

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

CAUSE NO. E1044 OF 2021

BARBARA WAYUA OTIATO.....CLAIMANT

VERSUS

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

JUDGMENT

The suit was filed on 15/12/2021 by the Claimant against the Respondent seeking the following reliefs:-

- (a) A declaration that the Claimant's termination was wrongful, unlawful and unfair.
- (b) A declaration that the Claimant is entitled to repay the outstanding loan with the Respondent while applying the staff interest rate.
- (c) General damages for wrongful dismissal of Kshs. 1,774,820.04.
- (d) Compensation for violation of rights under the Bill of Rights enshrined in the Constitution of Kshs. 10,000,000.00
- (e) Costs of the claim
- (f) Interest on (c), and (d) above at court rates.

Facts of the claim

CW1, the Claimant testified under oath and adopted witness statement dated 14/12/2021 as his evidence in chief and produced exhibits '1' to '14'

in support of his case. The Claimant was employed by Respondent as a graduate clerk and rose through the ranks to the position of Client Service Manager. On 31/10/2020, the Respondent unlawfully and without any justification terminated the employment of the Claimant on the pretext that his position had become redundant.

That earlier, the Respondent had invited the Claimant for an interview for the position of a Senior Universal Banker in the Branch which entailed a similar role to one already held by the Claimant. The Claimant was advised that he was not successful in his interview.

The Claimant states that the Respondent did not follow the provisions of section 40 of the Employment Act, 2007 and prays for compensation equivalent to 12 months' salary and general damages for violation of the Claimant's constitutional rights.

The Claimant said he had an outstanding loan with the bank that attracted interest at staff rate of 6.46% per annum and the Respondent deducted 70% of the Claimant's terminal dues to pre-pay the loan without any consent or justification. That the said loan was by a letter dated 2015 converted to a commercial loan at the interest rate of 14.5% effective 30/5/2021. That the Claimant's suit be allowed as prayed.

Under cross-examination the Claimant admitted that he received a notice of redundancy dated 24/9/2020. That he understood its contents and had conversation with Respondent on intended changes in retail division. That

he applied and was interviewed for the position of Senior Universal Banker a position similar to the one he held in band 7/8 role.

That termination was supposed to take place on 24/10/2020 but was extended to 31/10/2020. That the extension was meant to allow the Claimant get alternative job. That the letter of termination was dated 31/10/2020 on grounds of redundancy. CW1 said he signed the letters on a without prejudice basis together with the payment schedule. CW1 said he did not write a letter of objection to the deduction of the loan to the bank. That the loan was unlawfully converted to commercial rates.

RW1, Lolaine Oyombe testified in defence of the case. RW1 adopted a witness statement dated 17/2/2023 as her evidence in chief. RW1, produced exhibits '1' to '5' dated 8/11/2022 in support of the case. RW1 produced notice of redundancy 1/9/2020 addressed to the Commissioner of labour. That the Claimant was stationed at the Maritime, Branch Mombasa. That Claimant was paid terminal benefits upon termination.

That 70% of the benefits were deducted to pay a loan owed to the bank. That the issue was open to discussion and the Claimant could suggest a payment plan with the credit department but Claimant did not approach the department in that respect.

That the restructuring affected 200 people across the whole bank. That not all employees in the affected departments left. That the roles available were less than the number of people invited for suitability interviews. That

Claimant was not successful. That finance departments were affected. That notice of redundancy was issued after the interview. That employees were notified that they could renegotiate the loan terms.

RW1 said that the Respondent held meetings with individual employees but no seminars for affected persons were conducted. That the procedure followed was lawful and fair. That the suit be dismissed with costs.

DETERMINATION

The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are:-

- (a) Whether the termination of the Claimant was for a valid reason following a fair procedure?
- (b) Whether the Claimant is entitled to the reliefs sought?

In the case of **Caring Kenya Ltd versus Mwaka and 3 others (Civil Appeal No. 54 of 2019) (2021) KECA 115 (KLR)** the Court of Appeal had this to say:-

“34 While the requirement of consultation is not expressly provided in section 40 of the Employment Act, this requirement is implied, as the main reason and rationale for giving the notices in section 40(1) (a) and (b) to the union and employees of an impending redundancy. In this respect we wholly adopt the reasoning of Maraga J. A. (as then was) in Kenya Airways

Limited and Aviation and Allied Workers Union Kenya and 3 others (supra), where the learned judge held as follows:

“49...Section 40(1) of our Employment Act does not expressly state the purpose of the notice. Although it also does not expressly provide for consultation between the employer and the employees or their trade unions before the final decision on redundancy is made, on my part I find the requirement of consultation is provided for in our law and implicit in the Employment Act itself.

50. By dint of Article 2 (6) of the Constitution, the treaties and conventions ratified by Kenya are now part of the law of Kenya. The Kenya Constitution, 2010 was promulgated on 27th August 2010. Before then Kenya was a dualist state, which, like other dualist states, domesticated the treaties or conventions are ratified by legislation. By virtue of the provisions of this Article, however, the treaties or conventions which Kenya had ratified before that date, whether domesticated or not, automatically became part of the law of Kenya. The process of ratification of the treaties Kenya has entered and those it enters into after the enactment and entry into force of the Ratification of Treaties Act, 2012 is now through legislation.”

The Court of Appeal added as follows:-

“36 Furthermore, consultation is also now specifically required by Article 47 of the Constitution and the Fair Administrative Action Act. Article 47 and section 4(3) of the Fair Administrative Action

Act provide that where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:-

- (a) Prior and adequate notice of the nature and reasons for the proposed administrative action;***
- (b) An opportunity to be heard and to make representations in that regard;***
- (c) Notice of a right to a review or internal appeal against an administrative decision, where applicable.***
- (d) A statement of reasons pursuant to section 6;***
- (e) Notice of the right to legal representation, where applicable;***
- (f) Notice of the right to cross-examine or where applicable; or***
- (g) Information, materials and evidence to be relied upon in making the decision or taking the administrative action.***

The testimony by RW1 is that consultation did take place with individual employees. That employees targeted for redundancy were given opportunity to attend suitability interviews for the available jobs upon restructuring.

RW1 told the court that she understood the purpose of restructuring and that she held discussions with the Claimant although there was no agreement on the issue of deduction of 70% of her terminal dues to repay the loan she had with the bank. The Claimant also said there was no agreement on conversion of the loan from a preferential staff loan to a commercial one.

The question as to whether notices were issued is not in dispute here. The court is satisfied that the appropriate notices were issued to the labour commissioner and to the Claimant and other affected employees at least one month before the date of termination on grounds of redundancy.

The court is satisfied that the reasons given for the declaration of redundancy were valid within the meaning given to the term under section 2 of the Employment Act, 2007 which provides;

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer; where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

It is the court’s finding that the redundancy exercise conducted by the Respondent was for a valid reason and the Respondent followed a fair procedure in the separation exercise.

The court is further satisfied that employees affected were given opportunity to agree on a loan repayment plan but the Claimant did not take advantage of that opportunity nor did the Claimant make a written protest with regard to the deduction of 70% of her terminal benefits to repay the loan.

This court has held before that where termination of the employment of an employee is for operational reasons and no fault is attributed to the employee, it is unfair to convert a loan granted to the employee on preferential staff terms to punitive commercial rates. This conversion amounts to punishment for no fault of the employee. The clauses in the staff loan contracts which allow this type of scenario are unfair, unconscionable and reasonable employers should refrain from such practices which deprive employees accrued property rights under Article 40 of the Constitution and the practice itself amounts to unfair labour practice and unfair administrative action in violation of Article 41(1) and 47(1) of the Constitution of Kenya 2010. (Emphasis added)

Accordingly, the court makes the following findings and orders as between the Claimant and the Respondent: -

- (a)The termination of the Claimant on account of redundancy was for a valid reason following a fair procedure and the exercise was therefore lawful and fair.**
- (b)The Respondent is directed to allow the Claimant to repay the outstanding loan with the Respondent on the preferential staff interest rate and the impugned clauses in the staff loan agreements which deprive staff, accrued property rights, by virtue of their service, violate Article 40(1) and (2)a, 41(1) and 47(1) of the Constitution and are illegal, null and void ab initio.**
- (c)The Respondent to provide certificate of service to the Claimant within 30 days of this judgment.**
- (d)The Respondent to meet the costs of the suit.**

(e)For the avoidance of doubt all other reliefs sought by the Claimant lack merit and are dismissed.

Dated at Nairobi this 2nd day of April 2026



Mathews Nduma
JUDGE

Dated, signed and delivered in open court at Nairobi this 9th day of April 2026

Dr. Jacob Gakeri
JUDGE

In presence of:

Mr. Kabue for Claimant

Mr. Okeche for Respondent

Mr. Kemboi – Court Assistant