and ensure adequate provision for bad and doubtful debts. The Claimant states that the Respondent making additional provisions for bad debts after the audit provisional results was not peculiar to the year ended 2015. He discloses that in the financial year ended 2014, additional provisions of Kshs. 500 million and 250 million were proposed by the CBK auditors and external auditors respectively. Such additional provisions were also proposed in the years before the Claimant joined the Bank.

The Claimant states that he was discriminated against by the Respondent as the Bank had never dismissed other staff as a result of error/shortfall in provisioning and adjustments to provisions for bad debts.

It is the Claimant's case that he indeed took measures to persuade the Respondent's Board to adopt established practices for computing provisions for bad debts by: causing the Respondent to assign accrued interest on loans to the specific accounts for purposes of computing provisions for bad debts as is required under the CBK Prudential Guidelines, as opposed to assigning accrued interest on loans to only performing accounts leading to understatement of provisions for bad debts; and causing the Respondent to take into account the Forced Sale Value of securities and discounting of the same in conformity with the prudential guidelines, as opposed to only considering the Market Value of securities

and failing to discount the values of securities in its computation of provisions for bad debts.

The Claimant insists that he reported to the Board Credit Committee on a monthly basis on every aspect of the Bank's loan portfolio. The committee in turn reported to the Board, per Clause 3.1 Paragraph f of the Credit Management Policy. The Board cannot therefore assert that it was unaware of the loans' portfolio. The Claimant blames weaknesses in the Respondent's Core Banking System, which he states classified loans as non-performing, for inaccurate classification/identification of loan accounts. The Board was aware of the aforesaid weaknesses, the same having been highlighted by the external and CBK auditors in their reports for the years 2012-2014 before the Claimant joined the Bank, and in their reports for the year 2015 as well. The Claimant therefore states that the Respondent's Board is also to blame for failing to establish an efficient loan classification system, and explains that he attempted to, and in some ways succeeded in overhauling the Core Banking System, engaging both the vendor of the system and the Board.

### **Respondents' case in brief**

The Respondent called Rev. Cannon Stephen Obong (RW1) in defence of the case. RW1 adopted a witness Statement dated 16/4/24 and stated that he was the Head of Employee Relations at the respondent company and was a qualified human resource practitioner.

The Respondent admits that the Claimant was its employee, who was appointed as the Respondent's Chief Risk Officer on Management Grade 2 under a contract of employment dated 25th July 2014 subject to a probationary period of six (6) months. The Claimant's appointment was subsequently confirmed with effect from 25<sup>th</sup> February 2015 upon completion of his probation period. The Respondent confirms that the Claimant's role and title was changed to Chief Credit Officer with effect from 16th November 2015, a position he held until the termination of his employment.

As the Chief Credit Officer, the Claimant's key responsibilities included: own, manage and control Credit Risk in the bank that may be originated by the Corporate, SME, Islamic and Retail Banking Business Divisions; drive reviews on the Banks Credit, Operational and Market Risk policies and procedures; recommend and implement improvements to ensure an appropriate control environment for these risk exposures is established and maintained; lead in the analysis and approvals of credit applications, and where required present the applications for Board Credit Committee approvals; assist Senior Management and the Board of Directors in understanding risk, its measurement and control methodology and provide support to the Board in its oversight of risk through regular reports; actively participate in the Assets and Liabilities Committee (ALCO) of the Bank and provide critical input to help drive decision making on the optimal level of Risk Return trade-offs on transactions, products and business segments; develop and implement an appropriate Enterprise Risk Management (ERM) infrastructure by integrating risk management with the Bank's strategic

management process, manage an on-going risk quantification, assessment monitoring and reporting programs across the Bank; and finally, lead the Credit Risk, Credit Administration and Credit Remedial teams.

The Claimant's key responsibilities as aforesaid were clearly indicated in the job advertisement for his position published in The Standard and Daily Nation newspapers on 21<sup>st</sup> August 2013.

The Claimant, upon being directed to do so by the Respondent, filled in a Job Analysis Questionnaire relating to the job evaluation for the position of the Chief Credit Officer at the Respondent Bank and submitted it on 9<sup>th</sup> February 2016 via email, indicating that he understood his responsibilities.

It is the Respondent's case that owing to its status as a company listed on the Nairobi Securities Exchange and regulated by the Central Bank of Kenya and the Capital Markets Authority, the Respondent has strenuous reporting obligations that are aimed at safeguarding the interests of investors and general public.

The Bank is mandated to report and publish its quarterly un-audited financial statements (for the periods, 31<sup>st</sup> March, 30<sup>th</sup> June and 30<sup>th</sup> September every year) as well as the audited financial statements for the period ending 31<sup>st</sup> December every year. In order to meet its reporting requirements as aforesaid, the Respondent engaged Deloitte and Touche as its external auditors (hereinafter referred to as "the auditors"), in accordance with the requirements of the Companies Act.

The controversy at hand began with the submission of the auditors' report for the financial year 2015 to the Board and the management at Board meetings held on 23rd and 24th March 2016. The Claimant as part of the Respondent's management team went through the accounts with the Board members and the auditors during the subject Board meetings as aforesaid. The Respondent states that minutes of the meetings have not been provided to the Claimant and the court due to the sensitivity and confidentiality of the matters discussed during the meetings, bearing in mind the confidential customer details indicated therein.

During the meetings, the auditors brought to the Board's attention huge anomalies and differences between the Respondent's un-audited financial statements or management accounts presented to the Board (for June and September 2015), and the final audited accounts for the period ended 31st December 2015. In particular, it was established that the Bank's credit portfolio had been misrepresented with regard to certain customer accounts which had deliberately been made to appear as performing but the same were actually non-performing, which significantly and negatively impacted the audited financial statements of the Respondent for the period ended 31st December 2015. The effect of the misrepresentation of the customer accounts was that the Respondent was forced to take additional provisions or impairments in accordance with the International Accounting Standards and the CBK Prudential Guidelines.

Further, it was established by the auditors that certain loans had been re-booked and restructured un-procedurally in order to appear as if they were

performing thus causing the huge misrepresentation of the Respondent's financial statements, which fundamentally had the effect of making the Respondent appear in the eyes of the public as if it was profitable, and yet it was actually in a loss-making position. The auditors established discrepancies with regard to 11 customer accounts which were non performing, but had through the Claimant, been reported as performing.

The Respondent attributes culpability for the misrepresentation/misreporting of the Respondent's credit portfolio to the Claimant, and states that it was his sole responsibility as the Chief Credit Officer to ensure that the same was reported accurately in order for the true financial position of the Bank to be accurately represented to the public and other third-party stakeholders including the regulators. According to the Respondent, the Claimant had in the discharge of his duties wilfully misreported the status of the affected accounts and had therefore caused the Respondent to publish incorrect and misleading quarterly financial positions or results to the public.

That the dismissal of the Claimant was for a valid reason, was fair and the suit be dismissed for lack of merit.

## **DETERMINATION**

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 summary dismissal of the claimant was for a valid reason arrived at following a fair procedure**
- (b) Whether the claimant is entitled to the reliefs sought**

The main defence made by the Claimant in this suit is that he was wrongly blamed for misrepresenting the financial status of the Bank to the Board and therefore to the Central Bank and to the public at large which action embarrassed the Respondent greatly and amounted to gross misconduct. The claimant states further that he was not given adequate notice and documents requested to defend himself. The claimant adds that his fate was predetermined, was malicious and amounted to discrimination since responsible officers were not punished and matters complained of were routine in presentation of financial un-audited and audited accounts of the bank and alleged discrepancies between the internal and external audit statements were exaggerated and not true and if true could not be attributed to him.

The Claimant states that the significant issue of contention raised by the external auditors was that various loan facilities were not adequately provided for. The Claimant stated that he gave satisfactory explanation, and also pointed out that the external auditors failed to take into account critical detailed disclosures by the management. The Respondent's internal audit department (an independent department within the Respondent) had reviewed the numbers and had not raised any issues with regard to adequacy of provisions or grading of accounts. Further, the same judgment applied by the credit department had been applied during the audit for the

previous years and the external auditors had not raised any issues. The Claimant states that he explained to the Respondent's Board that he did not come up with the numbers on whether clients were servicing their loans or not, with the same being the responsibility of the operations department.

It is the Claimant's case that he was not informed during the meetings of 23<sup>rd</sup> and 24<sup>th</sup> March 2016 that the proceedings during these routine meetings between the Respondent and its external auditors for purposes of reconciliation of positions/accounts would constitute the basis for his unfair dismissal. No details or allegations of "misconduct" or intention to terminate his employment were discussed at these meetings.

On 29<sup>th</sup> March 2016 at 7p.m, the Claimant received a letter from the Respondent dated the same day referenced "Notification of a Disciplinary Hearing and Show Cause Notice", informing him of a disciplinary hearing scheduled to take place on 31<sup>st</sup> March 2016. The letter also indicated that the Claimant was being sent on compulsory leave, and that the Respondent was considering terminating the Claimant's contract of employment for alleged gross misconduct occasioned by "failure to take appropriate action to ensure that the state of the Bank's financial results reflected the correct position." The said letter was very scanty and did not disclose specifics of the alleged misconduct, and details or extent of the Claimant's participation in the alleged misreporting. Further, he was not supplied with any documentation that the Respondent relied upon to arrive at the skewed findings. The foregoing made it extremely difficult for the Claimant to respond to the blanket accusation.

The Respondent admits that the Claimant together with other members of the management were asked to step out of the meetings held on 23rd and 24th March 2016. It justifies its action by stating that the Board needed to establish independently from the auditors the implications of the financial misrepresentation due to the deliberate omissions and commissions of the management. The Respondent argues that there was nothing unusual about its request for the management team to leave the meeting since the Board as expected discusses many sensitive matters during meetings, and the banking regulations allowed the Board to have sessions with the auditors with the exclusion of management from time to time.

The Respondent asserts that public confidence is key in the banking sector considering that banks are custodians of billions of depositors' funds. It states that public confidence is even more important for the Respondent considering its shareholding, and its status as a publicly listed company on the Nairobi Securities Exchange. It posits that the projection, based on the inaccurate un-audited financial statements, that it would make a huge profit by the end of the year 2015, which turned out to be untrue after the publication of the audited accounts, grossly dented public confidence in the Bank.

The Respondent states that considering the gravity of the matter, it was forced to take action against the guilty parties when the disparities were revealed. The malpractices knowingly facilitated or overseen by the Claimant together with other former senior management staff who are not

part of this suit were subsequently independently investigated by the Capital Markets Authority and the Central Bank of Kenya (Banking Fraud Investigation Unit) pursuant to which criminal charges were preferred against them. The Board also separately considered the matter, and recommended that the concerned employees be served with letters to show cause why disciplinary action should not be taken against them.

The respondent in its rebuttal admitted that following the Board recommendation, the Claimant was served with a notice to show cause on 29<sup>th</sup> March 2016 and required to submit written representations by 31<sup>st</sup> March 2016 by 2.00pm. He was also notified that a disciplinary hearing would take place on 31<sup>st</sup> March 2016 at 5.00 pm at the Respondent's boardroom. In the intervening time, the Claimant was requested to take leave from 29<sup>th</sup> March 2016 until the conclusion of the disciplinary process. The Respondent confirms that the Claimant responded to the disciplinary issues set out in the notice to show cause, and is categorical that the Claimant was given sufficient and reasonable time to respond. The disciplinary hearing was conducted on 31<sup>st</sup> March 2016 as scheduled with the Claimant being given an opportunity to make oral representations in his defence. The disciplinary panel was made up of Board members.

The Respondent explained that the gist and substance of the charges made against the Claimant was that he had knowingly, wilfully or deliberately misrepresented the Respondent's status of its credit portfolio which had led to the inaccuracy of the Respondent's published financial statements, and thus caused it to mislead the public. The Respondent

considered this a serious breach of statute, regulatory requirements and the Claimant's responsibilities as the Chief Credit Officer of the Respondent. Because of this misreporting, the quarterly financial results indicated that the Respondent had made profits as at 30th June 2015 and 30th September 2015 and was thus expected to be in a profit position by the end of the year 31<sup>st</sup> December 2015. The Claimant, being aware of the quarterly financial results and the Respondent's actual loan portfolio at all time, and its audited accounts by virtue of his position, was expected to have realized that the internal results did not correctly represent the financial position of the bank.

The Board considered the Claimant's oral and written representations on the charges that the Claimant was facing, and held that his explanation was not satisfactory. It determined that the Claimant had fundamentally breached his contract of employment and his obligations, and resolved to summarily dismiss him from employment. Consequently, the Claimant was issued with a dismissal letter on 13<sup>th</sup> April 2016.

The Respondent takes the position that the Claimant cannot blame other departments of the Respondent and/or its Board Committees, in view of his roles and responsibilities. It further states that it was not bound to await the outcome of the investigations by the Central Bank of Kenya in order to take disciplinary action against the Claimant.

The Respondent insists that there was sufficient and just cause for the disciplinary action taken against the Claimant and points out that the

Claimant has since been charged in criminal proceedings on the basis of the investigations carried out by CBK and on other matters that came to light in the course of the external audit.

The Respondent denies the claim that the show cause letter was vague, and refers to the Claimant's response to the same, which was clearly in respect of the disparities in the figures. It also denies that new issues have been raised by the Respondent in court which were not raised prior to the disciplinary hearing in the notice to show cause issued to the claimant. The Respondent prays that the suit be dismissed with costs.

The Claimant insists that he was given a short period to respond to the unspecific accusations by the 31<sup>st</sup> March 2016 at 2 p.m. The Claimant wrote a letter dated 31<sup>st</sup> March 2016, requesting for minutes of the Board meetings held on 23rd and 24th March 2016, specifically the deliberations made in his absence, as well as the summary of the deliberations during the disciplinary hearing.

The Claimant reiterates that his requests have never been met to date and insists that it was apparent from the conduct of the disciplinary hearing on no notice at all that the decision to terminate his employment was premeditated. He reiterates that no specific accusations were made against him during the hearing; no questions with regard to the accusations were posed to him; and he was made to regurgitate the contents of his response to the notification of a disciplinary hearing and notice to show cause, which formed and determined the basis and the agenda of the hearing.

The Board of Directors then declared to the Claimant that his response had been considered and further, that their decision would be communicated to the Claimant in due course. The claimant was issued with a summary dismissal letter on 13<sup>th</sup> April 2016. The Claimant asserts that his summary dismissal from employment was not only unfair, illegal and unlawful but also was malicious, unreasonable and contrary to the rules of natural justice and that the suit be allowed and he be granted the reliefs sought.

It is the Courts considered finding that for a matter of this magnitude a one-day notice to attend a disciplinary hearing was not adequate. The claimant was not availed critical documents stated herein to mount his defence including the minutes of the two meetings from which the alleged charges arose. There was no investigation done and report presented to the claimant before he was summoned to attend the hearing and clearly had no time to prepare and request a colleague to accompany him to the disciplinary hearing. The written response the claimant stated was forced by circumstances to read at the disciplinary hearing was clearly done in haste and without the documents the claimant had requested for. The respondent did not adduce any evidence at the hearing as no witness was called to avail opportunity to the claimant to cross-examine on the contentious issues constituting the charges he faced.

The court has considered the case of **Ken freight (EA) Ltd vs Benson K Ngugi (2016) Eklr (Civil Appeal No. 31 of 2015)** where the Court of Appeal held that;

**“The next and more critical question is whether the termination was unfair. It is considered unfair to terminate a contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair; that the reason relates to the employee’s conduct, capacity, compatibility, or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure. Section 43 specifically places the burden to prove that the termination was fair on the employer”**

The Court has also considered the case of **Pius Machafu Isindu vs Lavington Security Guards Ltd (2017) eKLR** to find that the disciplinary process conducted against the claimant fell short of the requirements under section 41 of the Employment Act, 2007 read together with the provisions of Article 47(1) of the constitution of Kenya 2010.

**Clearly, the respondent missed opportunity to lawfully prove that it had a valid reason to Summarily dismiss the Claimant following a fair procedure. Accordingly, the termination violated sections 41, 43, 44 and 45 of the Employment Act 2007.**

The Claimant is entitled to compensation under Section 49(1)c read with (4) of the Employment Act. In this regard, the Claimant was a senior official of the bank and lost opportunity to further his career in the Respondent bank and in the entire banking industry given its nature. The claimant had no time to prepare himself for the shock of losing a job and significant

income that formed his support and that of his family. The claimant was summarily dismissed without notice and payment in lieu of 3 months' notice as per his contract of employment and so did not get his terminal benefits. The court is unable to state that the claimant contributed to the dismissal given the failure by respondent to give him a fair opportunity to defend himself.

The Claimant had not gotten alternative employment at the time of the hearing and continued to suffer loss and damage as a result of the unlawful summary dismissal from his employment. The claimant had served the respondent in high management positions having been promoted from Chief Risk Officer to Chief Credit Officer for a period of over two years with a clean record. He had been headhunted by the respondent from NIC bank.

The court has considered the cases of **Ken freight (EA)** (supra) where the **Supreme Court held that;**

**“Guided by the above analysis, we find that once a court has reached a finding that an employer has unlawfully terminated an employee’s employment, the appropriate remedy is the one provided under Section 49 of the Employment Act. We also need to clarify that a payment of an award in Section 49(1)(a) is different from an award under Section 49 (1)(b) and (c). Section 49 allows an award to include any or all of the listed remedies provided that a Court in making the award, exercises its**

**discretion judiciously and is guided by Section 49(4)(m)". An award of 12 months' salary was confirmed. And the case of **Hesbon v Omaera Pharmaceuticals Limited (Employment and Labour Relations Cause 2176 of 2016) [2025] KEELRC 2037 (KLR) (4 July 2025) (Judgment)** where Court held that;**

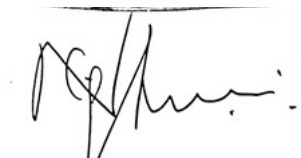
**"The court found there was no prove of the alleged theft and the reason for absconding was not proved hence the claimant did not contribute to his employment contract's termination (section 49(4)(b) of the Employment Act). The court on finding unfair termination is to consider and apply remedies under section 49 of the Employment Act". The Court awarded 5 months gross salary compensation**

The court has considered the above cases and has awarded the claimant the equivalent of five (5) months' salary in Compensation for the unlawful and unfair termination in the sum of Ksh 5,000,000.

**In the final analysis Judgment is entered in favour of the Claimant against the Respondent as follows: -**

- (a) Ksh 3,000,00.00 in lieu of 3 months' notice per the contract of employment**
- (b) Ksh. 5,000,000.00 being the equivalent of 5 months' salary in compensation**
- (c) interest at court rates from date of Judgment till payment in full**
- (d) Costs to follow the event**

Dated at Nairobi this **14<sup>th</sup> day of April 2026**



**Mathews Nduma**

**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 22<sup>nd</sup> day of  
April 2026**

**Dr. Gakeri J.**

**JUDGE**

**Appearances:**

Mr. Owino for Claimant

Mr. Makori for Respondent

Court Asst. Mr. Kemboi

ORIGINAL