

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS AT**  
**KAKAMEGA**  
**CAUSE NO. E004 OF 2025**

**JOSEPH HOLMES IMBOBA.....CLAIMANT**  
**-VERSUS-**  
**SAFARICOM PLC.....RESPONDENT**

**(BEFORE HON. JUSTICE DAVID NDERITU)**

**JUDGMENT**

**I. INTRODUCTION**

1. Through Reece Mwani & Company Advocates, the Claimant commenced this cause by way of a statement of claim dated 24<sup>th</sup> January 2025 seeking for the following reliefs –

*a) A declaration that the Claimant’s employment was unlawfully and wrongfully terminated by the Respondent in violation of Articles 28, 41(1), 47, 48 and 50(1) of the Constitution of Kenya, 2010, as well as Sections 41, 43 and 45 of the Employment Act, No. 11 of 2007, Laws of Kenya.*

*b) An award of damages for breach of contract and unlawful and wrongful termination of employment as hereunder:*

*i) Damages for unlawful termination (12 months' salary) -*

*Kshs. 1,099,714.56*

*ii) One month's salary in lieu of notice- Kshs. 91,642. 88*

***Total                   Kshs.1,191,357.***

***c) An award of aggravated and exemplary damages.***

***d) Costs of the suit plus interest at the Court rate until payment in full.***

***e) Any other relief that the court may deem fit to grant***

2. The statement of claim was accompanied with a verifying affidavit sworn by the claimant, a list of documents, copies of the listed documents attached, a list of witnesses and, the claimant's written statement.
3. The Respondent entered appearance through Meritad Law Africa LLP and filed a response to the claim dated 4<sup>th</sup> August 2025. It was accompanied with a list of witnesses, the written statement of Nancy Nafula, a list of documents and copies of the listed documents attached.
4. The Claimant filed a further list of documents dated 12<sup>th</sup> November 2025, and later filed a supplementary list of documents dated 13<sup>th</sup> November 2025, all accompanied with copies of the listed documents.
5. The Respondent filed a list of witnesses dated 29<sup>th</sup> January 2025, and a written statement of Odhiambo Ooko (RW1).
6. The Claimant's case came up in court for hearing on 28<sup>th</sup> January 2026 when the Claimant (CW1) testified and closed his case.
7. The defence was heard on 5<sup>th</sup> February 2026 when RW1 testified, and the Respondent's case was closed.
8. Counsel for both parties addressed and summed up their respective client's case by way of written submissions. Mr. Mukhabani for

the Claimant filed his submissions dated 16<sup>th</sup> January 2026 while Ms. Magoma for the Respondent filed submissions dated 3<sup>rd</sup> March 2026.

## II. THE CLAIMANT'S CASE

9. The Claimant's case is expressed in the statement of claim, his witness statement, the documentary and oral evidence in court and, the written submissions by Counsel.
10. The Claimant's case is that he was employed by the Respondent on 1st January 2011 as a Customer Experience Executive earning a monthly salary of Kshs91,642.88. He pleaded that he served diligently and without incident until 28th April 2023 when he was terminated.
11. The Claimant contends that the termination was unlawful, unfair, and procedurally defective as the same was carried out in violation of the **Constitution** and **the Employment Act (the Act)**. He avers that the Respondent failed to establish a valid or justified reason for the termination as required under **Section 43 and 45 of the Act** and, further, failed to adhere to the mandatory fair hearing procedure under **Section 41 of the Act**.
12. The Claimant's evidence is that the disciplinary process was a sham as the Respondent allegedly relied on an investigation report without properly considering his defence. He asserts that he was not served with clear charges or informed of the specific

allegations in advance, and that new issues were introduced during the disciplinary hearing, thereby prejudicing his defence.

13. The Claimant further denies the allegations of negligence arising from alleged SIM swap fraud incidents, stating that detection of such fraud fell outside his purview with the specialized technical and investigative units. He also disputed allegations that he received Kshs33,351/= from fraudsters, explaining that he had been receiving financial contributions from various persons through M-Pesa during a family fundraising effort for his ailing mother and as such he could not identify the source of each payment.
14. He maintained that the Respondent acted in bad faith, arbitrarily, without due process and, failed to notify him of the reasons for the termination.
15. In his testimony in court, the Claimant adopted his pleadings, the written statement dated 24th January 2025, as well as the documents filed with the two lists of documents. The documents were produced as exhibits 1 to 8.
16. The Claimant testified that he was suspended in March 2023 and later issued with a show-cause letter. He stated that he comprehensively responded to the same, denying any wrongdoing. He stated that he was denied access to the Respondent's system, thereby limiting his ability to adequately defend himself. He further stated that a new charge about a customer who allegedly lost Kshs500,000/= was introduced during the disciplinary hearing

yet, he had not been notified of the same. He complained that he was not provided with the minutes of the disciplinary hearing and that the termination letter dated 28th April 2023 was only served upon him in August 2023 after the lapse of the period of appeal. He confirmed that during the disciplinary hearing he was accompanied by a colleague, a Mr. Rotich. He disputed the authenticity of the unsigned minutes produced in court as well as the service of the letter of termination upon him.

17. In cross-examination, the Claimant confirmed that he was a Customer Experience Executive working with the Fraud Team and his team manager. He stated that to receive service customers would first physically present identification documents. He admitted receiving the letters of suspension and show-cause. He conceded that he may have received monies from customers or other persons, which he explained were contributions towards his mother's medical expenses.

18. The Claimant acknowledged that he was informed of his rights but maintained that he was not supplied with the list of the members of the disciplinary hearing despite requesting for the same. He conceded that he did not seek additional time to prepare for the disciplinary hearing and had no proof in support of his claim that the letter of termination was served late. He also admitted that there was no evidence in support of his allegation that the Respondent intended to dismiss him prior to the material allegations that led to his termination.

19. In re-examination, the Claimant maintained that fraud detection was the responsibility of the Fraud Unit and did not fall within his mandate, and that he was unaware of any other employee who was dismissed on similar grounds as those that were applied to him.
20. The Claimant asserted that his dismissal was substantively and procedurally unfair. He is seeking for the orders and reliefs set out in the introductory part of this judgment. However he conceded to having received Kshs 780,000/- upon his termination in terminal dues.

### **III. RESPONDENT'S CASE**

21. The Respondent's case is expressed in the response to the statement of claim, the written statement by RW1 the documents filed, RW1's oral testimony in court and, the written submissions by its counsel.
22. The Respondent conceded to the employment relationship between the parties and to the fact that the Claimant was employed as a Customer Experience Executive. However, it is denied that the Claimant performed his duties with due diligence. It was further denied that the termination of the Claimant was unlawful, unfair or, in breach of statutory provisions.
23. The Respondent's case is that the Claimant was fairly and lawfully dismissed on account of negligence and misconduct arising from his involvement in irregular handling of customer lines in fraudulent SIM card swaps. It was pleaded that the Claimant failed

to adhere to established company procedures and safeguards designed to protect customers and the integrity of the Respondent's systems.

24. In particular, the Respondent avers that the Claimant –

- a) Facilitated the unsuspension of customer lines without proper verification or authorization;
- b) Handled transactions involving customers who were not physically present, contrary to established retail procedures;
- c) Failed to capture and document mandatory system interactions for each access made to customer lines;
- d) Accessed customer lines that were subsequently fraudulently swapped, thereby exposing the Respondent and its customers to loss; and
- e) Made suspicious system entries, including reverting lines to “disputed registration” status after funds had been withdrawn.

25. The Respondent further alleges that the Claimant received Kshs33,351/= through his personal M-Pesa account, being funds linked to the fraudulent transactions that are indicative of misconduct and breach of company policy.

26. The Respondent rejects the Claimant's assertion that fraud detection was exclusively domiciled with IT and maintains that the Claimant's role expressly required him to identify suspicious activities and hence he was obligated to escalate them to the Fraud Department. The Respondent contends that the Claimant failed in

this duty and he should not shift his responsibility or blame other departments or persons.

27. On procedural fairness, the Respondent asserts that it fully complied with the law. It is stated that the Claimant was –
- i) Issued with a show-cause letter/notice dated 4th April 2023, detailing the allegations against him;
  - ii) Afforded an opportunity to respond to (i) above, which he did in a written explanation dated 6th April 2023; and
  - iii) Invited to and was heard in a disciplinary hearing held on 18th April 2023, in accordance with the *Act*, the Constitution, and the principles of natural justice.
28. The Respondent maintains that the Claimant was therefore fully aware of the charges against him and was accorded a fair opportunity to defend himself but his defence was unsatisfactory in light of the evidence against him based on the investigation as supported with his recorded transactions.
29. It is the Respondent's position that the Claimant failed to exhaust the internal appeal mechanism that was available to him within ten (10) days of the final decision but instead filed the present claim long after the dismissal, rendering the suit an afterthought.
30. In his testimony, RW1 reiterated the contents of the Respondent's pleadings and his written statement dated 29th January 2026. He produced and adopted the documents contained in the Respondent's list of documents as exhibits 1 to 5.

31. RW1 testified that the Respondent's issue with the Claimant was not performance but misconduct. He stated that the Claimant had fraudulently obtained money from customers by swapping their lines using his rights to access the Respondent's system.

32. He further testified that the Claimant was suspended on 10th March 2023 and issued with a show-cause letter served alongside an investigation report. According to RW1, the Claimant was subsequently invited for a disciplinary hearing that he attended in the company of Mr. Rotich, his line manager. Following the hearing, a recommendation was made that, as reflected in the minutes of the disciplinary hearing, the Claimant be dismissed, culminating in the issuance of a letter of termination dated 28th April 2023. RW1 maintained that the Respondent's employees are prohibited from receiving gifts from customers. He emphasized that the Claimant failed to appeal the dismissal within the 10 days stipulated in the letter of termination.

33. In cross-examination by counsel for the Claimant, RW1 conceded that the Claimant was not served with a copy of the minutes of the disciplinary hearing noting that the hearing was conducted virtually. He admitted that at the material time the Claimant could not access his official email account and that the Respondent had repossessed his laptop, forcing the Claimant to use a colleague's device during the hearing. He further conceded that although the Respondent had not filed its human resource policy in court,

customers visiting the Respondent's shops were required to carry identification documents.

34. RW1 acknowledged that the fraud department is responsible for suspending and lifting customer lines, while customer care executives merely act on instructions from that unit. He admitted that although there was a CCTV system installed in the Respondent's shops in Kakamega the recordings were not produced in court. He further stated that fraud involving mobile phone lines is common in Kenya and that many employees of the Respondent had been terminated for similar misconduct as the claimant.

35. Further, RW1 stated that the Claimant was served with the letter of termination in April 2023. He conceded that the letter of termination was unsigned and that the minutes of the disciplinary hearing were not signed by the Claimant.

36. RW1 maintained that investigation into the allegations and charges against the Claimant were conducted by the fraud department and that the Claimant was ultimately found and held guilty of the misconduct.

37. The Respondent disputes the remedies sought, contending that – the Claimant is not entitled to notice pay, as that issue was settled upon termination; the claim for 12 months' compensation is unjustified as the termination was lawful and procedurally fair; and that the claim for aggravated and exemplary damages is unwarranted.

38. In the alternative, and without prejudice to the foregoing, the Respondent avers that any loss suffered was wholly attributable to the Claimant's own negligence and misconduct.

39. Accordingly, the Respondent urges the Court to find that the termination was substantively justified and procedurally fair and dismiss the claim with costs.

#### **IV. SUBMISSIONS**

40. Counsel for the Claimant submitted on three issues – *Whether the claimant's employment was unfairly terminated; Whether the claimant is entitled to compensation sought; and Who bears the costs of the suit.*

41. It is submitted that the termination was both procedurally and substantively unfair within the meaning of **Sections 41, 43, and 45 of the Employment Act**. On procedural fairness, it is contended that the Respondent failed to accord the Claimant a fair hearing as required by law. It is further submitted that the Claimant was denied access to crucial evidence relied upon by the Respondent, including investigation reports, emails, CCTV footage, and witness statements. Further, it is submitted that the Claimant's official email was disabled and his laptop confiscated, thereby impairing his ability to prepare and present his defence.

42. Counsel pointed out that despite the Respondent confirming that the disciplinary proceedings were recorded and transcribed, no such records were produced in Court. It is submitted that the

Respondent failed to call key witnesses, including the affected customers and officers from the Fraud and Risk Department, and did not produce the company policies that were allegedly breached by the claimant.

43. In these circumstances, the Court is urged to draw an adverse inference against the Respondent for withholding material evidence in its possession. Counsel cited ***Kenya Akiba Micro-Finance Limited V Ezekiel Chebii Moses Gituma 14 OtherS [2007] KEHC 2809 (KLR)*** and ***Kimotho v KCB (2003) 1 EA 108***, wherein it was held in both cases that failure to produce material evidence entitles the court to presume that such evidence would be adverse to the party withholding it.

44. On substantive fairness, it is submitted that the Respondent failed to establish valid and fair reason(s) for the termination. It is further submitted that the alleged SIM swap fraud fell within the mandate of specialized departments of the Respondent such as the Fraud & Risk and IT units, and that the Claimant lacked the technical capacity and ability to detect such fraud. It is further argued that the ultimate authority to suspend or unsuspend customer lines lay with the Fraud & Risk Department, and this eliminates any causal link between the Claimant's actions and the alleged fraudulent activities. It is disputed that the Claimant received Kshs33,351/= from fraudulent transactions and, the explanation offered is that the funds were legitimate contributions from friends, colleagues, and well-wishers in a family medical fundraiser.

45. Counsel for the Claimant cited ***Janet Nyandiko v Kenya Commercial Bank [2017] eKLR*** wherein it was held that termination is unfair where the employer fails to prove both a valid reason and adherence to fair procedure and that the court must interrogate both the substantive justification and the procedural propriety of the termination. He also cited ***Jane Samba Mukala v Ol Tukai Lodge Ltd (2013) eKLR*** in support of the argument that an employer bears a high evidentiary burden in justifying termination and must demonstrate that the employee was accorded a fair opportunity to respond to the allegations.
46. On the remedies, counsel submitted that the Claimant is entitled to compensation for unfair termination, notice pay, and damages, pursuant to ***Section 49 of the Employment Act***. Counsel cited ***D K Njagi Marete v Teachers Service Commission [2017] KEELRC 820 (KLR)*** wherein the Court held that remedies should be proportionate to the loss suffered. Counsel also cited ***Kenfreight (E.A.) Limited v Benson K. Nguti [2019] eKLR*** which affirmed award of compensation where termination is found to be unfair.
47. In conclusion, counsel for the Claimant submitted that the Respondent failed to discharge its statutory burden of proving valid reason(s) for termination and of demonstrating compliance with due process. The Court is urged to find that the termination was unfair and unlawful and grant the reliefs as sought in the statement of claim.

48. On the other hand, counsel for the Respondent submitted on four issues – *Whether the respondent had a valid and fair reason to terminate the claimant’s employment; Whether the claimant has proven, to the requisite threshold, the claim of unfair termination under the Employment Act; Whether the termination complied with the procedural requirements under section 41 of the Employment Act; and Whether the claimant is entitled to the remedies sought.*

49. It is submitted that the Claimant’s termination was lawful, justified, and procedurally fair, and the Court is urged to dismiss the claim with costs.

50. On whether there was a valid and fair reason for the termination, counsel argued that the Claimant, a Customer Experience Executive, was implicated in suspicious activities involving the irregular suspension and unsuspension of customer Mpesa lines. It is submitted that evidence showed that customers whose lines were reinstated would send some money to the Claimant, after which the claimant would recommend suspension of their lines. The Respondent considered this to be gross misconduct. Relying on ***Sections 43 and 45 of the Employment Act*** and citing ***Nannungi v Kimondo Gachoka & Company Advocates [2025] KEELRC 2012 (KLR)*** counsel submitted that the Respondent had a genuine and reasonable belief justifying the termination.

51. On the burden of proof, counsel argued that under ***Section 47(5) of the Act***, the Claimant bears the burden of proving unfair

termination, which he failed to discharge. The Respondent maintains that both substantive justification and procedural fairness, as outlined in *Walter Ogal Anuro V Teachers Service Commission [2013] KEELRC 386 (KLR)*, were met and satisfied.

52. Regarding procedural fairness under **Section 41 of the Act**, the Respondent submits that due process was followed in that – investigations were conducted, a Show-Cause letter was issued and responded to, a disciplinary hearing was convened wherein the Claimant was accompanied by a co-worker of his choice, and a letter of termination was issued with reasons given and a right of appeal communicated. It is submitted that the Claimant admitted receiving all the above. The Respondent disputes the Claimant’s assertion that he was denied an opportunity to appeal, stating that the appeal period ran from the date of receipt of the letter of termination and that the Claimant failed to exercise that right.

53. On remedies, the Respondent argues that compensation under **Section 49 of the Act** is discretionary and only arises where unfair termination is proved. It is thus submitted that since the termination was lawful, no compensation is awardable. It is submitted that the Claimant already received terminal dues amounting to Kshs780,000/= hence any further claims shall amount to unjust enrichment.

54. In conclusion, the Respondent maintains that the Claimant failed to prove unfair termination, while the Respondent established valid

reasons and compliance with due process. The Court is therefore urged to dismiss the claim with costs.

## **V. ISSUES FOR DETERMINATION**

55. The court has carefully and dutifully gone through the pleadings filed, the documentary and oral evidence tendered by the parties, and the written submissions by their respective counsel. The following issues are for determination –

- a) Whether the Claimant was unfairly and unlawfully terminated.***
- b) Whether the Claimant is entitled to the reliefs sought.***
- c) Costs.***

## **VI. TERMINATION**

56. The Claimant was issued with a show cause letter dated 4<sup>th</sup> April 2023. The same is said to have been accompanied with the investigation Report of March 2023, highlighting the concerns raised in the show-cause letter. The show-cause letter was in the following style –

***4 April 2023***

***Joseph Holmes Imbomba  
EK4027.  
C/O Safaricom PLC.  
NAIROBI***

***Dear Joseph,***

***SHOW CAUSE - IRREGULAR ACCESS AND FRAUDULENT  
SIM SWAP OF CUSTOMER LINES***

*Reference is made to the above subject matter.*

*This show cause letter is issued following allegations that.*

- i) *On diverse dates, you failed to follow process in the areas of accessing customer's line without proper authorization. facilitating the unsuspension of fraudulent lines and accessing the funds in the lines.*

<i>Number</i>	<i>Actioned by Holmes</i>	<i>Amounts withdrawn from customer's line</i>	<i>Amount sent directly to Holmes' number</i>
<i>07***-Doris Nyaboke Onsarigo</i>	<i>Requested for line unsuspend line</i>	<i>15,331</i>	<i>15,331</i>
<i>07***Sharon Cherono Koech</i>	<i>Requested for line unsuspend line</i>	<i>99,500(withdrawn at an Agent where you frequent</i>	<i>No direct credit</i>
<i>254*** Janet Awour Nyagol</i>	<i>Requested for line unsuspend line</i>	<i>7165</i>	<i>7165</i>
<i>07**** Emmy Jepyego</i>	<i>Requested for line unsuspend line</i>	<i>10855</i>	<i>10,855</i>
<i>254****Beatrice Kamuyu</i>	<i>Requested for line unsuspend line</i>	<i>40,000/=(withdrawn at an agent where you frequent</i>	<i>No direct credit</i>
<i>7***JOYCE NJAGI</i>	<i>Requested for line unsuspend line</i>	<i>No funds lost customer noticed and reported immediately</i>	
<i>Totals</i>		<i>172,851</i>	<i>33,351</i>

- a) *From the above analysis, it is evident that you are facilitating customers who are not at your desk as is required by the Retail process. Further, you are directly receiving funds on Mpesa*

*account totaling to Kes.33,351/=from the lines you requested to be unsuspended;*

*b) You failed to capture the requisite interactions for each access of the customer's line which is against the process, and some of the lines you accessed ended up being fraudulently swapped.*

*c) Your action of going back to suspend the customer's line with comments of 'disputed registration' after funds had been withdrawn is suspicious, considering you are one who had requested the line to be unbarred, claiming that the said customer had visited the Shop and you had vetted them*

*Your actions above are contrary to your terms and conditions of employment, Data Privacy Policy and the work instructions and operational procedures, and the Safaricom Code of Conduct.*

*We have attached our investigation report with more details. This report should not be shared with anyone either within or without the organisation.*

*You are hereby required to submit your written explanation to the undersigned by Thursday, 6 April 2023 close of business to SHOW CAUSE why disciplinary action should not be taken against you for the above gross misconduct.*

*Should your explanation not be satisfactory, we shall invite you for an oral disciplinary hearing whereat you shall have the right to be accompanied by a fellow employee of your choice.*

*Kindly acknowledge receipt of this letter by signing and returning a copy.*

*Yours sincerely*

*Odhiambo Ooko*

*Senior Manager-Employee & Labour Relations*

57. The Claimant authored a response to the show-cause letter dated 6<sup>th</sup> March 2023, wherein he denied the charges/allegations against him. Thereafter, a disciplinary hearing was conducted on 18<sup>th</sup> April 2023 and the Claimant was ultimately terminated vide the letter dated 28<sup>th</sup> April 2023.

58. The letter of termination dated 28<sup>th</sup> April 2023 stated as follows –

**28 April 2023**

**Joseph Holmes Imbomba,  
EK4027,  
C/O Safaricom PLC.  
NAIROBI**

**Dear Joseph**

**RE: TERMINATION OF EMPLOYMENT CONTRACT**

**Reference is made to your disciplinary hearing held 18 April 2023, following an investigation by the Ethics & Compliance Department into an alleged case of irregular access and fraudulent sim swap of customer lines.**

**During the hearing it was established that**

- 1) On diverse dates you accessed several customers' lines several times without proper permission. authority. or any other lawful cause.**
- 2) You failed to capture the requisite interactions for each access of the customer's line, which is against the process and some of the lines you accessed ended up being fraudulently swapped.**
- 3) You re-suspended the customer's lines with comments of 'disputed registration' after funds had been withdrawn from the lines.**
- 4) You directly receiving funds on your Mpesa account totaling Kes. 33,351.00 from the lines you requested to be unsususpended.**

**Having given you a fair hearing and reviewed all the facts. We are of the view that you performed your duties carelessly, negligently and did not follow the laid down policies and procedures. Your actions constitute gross misconduct and were in violation of your terms and conditions of employment, the work instruction manual, the Doto Privacy Policy, the Gift Policy, and the Safaricom Code of Conduct. Consequently, the Management of Safaricom PLC has decided to terminate your employment with Safaricom with immediate effect.**

**In accordance with the terms of your contract, you will receive:**

- *One (1) month's salary in lieu of notice paid out in your final dues.*
- *Salary for days worked in the month of termination paid out in your final dues. Any leave balance accrued and not taken paid out in your final dues.*
- *Any allowance accruing. Please ensure that this is approved by your Line Manager before your last day.*

*Your final dues will be paid net of all statutory deductions and taxes. You will also receive a Certificate of Service.*

*All payments and issuance of final documentation will be subject to you returning to the Company any Company property that you may have in your possession. Kindly note that the Exit process has been automated. You will receive on email notification from Safaricom Clearance concerning the process. This will guide you on what is required from you. Please provide your personal email to your line manager and write it below as you acknowledge this letter.*

*Should you wish to appeal, write to [appeals@Safaricom.co.ke](mailto:appeals@Safaricom.co.ke) within ten (10) working days following receipt of this letter. We would like to take this opportunity to wish you well in your future endeavour.*

*Yours sincerely,*

*Paul Kasimu  
Chief Human Resources Officer*

*I.....Acknowledge receipt. Date ...  
Personal email .....*

## **VII. SUBSTANTIVE FAIRNESS**

59. This court has been invited to determine whether the decision to terminate the Claimant met the reasonable test as enunciated by Lord Denning in *British Leyland UK Limited v Swift (1981) I.R.L.R. 91*, wherein it was held that –

*The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed*

*him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view...”*

60. The Respondent, in commencing and undertaking investigation, reasonably believed that the Claimant was involved in the irregular handling of customer Mpesa lines involving fraudulent SIM card swaps.

61. In particular, the Respondent concluded that the Claimant had engaged in misconduct through bypassing required verification and authorization procedures to unsuspend customer lines, handling transactions for absent customers contrary to retail protocols and, failing to document mandatory system interactions. The Claimant was also adjudged to have accessed customer lines that were later fraudulently swapped, exposing the Respondent and its customers to loss, and made suspicious system entries including, reverting lines to “disputed registration” status after funds had already been withdrawn, suggesting his possible involvement in fraudulent activities. The Respondent further concluded that the Claimant had received Kshs33,351/= through his personal M-Pesa account from funds linked to the above fraudulent transactions solidifying evidence of improper conduct and a breach of company policy by the Claimant.

62. The Claimant, in his response to the show-cause letter and in his testimony in court, asserted that fraud detection was solely the responsibility of the fraud department of the Respondent, maintaining that his role only expressly required him to identify and escalate suspicious activities to the Fraud Department.

63. On the charges of receiving monies from the impugned accounts, the Claimant asserted that at the material time he was receiving funds for his mother's medical expenses and argued that customers had sent him money for that purpose and not as a gift. The Claimant maintained that he had personally attended to the customers at his desk and identified them by their national identity card. He maintained that the Respondent had not adduced evidence, say from CCTV camera recording to authenticate the assertion that he did not follow company policies.

64. However, the Respondent maintained that the Claimant failed in this duty and should not shift responsibility or blame to other departments for his misconduct and failures.

65. The Claimant alleged that new charges were introduced during the disciplinary hearing to the effect that a customer had lost Ksh500,000/=.

66. The court has studied and analysed the show-cause letter, the response thereto, the minutes of the disciplinary hearing and, the letter of termination. Evidently, there was no introduction of any new charges as alleged and claimed by the Claimant.

67. Further, a scrutiny of the Claimant's phone screenshots produced under his further and supplementary list of documents, the court noted that while the incidents leading to the Claimant's termination occurred on or around March 2023, conspicuously, the screenshots produced had a date of 12<sup>th</sup> May 2021, a period when the claimant was allegedly seeking medical support for his ailing mother. There is no evidence that the monies received as highlighted by the Claimant in the said screenshot had been received in March 2023. The court finds and holds that the contributions the Claimant relied on as proof that they were for medical support expenses were for his ailing mother were received in 2021 and not in 2023. The purported trail of communication on the medical expenses contributions was made not in 2023 but in May 2021.

68. Further, the court finds and holds that based on the operational needs of the Respondent, the circumstances under which the Claimant received funds from the suspected customer lines and the actions of the Claimant to request unsuspension and suspension of those Mpesa lines, raised questionable conduct. While the Claimant alleges that the Fraud Unit was responsible for unsuspension and suspension of lines, the Claimant was responsible for receiving customer queries at his desk and was required to exercise due diligence based on the operational needs of the Respondent. The customers had at first requested unsuspension of their impugned lines and later sought to suspend the same on the same day, an action which should have raised the

Claimant's curiosity as to why the said requests were being undertaken almost simultaneously.

69. The court finds that the reasons for the termination of the Claimant were within what a reasonable employer in the circumstances should have done. The Respondent had reasonable grounds for taking the disciplinary action and subsequent termination was in substance well grounded.

### **VIII. PROCEDURAL FAIRNESS**

70. The Claimant challenged the procedure adopted by the Respondent on the grounds that while the disciplinary proceedings were purportedly recorded and transcribed the minutes were not produced in court. His position is that during the hearing he was exonerated, in that the line manager and his colleagues had confirmed that he was receiving money for medical expenses, and that negligence was attributed to the Fraud & Risk Department. The Claimant contended that the Respondent failed to file the data policy he is alleged to have breached because the Respondent was allegedly predisposed to unfairly terminating him.

71. The Claimant had pleaded that he was not informed of the reasons to terminate him or given an opportunity to be heard.

72. Procedural fairness is mandatory even in the event where the employer contemplates summary dismissal for gross misconduct under **Section 44 of the Act**. The procedural fairness for gross misconduct is as defined under **section 41(2) of the Act**, to wit –

*‘41(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily 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.’*

73. The court finds and holds that the Respondent complied with **Section 41 of the Act** before the termination in that the Claimant was informed of the charges facing him through the show-cause letter. He responded thereto in writing and defended the same disciplinary hearing wherein he defended himself. The Claimant was accompanied by a colleague during the hearing, one Mr. Rotich.

74. As regards minutes of the disciplinary hearing, RW1 conceded that the Claimant was not served with the same. The court opines that there was no request by the Claimant that he be supplied with the said minutes. Upon filing this cause, the Claimant had the legal right to file a Notice to produce or ask the court to compel the Respondent to produce all the documents that the Claimant believed would support his cause so long as the same were in the Respondent’s custody. No such request was made.

75. Nonetheless, the Claimant conceded that he indeed attended the disciplinary hearing accompanied by a colleague of his own choice, a Mr. Rotich.

76. On the contention that he was served with the letter of termination in August 2023 past the 10-day appeal period, the court agrees with the Respondent that the appeal was to be filed within 10 days of receipt of the letter of termination and not from 28<sup>th</sup> April 2023, the date of the same letter.

77. Having received the letter of termination in August 2023, the Claimant had 10 days within which to file an appeal. This cause was filed in court in April 2025, over a period of one year and five months after the date that the Claimant admits to receiving the letter of termination. The court finds and holds that the Claimant failed to file an appeal within the period stated in the letter of termination. The claimant gave no reason or explanation of that failure on his part.

78. From the foregoing, the court takes the view and holds that the Claimant's termination was fair both in substance and procedure. The Respondent had justified and reasonable grounds for terminating the Claimant. The Claimant was afforded and accorded a fair and reasonable hearing and he presented his defence within the meaning and context of the provisions of the law and more so **Sections 41, 43, 44, & 45 of the Act**. In my considered view the termination was fair and lawful.

## **IX. RELIEFS**

79. Having held that the termination of the claimant by the Respondent was justified, fair and lawful, the court shall now

consider each of the reliefs sought as set out in the introductory part of this judgment.

80. Prayer (a) is for a declaration that the claimant's termination was unlawful and violated the claimant's constitutional rights. The court has already found above that the termination was justified both in substance and procedure. The court shall issue orders to that effect.

81. Prayer (b) is for damages for wrongful termination and one month's salary in lieu of notice. The court has found that the claimant's termination was justified and thus he is not entitled to compensation. However, he ought to have been issued with a notice or one month's salary in lieu thereof. However, the court notes that both parties admitted to payment of the same alongside other terminal dues amounting to Kshs780,000/= and that item is thus settled.

82. Prayer (c) is for aggravated and exemplary damages. The termination was justified, fair and, lawful and hence no compensation may be awarded in the circumstances.

83. The upshot of the foregoing is that this cause is devoid of merit and the same is hereby dismissed in its entirety.

## **X. COSTS**

84. No orders as to costs.

## **XI. DISPOSAL/ORDERS**

85. The court issues the following orders –

*(a) This cause is devoid of merit and is hereby dismissed.*

*(b) No orders as to costs.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT  
KAKAMEGA THIS 7<sup>TH</sup> DAY OF MAY 2026.**

.....

**DAVID NDERITU**

**JUDGE**

ORIGINAL