

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E065 OF 2024

AMOS BETT KOECH.....
.....CLAIMANT

VERSUS

THE CO-OPERATIVE BANK OF KENYA LTD.....
RESPONDENT

JUDGMENT

Introduction

1. For determination is the Claimant's Statement of Claim dated 18th December, 2023, and filed on 25th January, 2024. Under the claim, the Claimant seeks the following reliefs: -
 - a) A declaration that the Claimant's termination from his employment was unfair, unlawful, and wrongful.
 - b) Terminal benefits and other dues tabulated as below:
 - i. Service and/or gratuity for 7 years @ 18 days salary for each completed year at Kshs.704,722.20/-
 - ii. Twelve (12) months' salary for unlawful and/or unfair termination of Kshs.2,013,492/=
 - c) Interest at court rates from the date of filing suit till payment in full
 - d) An order directing the Respondent to lift the suspension on the Claimant's license
 - e) costs and interest of this suit.

2. A preliminary Objection dated 21st March, 2024, by the Respondent seeking the striking out of the Claim on the ground that it is time-barred, was heard, and the Court ordered that the issue be canvassed and determined upon the full hearing.
3. The Respondent filed a Memorandum of Reply to the Memorandum of Claim and a Counterclaim dated 10th June 2025, in response to the Claimant's Claim.
4. Both the Claimant's case and the Respondent's were heard on 24th September, 2025. The Claimant (CW1), testified in support of his case, adopted his witness statement dated 24th January, 2024, and produced his list and bundle of documents of even date as exhibits in the matter.
5. The Respondent presented one Ms. Leah Kerich, their Head of Employee Relations and Welfare, to testify in support of their case. Ms. Kerich (RW1) adopted her witness statement and produced documents filed in support of the Respondent's case as the Respondent's exhibits.
6. Submissions were received from both parties and have been duly considered.

The Claimant's case

7. The Claimant states that he was employed by the Respondent as a graduate clerk and was posted to the Respondent's Lang'ata Branch with effect from 2nd May

2013. He avers that his employment was subsequently confirmed.

8. The Claimant avers that he earned a starting salary of Kshs. 53,000 plus benefits, and, owing to his diligent service, he rose through the ranks and was promoted to the position of Relationship Manager on 3rd July 2020.
9. The Claimant states that he served the Respondent in various capacities until around 10th November 2020, when he was issued with a Notice to Show Cause containing allegations against him, and which he avers he controverted.
10. The Claimant contends that despite providing clear and verifiable explanations to the allegations raised against him, the Respondent ignored his evidence and proceeded to terminate his employment. He states that throughout his employment, he had maintained a clean disciplinary record and had never received any warning letters, demonstrating his diligence and commitment to service.
11. The Claimant further avers that following the termination of his employment, the Respondent suspended his licence, thereby preventing him from securing employment with other financial institutions. He maintains that his dedication and exemplary performance had previously earned him promotions, first to Supervisor Grade 2 and later to

Relationship Manager in July 2020, in recognition of his strong customer service and commitment to customer satisfaction.

12.The Claimant further avers that he never accessed any customer account unlawfully or engaged in any fraudulent activities. He contends that the Respondent ignored his request to verify the alleged activities through its internal systems, which verification would have exonerated him.

13.The Claimant states that he has since been rendered economically incapacitated because the suspension of his licence by the Respondent has frustrated all his efforts to secure alternative employment within the financial sector, despite being well qualified. He therefore seeks urgent reinstatement of his license to enable him to secure employment and support his dependants.

14.The Claimant further states that he seeks compensation for what he terms as unfair and unlawful dismissal from employment. He avers that he has suffered and continues to suffer irreparable loss and damage as a result of the suspension of his license, which has left him unemployed and jeopardized his professional career.

15.He maintains that despite serving the Respondent diligently and faithfully, his employment was unfairly terminated without payment of his lawful dues.

16.The Claimant maintains that his termination was unfair, unlawful, and maliciously orchestrated with the intention of

disregarding and bypassing the explanations he had offered in his defence. He contends that the Respondent failed to comply with the provisions of the Employment Act, 2007, and violated Article 41 of the Constitution of Kenya, 2010, which guarantees every employee the right to fair labour practices.

17.The Claimant further alleges that the Respondent acted illegally, unfairly, and discriminatorily in deciding to terminate his employment.

18.The Claimant states that he was entitled to continue serving the Respondent until the mandatory retirement age of 60 years. He therefore seeks compensation equivalent to twelve months' salary for unlawful and unfair termination, together with other attendant damages and reliefs arising from the termination of his employment.

19.On cross-examination, the Claimant told the court that his last salary was Kshs.166,000/-. He confirmed that his suspension was for targeted fraud involving the viewing of bank accounts and suspicion of involvement in fraudulent activities.

20.The Claimant confirmed that a list of fraudulent activities were listed in the show cause letter. He confirmed that he had been invited to attend a disciplinary hearing in the company of a representative, but he did not avail a witness on his own volition.

21. It is his further testimony that a disciplinary hearing was conducted and that he signed the minutes of the hearing, was paid his terminal dues, and issued a certificate of service.

22. The Claimant states that he appealed against the dismissal by tendering the facts as they were, and that the appeal was responded to. He confirmed that he had no right to access local accounts and that viewing them would have been a breach of the code of conduct he signed.

23. The Claimant confirmed that this suit was filed in January, 2024 and that he was terminated on 17th December, 2020.

24. On re-examination, the Claimant told the court that the logs were not supplied to him, and the CCTV images were of the whole branch.

25. The Claimant prays for Judgment to be entered against the Respondent as sought in his Statement of Claim.

The Respondent's case

26. The Respondent contends that as a preliminary point of law, the Claim is statute-barred pursuant to the provisions of Section 90 of the Employment Act, 2007, and urges the Court to dismiss the suit with costs.

27. The Respondent states that by an Employment Agreement dated 26th April 2013, the Claimant was employed as a Graduate Clerk on a fixed-term contract commencing on 2nd

May 2013 and ending on 1st May 2015. The Respondent further states that, vide a posting letter dated 26th April 2013, the Claimant was assigned to the Respondent's Lang'ata Road Branch as a Graduate Clerk.

28. The Respondent avers that by a letter dated 1st November 2013, the Claimant's appointment was confirmed after he successfully completed his probation period.

29. The Respondent further avers that the Claimant held various acting appointments during his tenure at the Respondent's Lang'ata Road Branch, namely, by a letter, dated 9th December 2015, he was appointed to act as Cash Officer for the period between 9th December 2015 and 30th January 2016, that by a letter dated 8th January 2016, he was again appointed to act as Cash Officer for the period between 8th January 2016 and 13th February 2016, that by a letter dated 29th February 2016, he was appointed to act as Branch Service Champion Officer with effect from 29th February 2016, and by yet another letter dated 2nd June 2016, he was appointed to act as Cash Officer for the period between 3rd June 2016 and 6th June 2016 at the Respondent's Lang'ata Road Branch.

30. The Respondent further states that on or about 14th March 2017, the Claimant's terms of employment were reviewed and converted from fixed-term employment to permanent and pensionable terms, effective 14th March 2017.

31. The Respondent further avers that by a letter dated 3rd July 2017, the Claimant was appointed as a Sales and Service Advisor at the Respondent's Lang'ata Road Branch with effect from 3rd July 2017. The Respondent states that while still stationed at the Lang'ata Road Branch, the Claimant was appointed as the Customer Experience Champion vide a letter dated 16th January 2018, and by a letter dated 2nd February 2018, the Claimant was transferred to the Respondent's Diaspora Banking Unit.
32. The Respondent states that subsequently, the Claimant was promoted to the position of Supervisory Grade 2 at the same unit with effect from 18th May 2018.
33. It avers further that following a structural review within the Respondent's Diaspora Banking Department, the Claimant was promoted and appointed to the position of Relationship Manager vide a letter dated 3rd July 2020.
34. The Respondent further avers that during the course of the Claimant's employment, he was issued with and required to comply with various internal policies and manuals, including the Business Code of Conduct & Ethics.
35. The Respondent states that on or about 30th September 2020, the Claimant was informed that preliminary investigations had established that on 8th September 2020, he allegedly contacted the Kimathi Branch Service Manager

and facilitated the fraudulent activation of Account No. 01116082496500 in the name of Samuel Odhiambo, which was suspected to have been targeted for fraud. It avers that the Claimant was consequently suspended to allow further investigations.

36. The Respondent states that the Claimant was issued with a Notice to Show Cause dated 10th November 2020, raising allegations of suspicious viewing of multiple bank accounts and suspected involvement in fraudulent activities. It states that he was required to explain why disciplinary action should not be taken against him, and that the Claimant responded vide a letter dated 12th November 2020, denying sharing any account information with customers and stating that he was unaware of how the information in question had been obtained.

37. The Respondent avers that the Claimant's explanation was found unsatisfactory, and he was invited to a disciplinary hearing vide a letter dated 18th November 2020, and the hearing was held on 25th November 2020.

38. It avers that following the disciplinary process, the Claimant was summarily dismissed vide a letter dated 17th December 2020 on grounds of gross misconduct, including breach of the Respondent's Operating Manual and Code of Conduct and Ethics, facilitation of fraudulent activities, and conduct that cast doubt on his integrity as an employee.

39. The Respondent further states that the Claimant lodged an appeal against the dismissal vide a letter dated 5th January 2021, but the appeal was declined vide a letter dated 27th January 2021 on the basis that it raised no new evidence warranting review of the decision.
40. The Respondent maintains that the Claimant's culpability was established through internal investigations and disciplinary proceedings. It is further averred that on 8th September 2020, the Claimant improperly contacted the Kimathi Branch Service Manager and requested activation of Account No. 01116082496500 in the name of Samuel Odhiambo, despite knowledge that the purported account holder was an imposter attempting to defraud the Bank.
41. The Respondent states that the impersonator presented forged documents, including a purported certificate of discharge from prison, falsely explaining the account's dormancy, while the actual account holder was deceased.
42. The Respondent further avers that on 13th August 2020, the Claimant attempted to facilitate the fraudulent activation of a dormant account belonging to Emmanuel Ochieng Nyambala by referring a fraudster to the Service Champion at Kariobangi Branch. The Respondent states that this account was subsequently targeted by fraudsters impersonating the genuine customer, resulting in financial loss to the customer's account.

43. The Respondent further states that the Claimant facilitated the activation of the said accounts by providing confidential customer information, which enabled unauthorized and fraudulent transactions, thereby occasioning loss to the Bank.
44. The Respondent contends that audit trails and system logs produced during the disciplinary hearing confirmed that the Claimant accessed and viewed sensitive customer account information unrelated to his duties, in breach of the Bank's confidentiality policies and data protection obligations. It is further stated that the Claimant contacted respective branches to facilitate activation of the said accounts.
45. The Respondent states that the disciplinary panel found the Claimant's explanations unconvincing, evasive, and inconsistent with the documentary evidence, particularly his failure to satisfactorily explain his contact with the Kimathi Branch Service Manager and lack of legitimate work-related justification for accessing the accounts in question.
46. The Respondent further avers that the Claimant's conduct amounted to breach of the Bank's Operating Manual and Code of Conduct and Ethics, including violation of customer confidentiality, unauthorized account handling, and failure to adhere to standards of honesty and integrity expected of bank employees, and consequently, the disciplinary committee found that the Claimant's actions constituted gross misconduct under Section 44(4) of the Employment

Act, 2007 and the Respondent's Human Resource policies, thereby justifying summary dismissal.

47. The Respondent further states that the Claimant's appeal against the dismissal did not introduce any new evidence or mitigating circumstances to warrant review, and was therefore dismissed for lack of merit.

48. The Respondent maintains that it had a valid and fair reason for terminating the Claimant's employment and that due process was followed throughout the disciplinary process.

49. The Respondent denies that the termination was unfair, unlawful, malicious, or motivated by cost-cutting considerations, as the Claimant was given adequate opportunity to respond to the allegations against him, and thus the termination was lawful and justified.

50. The Respondent avers that the Claimant was lawfully and procedurally terminated from employment in strict compliance with the Respondent's Staff Manual and the provisions of Sections 43, 44, and 45 of the Employment Act, 2007.

51. The Respondent submits that the Claimant engaged in acts of gross misconduct contrary to the Bank's Operating Manual and Code of Conduct and Ethics, which resulted in financial loss to the Bank and cast doubt on his integrity as an employee. The Respondent maintains that due process was followed in terminating the Claimant's employment and

therefore denies that the termination was unfair, unlawful, or unprocedural as alleged.

52. The Respondent further submits that in determining whether the termination was wrongful, unlawful, or unfair, the Court should consider the reasonableness of the employer's decision and whether a reasonable employer could have dismissed the employee in the circumstances. Reliance is placed on the case of ***Earl v Slater & Wheeler (Airlyne) Limited [1973] 1 All ER 145***, for the holding that the key consideration is whether the employer acted reasonably based on the circumstances known at the time of dismissal.

53. The Respondent contends that, in light of the facts presented, there were valid and fair reasons for terminating the Claimant's employment and that the procedure followed was lawful and proper.

54. On remedies sought, the Respondent submits that awards under Section 49(3) and (4) of the Employment Act, 2007 are discretionary and depend on the specific circumstances of each case. The Respondent further notes that Section 49(4) sets out factors that the Court must consider in determining appropriate remedies.

55. The Respondent argues that it has demonstrated that due process was followed and that the reason for termination was valid and fair. It is further submitted that the Claimant has

failed to prove that the termination was unfair, unprocedural, or unlawful to justify the compensation sought, including the claim for twelve months' salary as compensation for unfair termination.

56. Accordingly, the Respondent submits that none of the remedies under Section 49 of the Employment Act, 2007, are available to the Claimant.

57. On cross-examination, RW1 told the court that the investigation report was not issued to the Claimant for the reason that the report was reduced to a show cause letter.

58. RW1 avers that the outcome of the investigation and the audit trail are what formed the show cause letter.

59. The Respondent finally urges the Court to dismiss the Claimant's claim with costs.

60. On the Counterclaim, the Respondent avers that during his employment with the Respondent, the Claimant applied for and was granted a staff loan on or about 10th June 2019 in the sum of Kshs. 2,929,380.36. It avers that pursuant to its Staff Manual, it retains discretion to recall repayment of staff loans advanced to employees upon cessation of employment, as provided under Appendix 13 of the Staff Manual.

61. The Respondent further states that the Claimant defaulted in repayment of the staff loan facility, and as at 13th May 2025, a sum of Kshs. 2,929,380.36 remains outstanding, with

interest continuing to accrue. It avers that, despite the issuance of a demand and a notice to sue, the Claimant has allegedly failed, neglected, and/or refused to regularize the outstanding loan amount.

Analysis and Determination

62. Upon careful appraisal of the pleadings, oral testimonies, and submissions by both parties, the issues that crystallize for determination are: -

- i. Whether the Claimant's suit is time-barred under Section 89 of the Employment Act, 2007.
- ii. Whether the Claimant's summary dismissal was wrongful and unlawful.
- iii. Whether the Claimant is entitled to the reliefs sought.
- iv. Whether the Respondent has proved its Counterclaim on the staff loan.

Whether the suit is time-barred

63. The Respondent raised a preliminary objection on the premise that the claim is statute-barred under Section 90, now 89 of the Employment Act.

64. The Claimant confirmed on cross-examination that he was dismissed summarily on 17th December, 2020, and further confirmed that the suit herein was filed in January, 2024, specifically on 25th January, 2024.

65. It is not disputed that the Claimant lodged an appeal against the summary dismissal, whose decision was conveyed to him through a letter dated 27th January, 2021. In ***Kiige v National Hospital Insurance Fund [2026] KECA 309 (KLR)***, the Court of Appeal held that where an employee had a contractual right of appeal and which he pursued, the cause of action accrued only after the employer communicated the appeal outcome, and not on the original dismissal date.

66. By dint of the foregoing binding precedent, it is obvious that the cause of action herein accrued on 27th January, 2021, being the date the Respondent communicated the outcome of the Claimant's appeal and not the 17th December, 2020, when he was summarily dismissed.

67. It then follows that this suit, having been filed on 25th January, 2024, was on time, as it was instituted two days before the lapse of the limitation period under Section 89 of the Employment Act, 2007.

68. I therefore return that the suit herein is not statute-barred.

Whether the Claimant's summary dismissal was wrongful and unlawful

69. Whether or not a dismissal is wrongful depends on whether the employer adhered to the twin tenets of fair process and the substantive justification test espoused under Sections 41,

43, and 45 of the Employment Act, 2007. Procedural fairness speaks to the process leading to the decision to terminate or dismiss, while substantive fairness relates to the validity of the decision. **(See Pius Masafu Isundu v Lavington Security Guards Limited [2017] eKLR.)**

70. The Claimant's position is that his termination was unfair, unlawful, and maliciously orchestrated with the intention of disregarding and bypassing the explanations he had offered in his defence. He further contends that the Respondent failed to comply with the provisions of the Employment Act, 2007, and violated Article 41 of the Constitution of Kenya, 2010, which guarantees every employee the right to fair labour practices.

71. On its part, the Respondent denies that the Claimant's dismissal was unfair, unlawful, malicious, or motivated by cost-cutting considerations, and avers that he was given adequate opportunity to respond to the allegations against him, and thus the termination was lawful and justified. The Respondent further maintains that it had valid and fair reasons for terminating the Claimant's employment and that due process was followed throughout the disciplinary process.

72. Under Section 43, the employer is only required to prove a valid and fair reason for dismissing the employee. In **British Leyland v Swift (1981) I R L R 91**, Lord Denning described

the test of what a reasonable employer could or could not do in the following words: -

“The correct test is was it reasonable for the employers to dismiss? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair...”

73.The Respondent demonstrated that the Claimant was investigated for unauthorized access to customer accounts, suspected facilitation of fraudulent account activations, breach of confidentiality and banking protocols, and the audit trail evidence linking him to the account activities was produced in evidence before court.

74.In ***Mwangi v ABSA Bank Kenya PLC (Cause E065 of 2023) [2024] KEELRC 2399 (KLR)***, 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 a 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 Road Branch, Mombasa, the claimant had bigger accountability beyond what his junior staff held.”

74. Further, Section 44 (4) (c) of the Employment Act provides that careless and improper performance of duties under contract qualifies as a reason for summary dismissal.

75. The Court, in the circumstances, is satisfied that suspicion of fraud in a banking environment, supported by audit logs and internal investigation findings, constitutes a valid and fair reason for dismissal, especially given the high fiduciary duty in financial institutions.

76. In the premise, I hold that the Claimant's dismissal is substantively justified, fair, and lawful.

77. On procedure, Section 41 of the Employment Act, 2007 demands that before terminating an employee's employment on the grounds of misconduct, poor performance, or physical incapacity, the employer must grant the employee an opportunity to make representations either in the presence of a colleague or representative of a trade union if he is a member of one.

78. The Claimant confirmed on cross-examination that he was issued a show cause letter and that a list of fraudulent

activities was listed in that show cause letter. He further confirmed that he was invited to attend a disciplinary hearing in the company of a representative, but did not avail one, on his own volition.

79. The Claimant further testified that a disciplinary hearing was conducted and that he signed the minutes of the hearing, was paid his terminal dues, and issued a certificate of service.

80. The Claimant also confirmed that he appealed against the dismissal, and the appeal was responded to.

81. In ***Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR***, the Court observed as follows:

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.

Secondly, it would follow naturally that if an employee has a right to be informed of the charges, he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing, or through a

representative or shop floor union representative if possible.

Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

82.The evidence before court shows that the Claimant was suspended, issued with a Notice to Show Cause which he responded to in writing, invited to a disciplinary hearing, which again he attended, had opportunity for representation which he declined on his own volition, and was finally informed of the outcome of both the disciplinary hearing and the appeal.

83.In my considered view, the foregoing chronology of events, which are not disputed, satisfies the requirements of Section 41 of the Employment Act.

84.The Court therefore finds and holds that the Respondent complied with the procedural fairness requirements, which render the dismissal procedurally fair.

85.In whole, I find the Claimant’s summary dismissal both substantively and procedurally fair and lawful.

Whether the Claimant is entitled to reliefs

86. Having found the Claimant's dismissal lawful, the prayer for a declaration of unfair dismissal fails, and so does the claim for compensation for the dismissal.

87. On the claim for gratuity/service pay, the Claimant did not lead evidence of such an entitlement, and neither does his employment contract bestow this benefit.

88. It is also evident from the pay slips produced in evidence that the Respondent made deductions in respect of both a provident fund and NSSF, which confirm that the Claimant was not entitled to payment of a gratuity.

89. The claim thus lacks merit, and it fails.

90. On lifting of the suspension on the licence, the Claimant did not lead evidence of who issued the license and the conditions for one to hold such a license.

91. In my view, the employment relationship having ended way back in 2020, this claim is untenable, and I would add that this does not fall within the jurisdiction of this court.

92. The Claimant's claim therefore fails in its entirety.

Counterclaim

93. It is not disputed that the Claimant received a staff loan of Kshs. 2,929,380.36/-, whose repayment terms allowed recall upon termination. There is also no disputing that the employment has since ceased, and the loan remains unpaid.

94. The Claimant did not specifically rebut the outstanding balance or at all respond to the counterclaim. The Court therefore finds the Counterclaim proved on a balance of probabilities.

95. I thus find and hold that the Respondent is entitled to recover Kshs. 2,929,380.36/- plus applicable contractual interest until payment in full.

Conclusion

96. In conclusion, the Claimant's claim is dismissed in its entirety, and the Respondent's counterclaim is allowed.

97. The Claimant shall bear the costs of both the suit and the counterclaim.

98. It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 14TH DAY OF MAY 2026.

**C. N. BAARI
JUDGE**

Appearance:

Ms. Gichuru h/b for Mr. Matoke for the Claimant

Mr. Okeyo present for the Respondent

Ms. Esther S- C/A

ORIGINAL