



Kamande v NCBA Bank Kenya PLC (Employment and Labour Relations Cause 96 of 2018) [2026] KEELRC 1027 (KLR) (22 April 2026) (Judgment)

Neutral citation: [2026] KEELRC 1027 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 96 OF 2018**

MN NDUMA, J

APRIL 22, 2026

BETWEEN

SIMON MUIRURI KAMANDE CLAIMANT

AND

NCBA BANK KENYA PLC RESPONDENT

JUDGMENT

1. The suit was brought vide an amended memorandum of claim dated 4th October 2023, in which the Claimant seeks: -
 - a. Reinstatement to his position with no loss of benefits or salary from the date of termination.
In the alternative
 - b. A declaration of liability that the Claimant's termination of employment on grounds of his sex, amounted to a violation of his rights under Section 5(3) of the *Employment Act* Number 11 of 2007 and Article 27 of *the Constitution* of Kenya which guarantees his right to be free from discrimination.
 - c. A declaration of liability that the Claimant's termination was in violation of Sections 45 and 46 (g) of the *Employment Act*.
 - d. A declaration of liability that the termination was in breach of the Claimant's contract of employment and the Respondent's own policies.
 - e. A declaration of liability that the Claimant's dues have been withheld in breach of Article 30 of *the Constitution* thereby subjecting him to servitude.
 - f. Maintenance of his loan at the subsidized rate of 10% upon which he was awarded the loan from the date of termination until clearance of the same.



- g. A refund of the sums constituting the difference between the instalments paid on his loan at commercial rates and at the staff rate of 10% from the date the commercial rate was first levied.
- h. General damages for breach of the Claimant's Constitutional rights guaranteed under Articles 27 and 30 of the Constitution.
- i. Future loss of medical benefits to the Claimant over a 12 months period assessed at Kshs. 1,600,000.00
- j. Twelve months' salary in compensation for wrongful and unlawful termination at Kshs. 932,825.04
- k. A rectified certificate of service issued in accordance with the provisions of Section 51 of the Employment Act as the one released to the Claimant violates the law.
- l. A permanent injunction barring the Respondent from listing the Claimant with any Credit Reference Bureau in respect of any loan(s) he obtained while in employment.
- m. Costs of the suit.
- n. Interests at the rate of 14% per annum.

The Claimant's case

2. The Claimant testified under oath as CW1 and adopted his witness statement as his evidence in chief and produced exhibits 1 to 14 in support of the case. The Claimant also called one Loyce Omari, CW2 in support of his case and CW2 adopted a witness statement dated 13/2/24 as her evidence in chief. The testimony of CW2 was limited to confirming that the bank closed at 4.30 daily except on weekends but the staff continue serving customers already in the bank premises until the last customer has been served. CW2 said she was not implicated in matters the subject of this suit.
3. The claimant stated that he was employed by the organization to which the Respondent is successor in title, one Commercial Bank Of Africa Limited, as a contract cash management staff vide a 5-month employment contract effective 27th September 2012 to 26th February 2013.
4. The terms of the Claimant's contract were that, he was entitled to 21 leave days prorated over the duration of his contract at the rate of 1.75 days per month and the contract was terminable by either party giving one week notice in writing or 1 week's salary in lieu thereof.
5. Upon completion of the initial term, the Claimant's contract was renewed for a further term of 5 months on the same terms. Eventually, the Claimant was appointed to the position of Operations Assistant, and his employment contract converted to permanent and pensionable employment, subject to a 6-month probation period which he successfully completed.
6. The Claimant's key duties as an Operations Assistant included: handling customer queries; serving customers at the Branch; standing in for his supervisor when called upon to do so; and selling the Bank's existing products and services according to his set yearly objectives.
7. The Claimant states that he would ordinarily handle about 50 customers per a day, and would of necessity sometimes view their accounts in order to, for example, ascertain the available and existing balances or to respond to queries from customers.
8. The Claimant worked without complaint despite the fact that he was supposed to be assisted by a 2nd employee in customer service within the Branch but sometimes worked alone. The Claimant states



that his diligence is evidenced by good ratings and commendations which he received during the year 2016 appraisal, per the report dated 15th November 2016.

9. The claimant testified that on the evening of 17th January 2017 the Claimant's branch, namely the Mama Ngina Branch of the Respondent's predecessor, received communication from the Respondent's Clearing Department that all clearing cheques from other banks that were processed during the day had to be processed again but no explanation was offered on why the re-processing was to be done. On any given day, the said branch processed an average of 200 cheques, and re-processing them was a time-consuming affair which required the Claimant to manually key in all the relevant details. Due to the foregoing, the Claimant completed the work at around 9.00 pm at night. As he had left very late, the Claimant states that his supervisor, who was present at the branch, advised him to report at 11.00 am the next morning to compensate for the extra hours worked.
10. On the morning of 18th January 2017, at around 9.00 am, the Claimant states that he received a phone call from the Bank's Operations Manager directing him to report to the Bank's Security Department located at the Head Office, as opposed to reporting at his branch. The Claimant obliged and was requested to accompany the security officer to the Safaricom offices at the Central Business District where he was compelled to request for his call logs going back 6 months. He was not informed of the reason for the strange request, but again, the Claimant obliged. Upon receiving his call logs, he and the security officer returned to the head office. The Head of Security and security officer reviewed the Claimant's call logs, and later his Mpesa statements going back 6 months, which he had been compelled to generate from his Safaricom Self-Care online page, but found no anomalies. The Head of Security and Investigations directed the Claimant to grant him access to his WhatsApp messages and personal emails, but the Claimant resisted, judging it to be a breach of his right to privacy. He however, agreed once he was threatened with the loss of his job.
11. The Claimant states that he was subjected to duress and was coerced and blackmailed into giving access to his call logs, Mpesa statements, WhatsApp messages and personal emails.
12. That the Claimant was questioned by the Head of Security on whether he was aware of an account by the name of Katahira and Engineers International. He explained that the Branch Operations Manager at his branch had mentioned that the account was involved in fraud, and further that on a separate occasion he had been requested by a colleague at the Branch to assist in stopping unpresented cheques belonging to the said customer in the Bank's core system. Upon hearing his answer, the Claimant states that the Head of Security and Investigations then handed him foolscaps with several questions already filled to which he was told to respond. The main line of questioning on the foolscaps was why the Claimant viewed the account profile belonging to Katahira and Engineers International.
13. In response, the Claimant explained that although he could not recall the exact reason for viewing the account, there were several justifications for customer service staff to view accounts, such as when customers query account balances. The Claimant was finally instructed to report to the Security Office every day forthwith as opposed to his branch. The Claimant testified that he complied, but was humiliated by being asked to sit in the kitchen every day when he reported at the security office.
14. On 23rd January 2017, the Claimant was issued with a letter of reassignment to the security department to assist with investigations, but he states that he was assigned no duties. After a few days, he was informed that he had been placed on suspension for being complicit in fraudulent activities related to Katahira bank account and should stay home indefinitely. While on suspension, the Claimant states that he was summoned by the Respondent's predecessor in respect of two new allegations which were not material to his suspension.



15. It is the Claimant's case that the Respondent subjected him to additional, new, disciplinary charges when he was invited to attend a disciplinary hearing on 6th April 2017. The charges levelled against him were that the Claimant attempted to transfer USD 5,000 from one Dr. Pamela Mitula's account; that KES 20 million had been transferred from an account belonging to Environmental Liaison Center International (ELCI) over a period of several years, some going back to before the time the Claimant joined the Respondent as an employee.
16. The Claimant complains that although he selected a Senior Manager at the Bank to accompany him to the disciplinary hearing which was to begin at 10.00 am, the same was deliberately delayed to some minutes after 2.00pm, by which time the Senior Manager had left to attend to a pressing meeting. Nonetheless, the Claimant states that he was convinced to allow the hearing to proceed on the same day, so that he could return to work. During the hearing, the Claimant confirms that he responded to the allegations raised and produced email correspondence and related documentation in support of his defence.
17. The Claimant acknowledges that the signed minutes of the disciplinary hearing indicated that the same commenced at 11.30am, but he insists that this is an error, and states that he believes that the wrong commencement time was deliberately inserted by the Respondent's predecessor to mislead. Despite the hearing being held on 11th April 2017, the Claimant was issued with the minutes on 5th June 2017 for his execution.
18. Immediately he signed the minutes, the Claimant states that he was issued with a letter of termination. The Claimant adds that he was neither supplied with the outcome of the investigation nor given a chance to defend the same, prior to his employment being terminated.
19. Following the Claimant's dismissal, his credit card was immediately deactivated without informing him, causing him embarrassment when he went shopping at Nakumatt Thika Road Mall. He was only informed of the deactivation when he called the Call Centre of the Respondent's predecessor to get to the bottom of the matter, as other customers waited to be served in the supermarket.
20. The Claimant is categorical that the termination of his employment was unfair and wrongful as there was no justifiable reason for the termination. He also states that his rights under Articles 27 and 41, being freedom from discrimination and right to fair labour practices were violated as he was subjected to unjust and prejudicial treatment, and eventually dismissed from service.
21. On the issue of terminal benefits, the Claimant confirms that his terminal dues were computed and he was advised that his pension contribution amounted to Kshs. 371,999.57. However, only his terminal dues were released as he was informed that the pension benefit would only be released once he signed a discharge voucher absolving the bank of all liability. The discharge voucher erroneously stated that he had resigned from employment, so he refused to sign it.
22. In addition to the foregoing, the Claimant states that he was issued with an erroneous certificate of service drawn contrary to the law; and the loan of Kshs 985,000 which had been issued to him at the preferential staff rate of 10%, which he was faithfully servicing at the time of termination, was immediately reverted to commercial rates.
23. The Claimant states that the Respondent has levied unreasonable charges whereby the loan balance stood at Kshs 1,050,163 as at 04/12/2017. The Claimant requests that the Respondent be stopped from listing the Claimant with any Credit Reference Bureau in respect of the loan (s) he obtained while in employment.



24. The Claimant also prays for reinstatement to his previous position with no loss of benefits or salary, stating that the Respondent's unfair and malicious actions adversely affected his career and he is unable to obtain work in any other industry, being a banking and finance graduate.

Respondent's Case

25. The Respondent called Christine Wahome a senior legal counsel of the Respondent in defence of the case. RW1 adopted witness statement dated 4/4/24 as her evidence in chief and produced exhibits 1 to 6 in support of the defence case. The Respondent admits that the Claimant was its employee, who was employed as a Contract Cash Management Staff effective on 27th September 2012 and was later promoted to the position of an Operations Assistant with effect from 1st October 2013. The Claimant's duties per his job description included inter alia: handling of customer queries; to be diligent and responsible while serving customers at the Branch; filling in for the Supervisor when called upon to do so; and to sell the Bank's existing products and services in accordance with the set-out procedures.
26. It is the Respondent's case that on or about 24th December 2016, the Respondent's officer, James Mwangi, received a request from an email address mltulap@hotmail.com purporting to be from the Respondent's customer Pamela Mitula to transfer Ksh. 890,000 from her account into an account held by one Kubai Kinyua Paul purportedly as payment for a piece of land. The bank officer noted that the email address used to forward the instructions differed from the customer's email address mitulap@hotmail.com maintained in the Bank's system. The banking officer called Pamela Mitula who confirmed that she had not issued the instructions. The Bank's officer then escalated the matter to the Bank's Security Investigation Department.
27. Upon receiving the report, the Bank's Security Department viewed the bank account of Kubai Kinyua Paul, who was the intended recipient of the suspicious payment, and established that between 6th and 11th January 2017 the account had been credited with funds amounting to Kes.1,537,549.74 through multiple in-house cheque transfers from another customer's account, namely, Katahira & Engineers International. The Investigations revealed that the payments from Katahira & Engineers International to Kubai Kinyua Paul were processed from cheques emanating from a cheque book which was yet to be collected by Katahira & Engineers International but had been released unprocedurally to unknown persons.
28. Further, the Respondent investigated the Bank Accounts of Pamela Mitula and established that: Simon Muiruri Kamande (the Claimant) together with Sharon Atieno Omondi viewed the customer's profiles of Pamela Mitula without any evidence of customer's requests and/or instructions; on 16th December 2016. Simon Muiruri Kamande viewed the signing mandates of Pamela Mitula from her Bank Account; on the same date 16th December 2016, Simon Muiruri Kamande accessed the Customer's Bank Account of Pamela Mitula using the Customer's Base Number which enables one to view all customer's accounts and positions (bank balances); on 24th December 2016 at 11:17:58 Simon Kamande once again accessed the customer's account by using the Customer's Base number; and barely one hour and seven minutes after the Claimant viewed the Bank Account of Pamela Mitula, James Mwangi (private Banking Officer at Mama Ngina Branch) received fraudulent email instructions to transfer funds from Pamela Mitula account to Paul Kubai.
29. The Respondent states that it also carried out investigations into the bank account held in the name of Katahira & Engineers International and established as follows: on 4th January 2017 at 17:22:08 way past working hours, Simon Kamande (the Claimant) accessed the account profile of Katahira & Engineers International; this was way past working hours with no customer in the Banking Hall or branch or customer instruction received by him; CCTV reviews at Mama Ngina Branch showed the



- Claimant seated at the Customer Service Desk alone on 4th January 2017 at 17:22:08 way past the Branch's operating hours and indeed lights had been turned off; the fraudulent request to transfer the Customer's cheque book from Mama Ngina branch to Westlands branch was received through a phone call to Greenspan branch on 5th January 2017, a day after the unauthorized access of the account profile of Katahira & Engineers International by Simon Kamande; and on 6th January 2017 Simon Kamande was seen in the CCTV review interacting with the suspect who presented fraudulent cheques payable from the Bank account of Katahira & Engineers International.
30. Investigations into the bank account held by the suspected fraudster Kubai Kinyua Paul also revealed that: on 11th January 2017, Simon Kamande accessed the accounts profile of Kubai Kinyua Paul at 9:14.44 AM when there was no customer seated at the Customer's Service Desk and the Claimant was unable to explain the nature of instruction and/or request he was handling at the time; and two fraudulent cheques were deposited at CBA Upper Hill Branch at 9:12 and 9:13AM slightly a minute before the unauthorized access on the Bank Profile of Kubai Kinyua Paul by Simon Kamande.
 31. The Respondent also testified that it carried out investigations on fraudulent in-house cheques transfers amounting to KShs. 20 million from Environment Liaison Centre International (ELCI) Bank account into an account held by one Mike Dominic Okati and established that: one Kennedy Orwa, a signatory to Environment Liaison Centre International (ELCI) informed the Respondent's officials about suspicion of fraud involving in-house cheque payments to Mike Dominic Okati; and on 17th February 2017, the said Mike Dominic Okati presented an in-house cheque of an amount below KShs. 200,000/- at CBA Hilton Agency for payment.
 32. The Cash Officer however, informed Mike Dominic Okati that he could not access funds immediately since she needed to confirm payment with the account holder. Mike Dominic Okati declined and requested for the cheque to be returned back to him. The Cash Officer then called the signatory Kennedy Orwa who communicated to the Bank that he had not authorized the payments. On 18th February 2017, Simon Kamande sent a WhatsApp message to the Hilton Agency tellers that: "Anyone who has ever received and acted on instructions like "kindly take 500 for lunch" written on a pink slip we're coming for you." The WhatsApp message was sent specifically to Hilton Agency Tellers where Mike Dominic Okati had been informed that cheques would have to be confirmed before payment. Mike Dominic Okati tended to tip staff at both Mama Ngina Branch & Hilton Agency whenever he transacted by writing "take 500 for lunch" on the Bank's stationery. On 11th January 2017, Simon Kamande received Ksh. 500 from Mike Okati.
 33. RW1 was closely cross examined by counsel for the claimant and her responses were consistent and overall affirmed her evidence in chief. The Claimant's allegations of coercion and duress are denied by the Respondent, who states that he voluntarily gave all information required by investigators. Notably, the Claimant did not complain of coercion, duress and/or mistreatment on account of gender during the investigations and disciplinary hearing.
 34. The Respondent states that it followed due process by: carrying out investigations which implicated the Claimant; issuing an invitation letter to the disciplinary hearing, on 6th April 2017; and informing the Claimant of his right to be accompanied by a colleague of his choice in the disciplinary hearing. Upon considering the evidence and the Claimant's representations, the Respondent established that the Claimant had caused the Respondent to lose confidence, faithfulness and trust in him. Although a case of summary dismissal had been made, the Respondent opted for ordinary termination of employment and paid the Claimant his Notice pay.



35. The Respondent is adamant that the termination of the Claimant's employment was not based on grounds of sex as alleged by the Claimant, but rather on the matters highlighted in the termination letter. According to the Respondent, the termination was procedurally fair and just.
36. On the claims sought, it is the Respondent's case that it was a term of the loan facility taken by the Claimant that the interest rate would revert to commercial rates as soon as an employee leaves the employment of the Respondent for whatever reason. They therefore request the prayer for maintenance of the subsidized interest rate of 10% to be denied.
37. The Respondent states that the claim for future medical benefits lacks any basis in law, as medical benefits are only available to employees who are still in employment. It is the Respondent's position that the claim for compensation lacks any basis in law, as the Claimant's termination from employment was both procedurally fair and substantially valid. On the issue of pension, it is stated that the Claimant's pension is governed by the rules of the Pension Scheme. In any event, the Claimant collected his pension soon after termination of employment.

DETERMINATION

38. The Court has carefully considered the evidence adduced by the claimant *vis a vis* that adduced by the respondent and the submissions filed by the parties and the issues for determination are:
 - i. Whether the termination of employment of the claimant was for a valid reason following a fair procedure
 - ii. Whether the staff loan should be repaid on preferential rates
 - iii. Whether the claimant is entitled to the reliefs sought
39. The court is satisfied that the respondent has proved the following misconduct against the claimant which was established in the investigations and the disciplinary hearing and adduced as evidence before court: -

The claimant had a meeting with a suspected fraudster Paul Kinyua Kubai at the Respondent's Bank premises, with the said Paul Kinyua Kubai going ahead to deposit a fraudulent cheque purporting to be from Katahira & Engineers International; receiving cash benefits from Mike Dominic Okati who is suspected of attempting to deposit fraudulent cheques; fraudulently paying USD 2,300 using a cheque number 1502 to a fraudster Godfrey Okinyi Onyango who was purporting to be a signatory of the Respondent's Customer without ensuring the fraudulent cheque was duly signed as per the account mandate; and sending out a threatening Whatsapp message to the Teller's WhatsApp group with words "Anyone who has ever received or acted on instructions like "kindly take 500 for lunch" written on a pink slip we're coming for you."

40. The Claimant disregarded the Respondent's policy provided in the job description of an Operations Assistant and Appointment Letter by: viewing the "signing mandates" of the Respondent's customer's (Pamela Mitula) bank account without any evidence of customer's request and/or instructions in place; accessing the Bank Account of Pamela Mitula with the intention of examining the Customer's bank balances; and accessing the Bank Account belonging to Katahira & Engineers International without the instructions of the customer.
41. Furthermore, the investigations carried out by the Respondent established that the Claimant's digital prints were found in all the above fraudulent transactions giving the Respondent reasonable grounds



to believe that the Claimant was directly and indirectly involved in aiding and abetting the fraudulent activities.

42. The court is equally satisfied that the claimant was subjected to fair investigations and was fairly treated at a disciplinary process that ensued and led to the Claimant being found guilty of gross misconduct which would have subjected the Claimant to a summary dismissal but the Respondent found it fit to terminate the employment of the claimant normally to allow him to be paid terminal benefits which were tabulated and paid to him.
43. The Court is persuaded by the authority in the case of Violet Kadala Shitsukane v Kenya Post savings Bank [2020] KECS 718 (KLR) in which the Court of Appeal held as follows: -

Banks are custodians of their customers' funds and other valuables of a personal nature and operate in a highly sensitive environment and therefore, in order to inculcate and maintain customer confidence, banks and their staff are required to maintain a high degree of integrity, prudence and financial probity. It follows that where a staff's conduct in relation to funds and valuables belonging to customers points to fraud, such staff risks termination of his or her employment"

44. This case is similar to the case of Mwanyale v Imarika Sacco [2022] KEELRC 3972(KLR) where suspicious conduct of a staff who moved from back office to assist a customer who turned out to be a fraudster provided reasonable grounds for the sacking of the staff
45. The court finds in the final analysis that the termination of the employment of the claimant was for a valid reason and the respondent followed a fair procedure in arriving at that decision in compliance with sections 41 and 43 of the Employment Act 2007.
46. On the issue as to whether the outstanding loan amounts owed to the Respondent by the claimant should be paid on staff rates, it is the Respondent's case that it was a term of the loan facility taken by the Claimant that the interest rate would revert to commercial rates as soon as an employee leaves the employment of the Respondent for whatever reason. The court is of the considered finding that where a staff leaves employment for no fault on their part there cannot be any justification to deny them benefits that accrue to them by fact of their service to the company. This court has held elsewhere that this type of clause is unconscionable where for example an employee is retrenched from employment for operational reasons and for no fault of the employee. This however is not the case in the present matter and this claim by the claimant to be reverted to preferential 10% staff loan repayment rates lack merit and is also dismissed. The court finds no justification to recall for review the certificate of service given to the Claimant by the Respondent.
47. All the reliefs sought by the claimant and set out above in this judgment lack merit and are dismissed.
48. For the avoidance of doubt, this suit is dismissed in its entirety for lack of merit with no order as to costs

DATED AT NAIROBI THIS 14TH DAY OF APRIL 2026

MATHEWS NDUMA

JUDGE

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF APRIL, 2026

DR. GAKERI J.

JUDGE



Appearance:

Ms Bonyo, Advocate for Claimant

Mr. Njuguna for Respondent

Court Assistant: Mr. Kemboi

