



REPUBLIC OF KENYA



KENYA LAW
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**Okweh v I&M Bank Limited (Cause E510 of 2021)
[2025] KEELRC 158 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 158 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E510 OF 2021
J RIKA, J
JANUARY 31, 2025**

BETWEEN

DANIEL OCHIENG' OKWEH CLAIMANT

AND

I&M BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 28th June 2021.
2. He states that he was employed by the Respondent Bank, on 17th August 2010 as an Officer in the Commercial Relationship Department, at Kisumu city.
3. He was designated Assistant Manager Grade 4 on 1st July 2012, and re-designated Assistant Manager Grade 3 on 22nd October 2012. He was transferred to Kisii Branch on 5th November 2012, in the position of Branch Operations Manager.
4. Sometime in October 2018, the Branch Manager, the Security Officer and the Cash Officer, in the presence of the Claimant, discovered during cash count that hundred denomination notes, were concealed in a thousand denomination notes, and sealed in bundles of thousands, to be counted as denomination notes of a thousand.
5. The cash count was carried out one week after another count had been carried out by the Regional Manager, Branch Manager, the Cash Officer and the Claimant, and everything confirmed to be in order.
6. The Claimant states that Tom Adinda, who was the Cash Officer, called the General Manager Operations Joseph Njomo, and confessed that he carried out the fraud. Adinda made a written confession. He was arrested by Banking Fraud Investigation Unit Officers from Kisumu.



7. The Claimant also gave a written statement. He was later advised that things had changed, and the Respondent's Head Office had recommended his arrest and prosecution over the fraud. He was consequently arrested and presented before the Court at Kisii, alongside colleagues Tom Adinda, Denis Kioko and John Omaiko.
8. The Claimant was suspended on half –salary on 25th October 2018, pending investigations. He was not availed the outcome of the investigations. He was advised to report at the Head Office in Nairobi, on 4th December 2018, without being given the reason for reporting.
9. He found an ad hoc committee at Nairobi, comprising Joseph Njomo, John Nyamaiko, an Isaac Okwara. The committee asked the Claimant questions, with regard to the fraud. He asked the committee to direct its questions to Adinda. He reminded the committee that when the fraud was discovered, he called the General Manager Joseph Njomo and gave his side of the story. Njomo told the Claimant that he was aware the Claimant was a faithful Employee, and that the committee knew he did not steal, leaving the Claimant wondering who ordered that, he is arrested and prosecuted.
10. 2 months after his appearance at Nairobi, he was issued a letter of summary dismissal dated 31st January 2019. He states that he was never subjected to a disciplinary hearing. There was no letter to show cause. He was required to settle his personal loan outstanding at Kshs. 1,244,088.
11. He states that termination was arbitrary and most unfair. There was no valid reason to justify termination.
12. At the time of dismissal, he earned a monthly salary of Kshs. 238,823. He worked for 10 years.
13. He prays for the following orders: -
 - a. Declaration that the Respondent breached Section 41 of the *Employment Act* and Articles 10, 27, 28, 41, 47 and 50 of *the Constitution*.
 - b. Declaration that summary dismissal was unfair and unlawful.
 - c. Declaration that the Respondent is not entitled to recall the credit facilities extended to the Claimant.
 - d. Alternative to [c], declaration that the Respondent is not entitled to interest on the credit facility should the Court find that termination was unfair and unlawful.
 - e. 12 months' salary in compensation for unfair termination at Kshs. 2,865,876.
 - f. 2 months' half monthly salary for the period of suspension at Kshs. 238,823.
 - g. Notice pay.
 - h. Certificate of Service to issue.
 - i. General, aggravated and exemplary damages.
 - j. Any other suitable relief.
 - k. Costs.
 - l. Interest.
14. The Respondent filed a Statement of Response, dated 24th August 2021. It is conceded that the Claimant was employed by the Respondent as pleaded. It is conceded that the Respondent carried out 2 cash counts at its Branch at Kisii. The first was a snap cash check carried out by Okwara, the



- second, a detailed cash count. The second count involved all the money in the vault and the ATM. It was confirmed that, Kshs. 3,506,000 was disguised as Kshs. 29,000,000 and Kshs. 650,000 disguised as Kshs. 1 million.
15. The Claimant was the key custodian of the vault. He was required to carry out frequent cash counts after the Tellers had done their counting. The Claimant refused, failed or neglected to do so, leading to huge financial loss sustained by the Respondent. The Operational Guidelines, required the Claimant to confirm and seal the bundles of money held by the Respondent. Money would never have left the vault, without the knowledge and participation of the Claimant. He was its custodian.
 16. The Claimant signed the cash register, confirming he had counted the money, and all of it was there. He was arrested alongside Denis Kioko and John Omaiko who were Tellers at the Branch. The Tellers worked under the Claimant. They had filed and signed suspicious transactions, and the Claimant did not stop them.
 17. It is correct that the Claimant was suspended on half-salary. Investigations took place, confirming fraud. He was arrested and charged at Kisii Court.
 18. He was called by the Branch Manager and informed of a disciplinary hearing, to take place at Nairobi, on 4th December 2018. He attended and was heard by a committee made up of the persons named by the Claimant in his Statement of Claim. It is not correct to allege that there was no hearing. It was established that the Claimant was guilty of gross misconduct.
 19. The Claimant alleged that Adinda had confessed to him about the lost funds, insisting that he could however, not talk on behalf of Adinda.
 20. The Claimant was fairly heard and summarily dismissed for valid reason, in accordance with Section 44[3] of the *Employment Act* 2007. He was aware of charges before he was called for hearing at Nairobi, since he had already been arrested and charged by the Police. The charges were restated during the disciplinary hearing. The letter of summary dismissal, dated 31st January 2019, contained clear reasons, justifying termination.
 21. He is still required to settle his personal loan, in accordance with the terms of his loan agreement, even though he is no longer an Employee. He was paid all his pension dues, and would have settled his loan, from this payment.
 22. It is denied that the Respondent violated any provision of the law, or articles of *the constitution*, in terminating the Claimant's contract.
 23. The Respondent urges the Court to find that termination was fair and lawful, and dismiss the Claim with costs.
 24. The Claimant filed a Reply to the Statement of Response, dated 29th March 2022. He reiterates the contents of his Statement of Claim, laying blame for the lost funds, on Tom Adinda. It is misplaced to allege that Tellers acted with the knowledge of the Claimant. Suspicious transactions attributed to the Tellers, were never placed before the Claimant. The Respondent shifted blame on the Claimant instead of pursuing disciplinary action against the Tellers. He was made a scapegoat.
 25. The Claimant gave evidence and closed his case, on the 6th December 2023. Assistant General Manager Human Resources, John Nyamaika gave evidence on the same date. The last witness for the Respondent, Security Manager Daniel Kipkorir, gave evidence on 12th June 2024, when the hearing closed.



26. The Claim was last mentioned on 7th November 2024, when the Parties confirmed filing and exchange of their closing submissions.
27. The Claimant adopted his witness statement and 2 bundles of documents [1-15] [16-18], in his evidence-in-chief. He restated the contents of his Statement of Claim, retracing his employment history with the Respondent, from the year 2010 when he was employed, until the year 2019, when he was summarily dismissed by the Respondent, on allegation of involvement in fraud.
28. He reiterated that Adinda confessed to having committed the fraud. The Claimant found that an ad hoc committee, had been set up at the head office in Nairobi, to interrogate him about Adinda. He was advised at the end of the interrogation, that he would be given a feedback after 2 weeks. He was much later called, and issued a letter of summary dismissal.
29. Cross-examined, he told the Court that he was the Operations Manager. He oversaw operations. He used to carry out impromptu cash checks and would also check the cash in ATM. He would confirm the amounts and sign the cash register. He was a joint custodian of the cash vault. The other custodian was the cash officer. He confirmed that Kshs. 100 notes, were disguised as Kshs. 1000 notes. If he confirmed there was Kshs. 1 million, in the vault, and it turned out that the amount was Kshs. 100,000, blame would be on the cash officer, not him. Kshs. 29 million, turned out to be Kshs. 3 million. There was an audit carried out, confirming loss of money. The ad hoc committee recommended that the Claimant is dismissed. Adinda was the Claimant's supervisee. The Claimant could not speak on his behalf, at the disciplinary meeting. There was no disciplinary hearing. The Claimant does not know why he was dismissed. The criminal proceedings initiated against him at Kisii, are ongoing.
30. Redirected, he told the Court that the cash officer had the responsibility to confirm cash in the vault. The Claimant's role was to carry out surprise cash checks. Adinda was culpable. Negligence was not one of the grounds cited by the Respondent, to justify dismissal.
31. Assistant General Manager John Nyamaika adopted his witness statement and documents filed by the Respondent [1-14] and [15], in his evidence-in-chief. He confirmed that the Claimant worked for the Respondent as Branch Operations Manager, Kisii. He oversaw all operations, which included processing transactions. He signed cash records daily.
32. The Respondent received report of loss of Kshs. 27 million at the Kisii Branch, from its security department. The Claimant was implicated. He was taken through a disciplinary hearing, and found culpable. He was heard by an inter-departmental disciplinary committee. It was not an ad hoc committee. It was established that he was the cash custodian. Audit and security investigations implicated the Claimant. The cash officer was the Claimant's supervisee. The Claimant was supposed to be aware about whatever went on, in the cash vault.
33. The Claimant was summarily dismissed, and paid his terminal dues at Kshs. 1.3 million. He acknowledged receipt, and discharged the Respondent from any other liability. The payment cheque is exhibited.
34. Cross-examined, Nyamaika told the Court that the Claimant reported to the Branch Manager. There was no caution letter issued upon the Claimant. He was suspended to allow for investigations. He was paid half-monthly salary. He was not issued a letter to show cause. He was called for disciplinary hearing through the phone. He was not advised of his right to be accompanied. He was not availed the investigations report, prior to the hearing. The benefits paid to the Claimant were from the staff benefit provident fund. It was his personal pension funds. The Respondent did not exhibit cash operations guidelines. Adinda stated that he was totally liable for the loss of funds.



35. Redirected, Nyamaika told the Court that the audit report highlighted Claimant's failures. The Branch Manager's role was business development, which included bringing in customers. Operations Manager dealt with cash. Money would not have been lost, if the Claimant was alert. There was a valid reason, justifying termination. The money was never recovered.
36. Security Manager Daniel Kipkorir, relied on his witness statement and documents filed by the Respondent, in his evidence-in-chief. He corroborated the evidence of Nyamaika, on the employment history of the Claimant at the Respondent, his terms and conditions of employment, and the circumstances surrounding the termination of his contract. The Claimant was a joint custodian of the cash vault. The vault could not be opened without his knowledge or participation. He supervised cashiers and tellers.
37. Cross-examined, Kipkorir told the Court that he was not in the team that did the cash count. Okwara no longer works with the Respondent. Kipkorir was not present at the disciplinary hearing. He denied that his evidence is hearsay. He did not have the money protocols which he alleged in his witness statement, that the Claimant did not follow.
38. Redirected, Kipkorir told the Court that he gave his evidence, as a representative of the Respondent, relying on the documents exhibited by the Respondent. Okwara was a Security Manager, the same position held by Kipkorir. Akinda's confession did not affect the Claimant's liability.
39. The issues are whether the Claimant executed a discharge voucher in favour of the Respondent, after payment of terminal dues, committing not to pursue further claims against the Respondent; if he did not, whether the Court should proceed to examine if termination was procedurally fair and substantively valid; and whether the Claimant merits the remedies sought.

The Court Finds: -

40. The Claimant was employed by the Respondent Bank as a Grade 1 Officer in the Commercial Relationship Department at Kisumu, on 17th August 2010.
41. He was later promoted as an Assistant Manager, and lastly held the position of Operations Manager at Kisii Branch.
42. He was summarily dismissed on 31st January 2019. He was dismissed for various reasons, the principal one being, that a surprise cash count at the Kisii Branch vault, confirmed a shortage of Kshs. 27,144,000, a shortage traceable to the Claimant's negligence, or active involvement.
43. Discharge Voucher: In *Coastal Bottlers Limited v. Kimathi Mithika* [2018] e-KLR; and in *Thomas De La Rue [K] v. David Opondo Omutelema* [2013] e-KLR, the Court of Appeal held that the function of the Court, is to enforce, and give effect, to the intention of the parties to a discharge voucher. Giving effect to a discharge voucher means that the Court cannot entertain a Claim, filed by an Employee who has voluntarily executed discharge, committing not to file a Claim against his Employer.
44. Contrary to the evidence of Assistant General Manager Human Resources, John Nyamaika, the Claimant did not execute a discharge voucher, committing not to file a Claim against the Respondent, after being paid terminal benefits.
45. The discharge voucher exhibited by the Respondent relates to payment of Kshs. 1,835,422 to the Claimant, which was in full and final settlement dues to the Claimant, from the Respondent's Pension Scheme.



46. It was not terminal benefits, paid to the Claimant by the Respondent, as an Employee of the Respondent, but rather, pension dues, paid by the Pension Scheme to the Claimant, as a member of the Scheme. The Pension Scheme was a separate entity from the Employer. It was not part of the contract of employment.
47. The discharge did not relate to the contract of employment, between the Claimant and the Respondent.
48. The Claim was validly filed, and was not affected by the discharge executed by the Claimant. The Court is not barred from examining if termination of the Claimant's contract was procedurally and substantively fair, and whether the Claimant merits the prayers sought.
49. Procedure: The Claimant was suspended with effect from 26th October 2018. He was placed on half-salary. He was advised that the Management had noted irregular transactions at Kisii Branch, where the Claimant was in charge of operations.
50. Two cash counts were carried out and confirmed vault and ATM cash differences of about Kshs. 27 million. There was an internal audit, internal investigations, and investigations carried out by the Banking Fraud Investigation Unit, confirming loss.
51. The Claimant was arrested and arraigned at Kisii Law Courts, in a criminal case that at the time of hearing this Claim, was ongoing.
52. He was notified of disciplinary hearing at the Respondent's Head Office, in Nairobi.
53. The Court does not think that he was placed at any procedural disadvantage, by being notified of the hearing through the phone, instead of in writing.
54. He received the communication, and attended the hearing at Nairobi. He was heard by what he complained was an ad hoc committee. The Respondent explained that this was an inter-departmental disciplinary committee. The Court is satisfied that the Claimant was heard by a disciplinary committee. It was not in breach of fair procedural standards, that the committee did not pronounce itself to be a disciplinary committee. The subject matter was the disciplinary hearing of the Claimant, on a subject both parties were familiar with.
55. He was heard alongside his colleagues, Tom Adinda the Cash Officer, and Tellers John Omaiko and Dennis Kioko.
56. The Claimant did not complain at the hearing, that he was subjected to an ad hoc committee. He confirmed to the committee that he was aware why he had been called to Nairobi. He was thankful for the opportunity accorded to him, to defend himself. Questions were put to him by the committee, which he responded to, one after the other.
57. The committee made findings and recommended that the Claimant and his colleagues are dismissed with immediate effect.
58. He was summarily dismissed with effect from 1st February 2019, through a letter dated 31st January 2019. The Court again does not believe that the Claimant was placed at any procedural disadvantage, by the length of the period of about 2 months, from the date the committee recommended his dismissal, to the date he was dismissed.
59. He did not complain to the committee about his right to be accompanied at the hearing, or right to call witnesses.



60. The procedure adopted by the Respondent did not place the Claimant at any discernible disadvantage, such as would call on the Court to find that termination was procedurally unfair, under Sections 41 and 45 of the *Employment Act*.
61. Substantive grounds: It is common evidence that the Claimant was the Operations Manager at Kisii Branch. It is also common evidence that the Branch suffered a huge loss of its clients' money, stolen from the cash vault and ATM. It was explained that the Claimant, was in charge of the Cash Officers and Tellers at the Branch, while the Branch Manager, oversaw business development. In other words, the cash vault and the keys to the vault, were squarely a responsibility of the Claimant. The Officers who oversaw safe custody of the cash, were all under the Claimant.
62. He was the joint-custodian to the vault. He held the keys with the Cash Officer. Not a single coin would leave the vault, without the knowledge or active participation of the Claimant.
63. He conceded that he was the joint custodian of the cash vault. He did not dispute that over Kshs. 27 million, went missing from the vault.
64. The Internal Audit Report confirmed that, the Respondent sustained cash vault difference of Kshs. 25,490,730, ATM cash difference of Kshs. 1,654,200, and Mobicash float difference of Kshs. 3,100,000.
65. Isaac Okwara a Security Officer from the Respondent's Security Department, confirmed cash vault difference of Kshs. 25,495,270 and ATM cash difference of Kshs. 1,654,200, total Kshs. 27,144,930.
66. Kshs. 100 notes were placed in bundles, disguised as Kshs. 1000 notes in the vaults.
67. The fraud was reported to Banking Fraud Investigation Unit at Kisumu. The Claimant, his Cash Officer and 2 Tellers were charged at Kisii Law Courts, for stealing by servant. The charge sheet indicates that, they were charged with stealing the sum in question, of over Kshs. 27 million. The criminal charges are based on the same facts, leading to the Claimant's summary dismissal.
68. The Claimant's shift of blame, to the Cash Officer and Tellers is a very weak defence, before this Court. Such a shift may afford him reasonable doubt in the criminal jurisdiction, but is insignificant, in the employment jurisdiction. The Cash Officers and Tellers were juniors to him. It is likewise a very unconvincing line of argument advanced by the Claimant, that the initial surprise cash count, found everything was in order. How would everything have been in order, while all audits and investigations, established loss of over Kshs. 27 million at the Respondent's Branch at Kisii?
69. The Court is persuaded that the Respondent had adequate proof, of the reason for termination, under section 43 of the *Employment Act*.
70. Remedies: Termination was procedurally and substantively fair, and no prayer sought by the Claimant, save for the certificate of service, is merited.
71. Certificate of service to issue to the Claimant.
72. He was a Senior Manager, placed in a fiduciary position by the Respondent. Huge amounts of cash were placed in his custody. He held the key to the vault. Not a single coin could leave the vault, without his knowledge or participation. He was a joint-custodian, and through his knowledge or negligence, the Respondent Bank was robbed by insiders without violence, and lost its clients' funds, to the tune of over Kshs. 27 million.
73. There is no legal or factual basis, for the Claimant to be granted an order regarding his credit facilities. The interest payable on his loan, is not subject matter of the employment dispute between the Parties.



It was a personal loan, separate from the contract of employment, whose terms did not terminate with the contract of employment. The Court does not have ground, to declare that the Respondent is not entitled to recall the credit facilities.

74. There were no statutory or constitutional articles, shown by the Claimant to have been violated by the Respondent, in terminating his contract. Termination was well– founded under Sections 41,43,44, 45 and 46 of the *Employment Act*. Declaratory orders sought on statutory and constitutional violations, are declined.
75. The Claimant was a white-collar Employee, knowledgeable on the consequences of filing a half-baked Claim, and the consequences of its dismissal. He was paid pension dues. He was a Senior Manager, with the financial wherewithal to litigate against the Respondent, and to bear the consequences of loss of his Claim against the Respondent. The Claimant shall pay the costs of the Claim to the Respondent.

It is ordered: -

- a. The Respondent shall issue the Claimant, his certificate of service.
- b. The rest of the Claim is declined.
- c. Costs to the Respondent.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT
PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025**

JAMES RIKA

JUDGE

