



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

(ON Makau J on 30th April, 2026)

CAUSE NO. 871 OF 2019

LILIAN

RHODA

ADHIAMBO.....CLAIMANT

-VERSUS-

ABSA

BANK

KENYA

PLC.....RESPONDENT

JUDGMENT

1. By an Amended Memorandum of Claim dated 27th September 2021, the Claimant sued for unfair termination of her employment by the Respondent on 29th November 2019. She averred that the reason for the termination was not

valid and the procedure followed was not fair. Therefore, she prayed for the following:-

- a) A declaration that the act of the Respondent withholding the evidence forming the basis of termination of the Claimant is unfair, unlawful and against the rules of natural justice.***
- b) A declaration that the act of discrimination in the place of work is unconstitutional, unlawful and illegal and amounts to breach of contract of employment and deprivation of property.***
- c) A declaration that the Claimant's termination was unfair and unlawful.***
- d) An Order for the Claimant's reinstatement and/or re-engagement at the same or similar terms.***
- e) A permanent injunction restraining the Respondent from charging any bank charges or interest rates on the Mortgage Loan facilities at commercial rates or any other rate of interest save the allowed charges for staff***

account and staff interest not exceeding 6% per annum.

f) 12 months' pay for unfair dismissal at Kshs 6,493,455.00.

g) 1 months' notice pay Kshs 500,145.00.

h) Service pay at one month's pay for every year worked for 20 years at Ksh 10,062,900.00.

i) Leave pay 24 unpaid leave days Kshs 575,022.00.

j) Pay of days worked from 1st March 2019 to 18th March 2019 Ksh 104,922.00.

k) 40% discount on outstanding loan balance.

l) An order for payment of actual pecuniary loss suffered as a result of termination leading to loss of career from the date of termination, to the date of payment.

m) General, aggravated and exemplary damages for deceit, fraudulent misrepresentation.

n) Cost of the suit and interest thereon at court rates.

o) Any other relief the Court may deem fair and fit to grant.

2. The Respondent filed a Memorandum of Defence and Counterclaim dated 20th March 2020 denying the alleged unlawful termination and averred that the Claimant was summarily dismissed for acting un-procedurally, dishonestly and fraudulently in various transactions. It further averred that the Claimant's misconduct breached the bank's policies and exposed the bank to reputational damage and potential financial losses. The Respondent prayed for dismissal of the Claimant's suit and judgment on its counterclaim for Kshs. 13,860,580.60 being loans advanced to the Claimant during her employment.

Evidence

3. The Claimant testified as CW1 and adopted her written statement dated 27th September 2021 as her evidence in chief. She further produced her bundle of documents dated

18th October 2023 as exhibits. In brief, her evidence was that she joined the respondent in 1988 as a Manager's Assistant and rose through the ranks to become a Branch Manager in July 2007. Her promotions were due to her honest and stellar performance in the various stations. Her last station was Karen Prestige where she was posted in January 2019 and her monthly salary of Kshs 500,145.

4. On 23rd October 2019, she was away from office visiting a friend when her Line Manager Grace Muamba called her to the office and gave her a suspension letter. The suspension was for 30 days and the reason cited was questionable/unprocedural transactions.
5. On 28th October 2019, she was interrogated by three members of the Forensic Department including Ken Olung'o and thereafter she was asked to record a statement. She was also asked to leave her mobile phone with the investigators for one hour but she only got it back after three hours.

6. On 7th November 2019, she was served with a show cause letter while on the way to hospital and she responded by requesting for access to computer and system to review the vouchers, cheques and approval trail of the said transactions. On 14th November 2019, Vaslas Odhiambo, the Wellness Manager, wrote responded to her request and asked her to see Ken Olung'o at Forensic Department to access the documents.

7. On 15th November 2019 her Line Manager, Grace notified her via a text message to collect a letter extending her time to respond to the show cause from Ken when going to view the documents she had requested for. The investigators ken, Generose and Michael gave her access to the documents to view but prohibited her from taking copies. She was also not allowed access to the audit trail to check who were the other authorizers of the concerned transactions, including the manual and electronic approvals. She left disappointed and delivered her response to the show cause letter to Grace on 19th November 2019, who also served her with letter dated 18th November 2019 extending her suspension.

8. On 21st November 2019, she was invited to a disciplinary hearing on 27th November 2019 but later it was rescheduled to 28th November 2019 vide a letter dated 22nd November 2019. She attended the hearing before a panel of three members who were very hostile to her in the manner in which they were asking questions. She contended that the hearing took two hours but it was not in accordance with the DC & G Handbook as it looked more of fight than a hearing. The following day, she was served with a summary dismissal letter and an exit pack to sign by Vaslas Odhiambo.
9. On the same day she wrote an email to Grace and Vaslas requesting to access the bank systems and her documents to aid in doing a comprehensive appeal and Vaslas responded that she had been given enough support, and referred her to the Forensic to pick her items. She found that her desk had been allocated to another person and her belongings removed and others tampered with. She contended that the whole disciplinary process was unfair as she was inhumanly treated.

10. She denied any wrong doing contending that her role as Branch Manager was to approve RTGS transactions upon proper identification and verification of a customer by at least four departments. Finally, she contended that her right of appeal was denied when her request for documents to enable her appeal was declined.

11. In cross examination, the Claimant admitted that she had worked for the Respondent for 20 years and held the position of Senior Branch Manager from 2010. She further admitted that she was placed under suspension by letter dated 23rd October 2019 on full pay. She also admitted that the show cause letter dated 7th November 2019 detailed 11 transactions and that she was involved in all of them. She admitted that she was allowed to view the relevant documents. She further admitted that she had a previous disciplinary issue while at Ruaka Branch concerning Kshs. 80,000 for team building which she held for over a month. Finally, she confirmed that she did not appeal against her summary dismissal.

12. The Respondent called two witnesses. RW1, Michael Ngobo, a Senior Forensic Investigator, adopted his written statement dated 25th October 2023 and produced the Respondent's documents numbered 1 to 14 as exhibits. In brief, his evidence was that he was tasked to investigate several suspicious transactions done in respondent's Karen Branch in October 2019. They included:

- a) Two transactions for a cumulative Kshs 3,600,000 drawn from account number 0165218779 in the name of Ronald Roy and Sheila Claridge, on 13th October 2019.
- b) A transaction for Kshs 1,169,000 from account number 0227700347 in the name of Eskinder Assefa Kebede
- c) A cash withdrawal of the sum of Kshs 1,850,000 from account number 065-1631513 in the name of Simon Joseph Karasha.

13. He and his team investigated each transaction and interviews all the staff involved at every step of the authorization. He contended that the Claimant was the

branch manager and the senior most member of the staff who had handled and authorized the transactions. The team further investigated whether the staff involved in the transactions had followed the standard procedures of customer identifications and screening prior to effecting the instructions and approving the transactions. They also reviewed the mobile phone activities of the staff members to find out whether they had been in contact with the initiators of the suspicious transactions.

14. Finally, he stated that upon considering the evidence gathered, the investigations team concluded that the said transactions were fraudulent and recommended that the funds withdrawn be reimbursed by the Respondent to the respective customers. It further recommended for disciplinary action to be taken against the staff members adversely mentioned in the investigation reports dated 4th November 2019, including the Claimant.

15. On cross examination, he confirmed that the Claimant could make inquiries on the FCR template and that was not

illegal. He confirmed that the CCTV footage referred to his investigation was not produced in court. He stated that the Respondent did not establish any financial or monetary benefit obtained by the Claimant and did not institute any criminal proceedings against her.

16. RW2, Vaslas Odhiambo, the Employee Relations Manager, testified on 7th October 2025 and adopted his witness statement dated 20th March 2020. In brief his evidence was that the Claimant was employed by the respondent as Branch Manager at Karen Branch during the material time relevant to this suit. On 1st, 18th and 19th October 2019, the Respondent discovered various gross anomalies involving fraudulent transactions at Karen Branch and the Claimant knew or ought to have known of the same.

17. The Claimant was suspended pending investigations and later she was subjected to disciplinary process after she was adversely mentioned in the investigation reports dated 4th November 2019. He contended that fair procedure was followed, including service of show cause letter, availing

relevant documents to the Claimant upon her request, reviewed claimant's response to the show cause letter and thereafter accorded her an oral hearing before a panel on 28th November 2019. After the hearing, the panel considered the evidence and made observations and findings adverse to the Claimant and she was dismissed by the letter dated 29th November 2019.

18. Finally, he stated that the dismissal letter notified the Claimant that her outstanding loan balance was Kshs 13,860,580.60 and the interest rate would change from time to time, and that her terminal dues would be applied to offset the said indebtedness. She was also issued with a certificate of service. He maintained that the Claimant is still indebted to the Respondent to the tune of Kshs13,869,580.60 and the same continues to accrue interest at the commercial rate as she is no longer entitled to staff rate of 6% after the exiting the bank.

19. On cross examination, he confirmed that the Claimant had been a good employee. He stated that the forensic

reports were supplied to the Claimant before the disciplinary hearing. He clarified that the claimant never requested for copies but access to the documents and computer, of which she allowed for four hours. He contended that she was free to view, copy or print the documents to prepare for the hearing.

Claimant's Submissions

20. The claimant's submissions, raised three main issues, namely, procedural fairness, validity of the reason for the termination and entitlement to the reliefs sought. On procedural fairness, it was submitted she was neither given adequate information on the specific charges she was facing nor was she issued with a copy of the Investigation Report before the disciplinary hearing to adequately prepare her defence. It was argued that, by unjustifiably allowing limited access to the forensic investigation reports that purportedly implicated her of fraud, the Respondent's disciplinary process was flawed.

21. It was further submitted that the Respondent failed to furnish her with the investigation reports she requested for which were necessary for her to rely on during the appeal hearing. Reliance was placed on **Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] eKLR**, where the Court underscored that the provisions of Section 41 of the Employment Act are mandatory and failure to comply therewith renders any resultant termination unfair. She maintained that the Respondent violated these mandatory provisions by failing to accord her a fair hearing prior to dismissal.

22. Reliance was also placed on the case of **University of Nairobi v Onjira John Anyul [2021] eKLR**, where the Court of Appeal held that the rights to a fair hearing and fair administrative action under Articles 50 and 47 of the Constitution extend to disciplinary proceedings. It was submitted that the claimant's rights herein were infringed when the Respondent failed to supply her with the investigation reports she had requested, and thereby denied her an adequate opportunity to mount a proper defence.

23. On the validity of the reason for termination, it was submitted that the Claimant was not involved in any of the fraudulent transactions as alleged by the Respondent. It was further submitted that the Respondent's forensic investigation reports did not implicate her in any wrongdoing and were characterized by assumptions and speculative assertions. She further submitted that the Respondent failed to satisfy the standard of proof for allegations of fraud, which she argued is higher than on a balance of probabilities.

24. It was further submitted that the Respondent falsely accused her of failing to adhere to standard procedure despite knowing that her role was limited to authorization after positive identification by other departments. It was also submitted that, some employees under her, were uncomfortable with her leadership style and had maliciously resisted her leadership. It was clarified that her previous disciplinary case cited by the respondent had no relation to the allegations of fraud and it was therefore an attempt to paint a picture that she was a problematic employee despite her 20 years of distinguished service. Therefore, it was

argued that the respondent did not discharge the burden of prove of valid reason and fair procedure as required under section 41,43 and 45 of the Employment Act.

25. For emphasis, reliance was placed on **National Bank of Kenya v Anthony Njue John [2019] eKLR**, where the Court of Appeal affirmed that termination is deemed unfair where an employer fails to discharge the statutory burden of proof of valid and fair reason for the termination.

26. Further reliance was placed on **Postal Corporation of Kenya v Andrew K. Tanui [2019] KECA 489 (KLR)** where the Court of Appeal held that an employer must prove the reasons for termination under Section 43, establish that such reasons are valid and fair under Section 45, and justify the grounds for dismissal under Section 47(5) of the Employment Act. She argued that the Respondent failed to sufficiently discharge this burden.

27. It was further submitted that the allegations of fraud and dishonesty levelled against her had not been proved to the required standard. Reliance was placed on **Stanley Mwangi**

Gachugu & another v Barclays Bank of Kenya Ltd [2019] eKLR, wherein the Court held that fraud must not only be specifically pleaded but must also be distinctly proved and cannot be inferred from the facts.

28. Lastly, on the issue of the reliefs sought, it was submitted that the Claimant was entitled to a reinstatement because she had served for 20 years. Reliance was placed on **Fredrick Odongo Owegi v CFC Life Assurance Limited [2014] eKLR**, where the Court, taking into account the claimant's long service, granted reinstatement.

29. It was further submitted that the claimant is entitled to all the other relief sought in the Amended Memorandum of Claim dated 27th September 2021.

Respondent's Submissions

30. The Respondent submissions dated 26th January 2026 addressed the same issues raised by the claimant, namely, valid and fair reason for the termination, procedural fairness, and the Claimant's entitlement to the reliefs sought.

31. From the onset it was submitted for the respondent that the banking industry is built on trust, responsibility and accountability but between July and October 2019, customer funds exceeding Kshs. 6.3 million disappeared under the Claimant's watch and in several instances with her direct personal authorization. It argued that the Claimant was not an ordinary bank employee but a Branch Manager, the most senior banking professional at the Respondent's Karen Branch, with thirteen years of experience as a Branch Manager and over twenty years in banking career.
32. It was therefore argued that the Respondent had discharged its burden of prove of a valid reason for dismissing the Claimant from service as required under Sections 43(1) and 45(2)(b) of the Employment Act.
33. To fortify the above submission, reference was made to the case of **Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR**, where the Court of Appeal held that the standard of proof in employment disputes is on a balance of probabilities and that an employer is only required to demonstrate the reasons it genuinely believed to

exist at the time of termination. The Court further cautioned against imposing a criminal standard of proof upon employers, noting that it would be improper to expect an employer to undertake a near forensic examination of facts before taking disciplinary action.

34. It was further submitted that the Respondent's suspicion against the Claimant met the threshold of being reasonable and was sufficiently grounded. For emphasis, reliance was placed on **Bamburi Cement Limited v William Kilonzi [2016] eKLR**, where the Court of Appeal held that the employer's suspicion should be founded on reasonable and sufficient grounds.

35. It was further argued that the Claimant's actions constituted fundamental breach of her contractual obligation, thereby justifying summary dismissal. For emphasis, reliance was placed on **Chepkuto v Egerton University Investment Co Ltd [2024] KECA 1848 (KLR)**, where the Court of Appeal clarified that an employer is entitled to summarily dismiss an employee for gross misconduct under

Section 44 of the Employment Act, provided that the conduct complained of amounts to a fundamental breach of the employee's contractual obligations.

36. It was further submitted that the Claimant, being the Branch Manager, was subject to this elevated standard, but her conduct fell short of the same, thereby justifying the disciplinary action taken against her. It was argued that the respondent has demonstrated by three Forensic Investigation Reports dated 4th November 2019 that three accounts where funds were drawn fraudulently under the watch or authorization by the claimant in October 2019. Reliance was placed on **Njuki v Bank of Africa Kenya Limited [2025] KEELRC 1694 (KLR)** where the Court held that the Claimant had acted negligently.

37. The Respondent further submitted that the Claimant had previous disciplinary issues while serving as the Ruaka Branch Manager, as reflected at pages 109 to 117 of the Respondent's Bundle, which established a pattern of conduct

and undermined any suggestion that the Respondent acted with malice.

38. On procedural fairness, it was submitted that a fair procedure was followed as the Claimant was suspended on full pay by letter dated 23rd October 2019, interviewed by the Forensic Team, issued with a Notice to Show Cause letter dated 7th November 2019, granted an extension of time upon request to respond and hearing was accorded to her on 28th November 2019 as required under Section 41 of the Employment Act.

39. For emphasis, reliance was placed on **Naima Khamis v Oxford University Press (E.A) Ltd [2017] eKLR**, where the Court held that procedural unfairness arises where an employer fails to adhere to the procedure prescribed under the contract and the law, and emphasized that an employee must be accorded an opportunity to be heard, with their representations duly considered before a decision to terminate employment is made.

40. Further, reliance was placed on **National Bank of Kenya v Anthony Njue John [2019] eKLR**, where the Court of Appeal underscored the obligation placed upon an employer to comply with the provisions of Sections 41 and 45 of the Employment Act in the conduct of disciplinary proceedings. In that decision, the Court approved the holding in **Janet Nyandiko v Kenya Commercial Bank Limited [2017] eKLR**, which elaborated on the duty of an employer to observe procedural fairness prior to termination.

41. It was further submitted that the Claimant was not targeted for dismissal as all the other employees implicated in the forensic investigation report like the claimant were issued with show cause letters as shown at pages 74 to 84 of the Respondent's Bundle.

42. On the alleged failure to provide the claimant with the investigation reports to prepare his defence, it was submitted that the Respondent expressly invited the Claimant vide an email, to make arrangements to access her PC ahead of the disciplinary hearing. It was further

submitted that the Claimant was fully apprised of the allegations and had sufficient material to prepare for the disciplinary hearing. For emphasis, reliance was placed on **Charles Munuve & another v Safaricom PLC [2021] eKLR.**

43. As regards the reliefs sought in the suit, it was submitted that the Claimant is not entitled to the same. It was submitted that reinstatement would not be practicable as the trust had been irreparably broken, and the three years limitation period that is allowed by Section 12(3) of the Employment and Labour Relations Court Act had lapsed from the date of the summary dismissal.

44. It was further submitted that the claimant is not entitled to compensation for unfair termination as the dismissal was fair and lawful. However, on a without prejudice basis, it was submitted that if the court finds the dismissal was unfair, an award of 1 month's basic pay would be sufficient.

45. It further submitted that the Claimant was not entitled to the prayer for service pay under Section 35(6) of the

Employment Act since she was a member of National Social Security Fund and a pension scheme.

46. It was further submitted that the prayer for salary in lieu of notice must fail since Section 44(1) of the Employment Act, which permits summary dismissal for gross misconduct.

47. As regards the pray for leave, it was submitted that the same was duly considered and computed as part of terminal benefits which were applied to offset the Claimant's outstanding loan facilities.

48. The prayer for general and exemplary damages, was deemed as unmerited since Section 49 of the Employment Act does not provide for such damages. For emphasis, reliance was placed on **Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR** and **D K Njagi Marete v Teachers Service Commission [2020] eKLR** where the Court of Appeal held that general damages are not awardable for wrongful termination.

49. As regards the prayer for 40% discount on the outstanding loan facility, it was submitted that the Claimant had

previously pursued this matter before the Commercial Court and had deliberately failed to inform this court of those proceedings.

50. Finally, it was submitted that the claimant had failed to prove her case and prayed for the same to be dismissed with costs for lack of merits.

Claimant's Rejoinder

51. It was submitted for the Claimant vide the supplementary submissions dated 18th February 2026 that the Respondent's case rested on mere suspicion, but no proof. It was submitted that the Respondent's suspicion was neither reasonable nor supported by sufficient grounds as was held in **Bamburi Cement Limited v William Kilonzi [2016] eKLR**.

52. She pointed out that RW1 and RW2 confirmed under cross examination that the Respondent did not establish any financial benefit obtained by the Claimant, did not institute any criminal proceedings against her, and that the Claimant could not have ascertained whether the customer's passport

was fake. It was further submitted that forensic Report ASKE-1910-00069, confirmed that the Claimant inquired from the Respondent's forensics department about the memo and she was advised to lower it to allow the customer to transact.

53. On the alleged calls with Nixon Odhiambo, it was submitted that the screenshots provided in the Forensic Investigation Report were not accompanied by a Certificate of Electronic Evidence as required under Section 106B of the Evidence Act Cap 80 and therefore the same could not be relied upon as they were inadmissible. It was further submitted that the CCTV footages relied upon to implicate the Claimant was not produced as an exhibit in court and therefore the court cannot be invited to rely on evidence that has not been produced before it to see.

54. It was reiterated that fraud must be distinctly alleged and distinctly proved. It was further reiterated that the standard of proof for fraud is higher than on a balance of probabilities as was held in **Emfil Ltd v Registrar of Titles & 2 Others**

**[2014] eKLR and Mokebo v Kenya Women Microfinance
[2025] KEELRC 2634.**

55. As regards the non-disclosure of the Investigation Reports, it was submitted that the same violated her right to a fair administrative action and fair hearing under Article 47 and Article 50(1) of the Constitution. The case of **University of Nairobi v Onjira John Anyul [2021] eKLR** was cited for emphasis.

56. It was further submitted that access to a computer was not access to a forensic investigation report, and that the of **Charles Munuve & another v Safaricom PLC [2021] eKLR** cited by the respondent was distinguishable from the instant case since in that case the employees had been supplied with an extract of the investigation report. In the instant case, it was argued that RW1 and RW2 admitted that the claimant was not supplied with the investigations report before the disciplinary hearing and only came to see them in 2023, four years after the dismissal. It was argued that the

said procedural flaw prejudiced the claimant and denied her an opportunity to mount an appeal after the dismissal.

57. As regards concealment of the fact that the issue of discount on the outstanding featured in another suit, it was submitted that the bank had already sold the charged property and fully recovered the mortgage facility in exercise of its power of sale and therefore that prayer was spent.

Issues for determination and analysis

58. Having considered the pleadings, evidence and submissions summarized above, it is common ground that the Claimant was summarily dismissed from employment by the respondent on 29th November 2019. Therefore, main issues for determination in this case are:

- (a) Whether the dismissal of the claimant was unfair and unlawful.
- (b) Whether the reliefs sought in the suit are merited.
- (c) Whether the court claim is merited.

Unfair and unlawful dismissal

59. The Claimant contended that the termination of her employment was unfair and unlawful while the Respondent maintained that it was justified. Section 45(2) of the Employment Act provides that:-

“(2) A termination of employment by an employer is unfair if the employer fails to prove:

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason—

(i) related to the employee's conduct, capacity and compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.”

Reason for the dismissal

60. RW1 testified that the Claimant was implicated in three forensic investigation reports all dated 4th November 2019 involving fraudulent transactions totaling over Kshs. 6.3 million. The reports indicated that the Claimant authorized payment without carrying out the required due diligence checks, failed to see customers' identification documents, made suspicious enquiries on the FCR system, and had unexplained communications with a non-customer suspect. The Respondent also produced evidence of previous disciplinary issues concerning the Claimant in 2014 while she was at Ruaka Branch from Pages 109 to 117 of the Respondent's Bundle.

61. The Claimant denied the allegations and contended that she followed the Respondent's approved procedures. She maintained that her role was limited to authorization after positive identification by other departments.

62. I have carefully considered the three forensic investigation reports all dated 4th November 2019 which were produced as exhibits without any objection. I have also considered the

testimonies by the Claimant and the Respondent's witnesses. The reports indicate that the Claimant authorized the fraudulent transactions and actively interacted with the suspected fraudsters in her office. She also had phone calls with one suspected fraudster before the fraudulent transactions.

63. The Claimant admitted that she was involved in each and every transaction listed in the show cause letter. She further admitted in her testimony that she signed the counter cheques and authorized the RTGS transactions. She also advised the suspected fraudsters not to withdraw large sums and instead take half in cash and the balance via RTGS. She also admitted that she had communications with Nixon Odhiambo, who was identified as a suspect. In the circumstances, I see no difficulty in finding that the Respondent has proved and justified on a balance of probability that the claimant had grossly misconducted herself in the manner she dealt with said fraudulent transactions. It is clear from the evidence that she acted negligently leading to loss of customer funds. It is immaterial

that the Respondent did not prove that she benefited from the fraud.

64. Section 44 (4) of the Employment Act provide that:-

“ (4) Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause...

(c) an employee willfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;

(g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.”

65. The Claimant's conduct as the Branch Manager, falls within the ambit of the above provisions. I therefore hold that the

Respondent has proved a valid reason for the summary dismissal.

66. I gather support from **Mwangi v ABSA Bank Kenya PLC [2024]KEELRC 2399 (KLR)** where the court held:-

“The banking sector was sensitive and highly regulated through its policies and the Central Bank of Kenya. Breach of fiduciary duty extended to third parties and the conduct of the claimant justified the sanction taken and termination of employment. Similarly, certain positions such as branch manager of a bank, attracted a high calling of integrity and financial probity. Once held, great responsibility and accountability was called for. As the branch manager of the Nkrumah Branch, Mombasa, the claimant had bigger accountability beyond what a junior staff held.”

67. I entirely agree with the above view and adopt it in this case.

As the Branch Manager Karen Branch, the Claimant was

bound by both the law and her contract of service to act for the best interest of the bank and its customers by ensuring that funds in the bank's custody are not paid to fraudsters through breach of the established bank policies and procedures. She was required to exercise due diligence before approving any transactions even where her Junior staff had approved.

Procedure

68. Section 45(2)(c) of the Employment Act places on the employer the burden of proving that termination of employment contract was done in accordance with fair procedure. Section 41 of the Act then sets out the mandatory procedure for terminating employment for misconduct as follows:-

“ (1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee

understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summary dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance and the person, if any, chosen by the employee within subsection (1), make.”

69. The Claimant contended that she was denied a fair hearing because she was not supplied with the forensic investigation reports before the disciplinary hearing. The Claimant testified that she requested for copies of the reports by email dated 13th November 2019 and her request was

declined. However, RW2 confirmed during cross examination that the forensic investigation reports were supplied to the Claimant before the disciplinary hearing and she was free to view, copy or print the same to prepare for the hearing.

70. In the case of **Charles Munuve & another v Safaricom PLC [2021] eKLR** the Claimants were not supplied with the full investigation report but extracts only and the court held:-

“They were not ambushed. They were well acquainted with the facts and the issues in dispute. They did not cite any one issue, raised on the floor of the disciplinary hearing, that caught them by surprise, compromising their procedural protection. The court does not think they were significantly prejudiced by not having the full Report from Ndibo.”

71. In the instant case the Claimant only asked for access to the documents and computer and it was granted. She never asked for hard copies of the documents. Her email of 13th November 2019 to Grace partly read as follows:-

“... I am requesting for 7 days to respond to the show cause letter.

I would also like to see the investigation report as earlier requested. I would also like to be given access to transaction documents, cheques, vouchers related to the transactions. Advise the venue I can have access and review them.”

72. During cross examination, she admitted that she was given opportunity to view the documents she had requested on 13th November 2019. In the circumstances, I find that the Claimant was not denied any document or information to enable her prepare for the disciplinary hearing. She was granted her request to access and view the documents. She never asked for copies of the same. Therefore her right to fair hearing and right to fair administrative action were not violated through denial of information as alleged.

73. The evidence on record show that fair disciplinary process was followed. The Claimant was notified of the allegations levelled against her through the show cause letter dated 7th

November 2019 and she responded in writing. She was then invited to an oral hearing on 28th November 2019, before a panel in the company of another employee of his choice but she attended alone. The hearing was fashioned as per Section 41 of the Employment Act. During the hearing she was interviewed for two hours and a verdict was communicated to her the following day giving her a right of appeal within 5 days but she never appealed within that period.

74. Although she alleged that she was prevented from mounting her appeal by the failure to receive relevant documents from the Respondent, I find no merits in that contention since she had been given access to all the information even before the disciplinary hearing. Accordingly, I am not convinced that her failure to lodge an appeal within the required time was to be blamed on the respondent.

75. Having found that the Respondent had a valid reason to dismiss the Claimant, and that a fair procedure was followed as required by Section 41 of the Employment Act, I proceed

to hold that the summary dismissal of the Claimant was fair and lawful within the meaning of section 45 of the Act.

Reliefs in the suit

76. In view of the foregoing conclusion I find that the Claimant is not entitled to the declaratory orders, reinstatement, salary in lieu of notice and compensation for unfair termination as prayed in the Amended claim.

77. She is also not entitled to service pay since she was a member of the National Social Security Fund and a pension scheme where the employer contributed for her. She is also not entitled to permanent injunction to restrain change of interest rate on her loans and the prayer for discount of 40% of the outstanding loan because she admitted that the said issues were litigated in another suit before the Commercial court. Besides the said prayers are not supported by the loan contracts between the parties herein which entitled the Respondent to change of interest rate upon the Claimant's exit.

78. The Claimant prayed for leave pay of Kshs. 575,022.00 for 24 unpaid leave days. The Respondent submitted that the leave was computed as part of the terminal benefits and applied to offset the Claimant's indebtedness. However, the final payslip dated 30th November 2019 produced by the Respondent does not show that leave was included in the sum paid. In the absence of clear evidence that the Claimant was paid for her accrued leave days, I award the Claimant leave pay for the year 2019. From the Claimant's testimony, she had taken 7 leave days in 2019 and was entitled to 31 days, leaving a balance of 24 days. I therefore award Kshs. 575,022.00.

79. The Claimant prayed for pay for days worked from 1st March 2019 to 18th March 2019 at Kshs. 104,922.00. The Respondent produced the payslip for March 2019 showing that the Claimant was paid her full salary for that month. The Claimant did not challenge the authenticity of the said payslip. Accordingly, this prayer is declined.

80. The Claimant prayed for general, aggravated and exemplary damages for deceit and fraudulent misrepresentation. However, the said prayer is declined since the dismissal was within the four corners of the law. Besides, Section 49 of the Employment Act provides for the remedies for unfair termination which include compensation and not general or exemplary damages. This position was affirmed by Court of Appeal in **Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR** where it held that general damages are not awardable for wrongful termination.

81. The Claimant prayed for payment of actual pecuniary loss suffered from loss of career due to her dismissal. However, that prayer fails since the dismissal was lawful and the loss of job was justified

Counterclaim

82. The Respondent prayed for judgment on the counterclaim for Kshs. 13,860,580.60 being the Claimant's indebtedness as set out in the termination letter dated 29th November

2019. The Respondent submitted that the Claimant ceased to be a beneficiary of staff interest rates upon dismissal.

83. The Claimant in her supplementary submissions admitted that the Bank exercised its statutory power of sale and sold the charged property, fully recovering the loan facilities. The Respondent's witnesses never testified in support of the counterclaim and its counsel never submitted on the same. In the circumstances, I find that the counterclaim was not prosecuted and it is therefore dismissed.

Conclusion

84. I have found that the dismissal of the Claimant was fair and lawful within the meaning of Section 45 of the Employment Act. I have also found that the Claimant is entitled to leave of 24 days being Kshs. 575,022. I have further found that the counterclaim was not prosecuted and dismissed it. Consequently, I enter judgment for the Claimant against the Respondent as follows:-

- a) Leave pay for 24 days.....Kshs.
575,022.00

b) The counterclaim is dismissed.

c) The Claimant is awarded costs of the suit and interest at court rate from the date of filing suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN
COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.**

ONESMUS MAKAU

JUDGE

Appearance

Mutisya for Claimant

Angwenyi for Respondent