



**Zamzam v Gulf African Bank Limited (Cause E006 of 2022)
[2025] KEELRC 165 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 165 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E006 OF 2022
M MBARÚ, J
JANUARY 30, 2025**

BETWEEN

SAID AHMED ZAMZAM CLAIMANT

AND

GULF AFRICAN BANK LIMITED RESPONDENT

JUDGMENT

1. The respondent bank employed the claimant on 2 February 2013 as a treasury sales officer at a salary of Ksh.90, 000 per month. He was issued with a written contract with terms and conditions of service and other benefits including an option of joining the pension fund scheme and a provision of bonus based on performance during the year. The claimant’s main duties included calling clients dealing with forex exchange daily or weekly and holding discussions in the bank.
2. The salary paid increased over the year, and in 2020, he was earning Ksh.132 000. In 2021, due to the COVID-19 pandemic, the claimant was assigned the duties of customer service officer in addition to the position of treasury sales officer. He was based at the Nkrumah Road branch, but his salary remained the same, and by 1 July 2020, the claimant had earned Ksh.2, 250,278.78
3. The claim is that on 7 September 2021, while the claimant was serving a customer, an intern was assisting him. Another colleague, Hajra Abdalla was beside them. Each had a desk but the claimant and the intern had each a chair for the customers seeking services at the bank. Hajra did not have a chair for clients as she was not required to receive clients.
4. The intern explained to the claimant that she needed to move her Customer (customer A), an old lady, to his desk since she did not fully access the banking system. The claimant asked Customer A, seated with the intern, to move over to his desk so that he could serve her. Before Customer A could move over as requested, another customer (Customer B) pulled the chair. The claimant intervened and asked



- him to leave the chair since he had a customer to attend to. The Customer had not checked with the claimant whether he still needed the chair before removing it.
5. The claimant knew the Customer B well and that he was hot-tempered. He reacted wildly claiming that the claimant had disrespected him and made threats at him for dire consequences. The claimant remained calm and did not engage Customer B. The claimant proceeded to attend to Customer A, the Customer he had invited over to his desk.
 6. Customer B was attended to by a colleague but could not control the situation as customer B complained loudly. The branch relationship manager had to intervene and take customer B upstairs. The colleague ordered the claimant to apologise to customer B, but the claimant declined. This was a cover-up for a mistake customer B had made and threatened him with dire consequences. The claimant did not find it useful to engage customer B while still angry. In any event, the matter should have been escalated to the operations manager or branch manager to resolve the issue and allow the claimant to give his side of the story.
 7. After banking services closed for the day, the branch manager and operations manager called the claimant to a meeting to discuss the incident. The claimant explained the situation to his supervisors who him to visit customer B the next day to apologise, the claimant accepted.
 8. On 8 September 2021, the claimant asked the relationship manager about the time to visit customer B for an apology. He was told it was no longer necessary and that they would handle the situation. The claimant reported this to the branch manager.
 9. On 10 September 2021, the claimant was issued a letter from the head of human resources, a show cause notice under the subject of disrespect to a customer. He replied on 13 September 2021 and was issued another letter seeking more information. On 15 September 2021, the claimant was invited to attend a disciplinary hearing and present were Amina Bashir as chair; Lul B. Musa, the head of human resources; Shamsa Awadh, the branch manager; Phidelis Mwarenge, the contact centre manager; Peter Sitati, an IT expert, Hajra Abdalla, the colleague who attended to customer B.
 10. The claim is that the claimant was not allowed to have another employee of his choice present at the disciplinary hearing as required under Section 41 of the [Employment Act](#).
 11. Through a letter dated 16 September 2021, the respondent terminated the claimant's employment on grounds of showing disrespect to a customer and that he was careless in the performance of his duties contrary to section 44(4)(c) of the [Employment Act](#). The decision to terminate employment was unjustified and unfair, contrary to the law and constitution. The reasons given were not valid or reasonable, and there was no procedural fairness or substantive justice. The claimant was not allowed his right of appeal or provided with the disciplinary minutes/proceedings.
 12. At the time of the termination of his employment, the claimant had taken a mortgage facility with the respondent in 2016 for Ksh.5, 095,162, to be serviced within 25 years. This was for a house whose title deed was charged to the respondent bank. The claimant has not been able to service his loan, which he was paying through his salary. The claimant had legitimately expected to retire on the job save for the breach of his constitutional rights by the respondent through termination of employment.
 13. The claimant is seeking the following orders;
 - a. A declaration that the termination of the claimant's employment by the respondent was wrongful, and unlawful for being substantive without justification and being procedurally unfair;



- b. A declaration that the termination of the claimant's employment and the unlawful conduct by the respondent infringed the claimant's constitutional right to fair labour practices under article 41 of *the constitution*;
 - c. An order that the claimant be reinstated back to employment with the respondent forthwith loss of benefits and continuity of service;
 - d. An order compelling the respondent to pay the claimant his full salary and benefits during the period of dismissal;
 - e. In the alternative to (c) and (d) and without prejudice to the above, the claimant be paid 12 months' salary as compensation for unfair termination at Ksh.2,250,278.78;
 - f. A declaration that the claimant is entitled to payment of damages and compensation for infringement of his rights and freedoms under *the constitution*;
 - g. Underpayment of salary of a treasury sales officer at Ksh.90,000 per month x 24 months to date Ksh.2,160,000;
 - h. General damages for breach of right to fair labour practices;
 - i. Costs of the suit.
14. The claimant testified that the respondent employed him on 2 February 2013 as the treasury sales officer on permanent and pensionable terms. His basic salary was Ksh.90, 000 per month. His position involved foreign exchange customers of the respondent in buying and selling. He had direct contact with customers. His last salary was Ksh.132, 200 per month. He worked well without any disciplinary incident. He took a mortgage facility and charged the title to the respondent bank.
15. On 7 September 2021, as the claimant was in the process of serving customers, an intern was next to him. There was a chair facing him where customers sat. Next to him was another desk where the intern sat facing the customer. The rule and policy of the respondent was that first come, first served, and an employee of the respondent was supposed to have tools of trade to serve customers. The system was to have a chair for the customer to sit on.
16. Another colleague was sitting and facing the claimant. She did not have a chair for the customers she was serving. Customer B came in and pulled the chair the claimant was using to serve his customers, but he stopped him. He got angry, and his colleague had to intervene.
17. The claimant testified that he previously had an issue with the respondent, which was resolved in 2017.
18. During the COVID period, he was given additional duties. His salary increased by Ksh. 16 000. In 2020, there will be a general increase in salary for all employees. His dual role as treasury sales office and customer service was not compensated.
19. The claimant testified that he was invited to the disciplinary hearing and attended on 15 September 2021. During the hearing, he was shown a video clip of what had happened on 7 September 2021, and he saw the video clip for the first time. He was dismissed from employment after the hearing on 16 September 2021.
20. Upon cross-examination, the claimant testified that he had a job description as the treasury sales officer. Part of his duties was to respond to customer needs professionally. He was also aware of the human resources policy. One objective was to ensure customer relations and excellence. Everyone who held an account with the bank was a customer. He was provided with tools for work.



21. The claimant testified that on 7 September 2021, customer B came to the bank. There was an empty seat next to his desk, and he took it—he did not ask to take it. At the time, the claimant had already called another person to sit there. He politely asked customer B to leave the chair since there was customer A expecting to be attended to. He got angry, and tempers flared.
22. The claimant testified that customer B would attend at his mosque. They had engaged before, which was not pleasant. He was not happy with the unpleasant engagements. He always tried to avoid customer B whenever he felt anything unpleasant.
23. On 7 September 2021, the claimant was asked to apologise to customer B but refused.
24. Work performance was reviewed annually. There were no negative comments in the 2020 review. There was no appraisal in 2021 since this was done at year-end. The allegations that he was not a team player were not brought to his attention. The notice terminating employment did not relate to the matter of not being a team player.
25. During the disciplinary hearing, the claimant testified that he was asked if he was aware of the right to be accompanied by another employee but chose to be alone.

In response

26. In response, the respondent admitted that the claimant was an employee assigned to an officer of the customer experience after his poor performance as a treasury sales officer. He was not evaluated for any treasury sales officer duties in 2020 and 2021, as alleged.
27. The claimant's employment was terminated for reasons stated in letters dated 10, 13, and 16 September 2021. The termination of employment was procedurally and substantively fair.
28. The claimant had taken a loan facility with the respondent, and security was taken. The claims made are without merit and should be dismissed with costs.
29. In evidence, the respondent called Lawi Sato, the senior legal officer at the head office in Nairobi. He testified that in his capacity, he has access to the records and personal knowledge of the matters herein.
30. The claimant worked for the respondent from 2 February 2013 until 16 September 2021, when his employment was reasonably terminated. The respondent, a commercial bank offering shariah-compliant banking, operates around key values and principles. The key value is 'customer first', which means that the respondent and its employees will do all that is lawfully and reasonably within their power to satisfy the needs of its customers. These values were in the claimant's job description.
31. It was a fundamental breach on the claimant when, on 7 September 2021, he treated a customer's attempt to sit on an empty chair reserved for customers. The chair, although placed at the desk utilized by the claimant, was meant to serve all customers. The customer being served by another employee was denied using the unoccupied chair simply because the claimant was anticipating another customer.
32. The customer was displeased by the claimant's actions. The supervisor asked the claimant to apologise to the customer, but he declined. The branch manager took over the matter because the claimant's actions angered the customer, potentially spoilt the reputation of the respondent, and caused direct and indirect financial loss.
33. Sato testified that two days later, on 9 September 2021, the respondent received three (3) letters from customer B seeking to close their bank accounts. This formed valid reasons for termination of employment. The decision was not excessive but deserved as he acted contrary to the respondent's policies. By refusing to apologise to Customer B, the claimant remained disrespectful to Customer B.



34. Sato testified that the respondent filed the CCTV footage for 7 September 2021, demonstrating his disrespect for customer B.
35. Sato testified that the claimant had alleged that he was assigned two roles, which is not correct. The claimant had consistently underperformed as a treasury sales officer. Discipline letters were exchanged in June and December 2017, and instead of taking the option to dismiss him from his employment, the respondent reassigned him to a customer experience officer. In 2020 and 2021, the treasury sales office did not evaluate the claimant.
36. The respondent has the right to reorganize its business to improve productivity. This did not entitle the claimant to two salaries as alleged.
37. The claimant was notified of his right to bring another employee of his choice to the disciplinary hearing but opted to attend alone. Termination of employment arose out of a disciplinary process in which the claimant participated.
38. Sato testified that the claimant took a loan and security taken.
39. The CCTV footage was shown to the court, and a copy was filed.
40. At the close of the hearing, both parties filed written submissions.
41. The claimant submitted that on 7th September 2021, while serving clients, he politely requested customer B not to take a chair as customer A was to use it. The respondent produced a video and audio recording of what transpired on that particular day but the same was manipulated not to emit any audio.
42. After the incident, the claimant's colleague Hajra Abdalla told the claimant to apologize to the customer but he refused since he had no authority to make that request. Procedurally, the matter was supposed to be escalated to the operations manager or the branch manager immediately for intervention but it happened after the close of banking hours. The Show Cause letter dated 10th September 2021, alleged that the claimant's actions resulted in customer B closing all his accounts. However, the closure letters were not signed by any director of Tudor Nora Apartments, Eurosom Group Ltd, or Deepsky Ltd, neither did the letters specify by name the alleged staff who showed disrespect to the author of the letters. Further, the respondent's witness did not establish any connection between customer B in the video recording and the unnamed author of the said letters.
43. The claimant submitted that Section 43 of the [Employment Act](#) obligates the employer to establish a valid reason that would cause an employer to terminate an employee. In Civil Appeal No. 62 of 2015, *Bamburi Cement Limited v William Kilonzi* (2016) eKLR, the Court of Appeal held that The question to be answered is whether the employer's suspicion was based on reasonable and sufficient grounds. Section 47(5) places the burden of proving that the dismissal was wrongful rests on the employee while justifying the grounds of wrongful dismissal rests on the employer. It is a shared burden, which, strictly speaking, amounts to the same thing. The respondent's Human Resource Policy states dismissal proceedings should commence after two written warnings. Even if dismissal is immediate, due process ought to be followed. No such warning letters were issued in this instance.
44. In the Court of Appeal case of *Nairobi City Water and Sewerage Company Limited v Irungu* (Civil Appeal 458 of 2019) (2024) the court held that In addition to substance, the [Employment Act](#) places due process as the central consideration in matters of employment where an employer is considering to terminate employment. The process is everything under the Act and an employer who ignores it while terminating employment falls foul of the law.



45. The Show Cause Letter dated 10th September 2021 ignored the fact that the claimant agreed to apologise nor did it state the claimant's violations. There was also no mention of his failure to work as a team player nor was there any mention of responding to the allegations. Yet, these concerns were part of the agenda for deliberations during the disciplinary hearing. The disciplinary hearing was held on the 16th of September, 2021 and the claimant was terminated on the same day. He did not have time to confirm the minutes of the meeting or to prepare for his appeal as per paragraph 26.5 of the HR Manual. Further, the video presented during the hearing was not availed to him beforehand.
46. The court in the case of *George Onyango Akuti v G4S Security Services Kenya Ltd [2013] eKLR* held that;
- unfair labour practices have not been defined in *the Constitution* or statute. This is unlike the statutory framework obtained in other jurisdictions such as South Africa where section 186(2) of the *Labour Relations Act* has defined unfair labour practices. It is a flexible term not capable of precise definition. Therefore it is left to the Courts to define and determine the scope, content and extent of what would qualify to be an unfair labour practice, or to put it in the converse what conduct or practice would amount to an unfair labour practice. I also note *the Constitution* has not talked of lawful or legal labour practices.
47. The claimant submitted that due to unfair termination of employment, he is entitled to compensation of 12 months' salary. On underpayment, the claimant submitted that sometime in 2021, he was assigned the customer service officer role while still serving as a Treasury Sales Officer. The Respondent did not present evidence that the Claimant had been reassigned his duties from a Treasury Sales Officer to a Customer Service Officer. Neither was there any evidence to show that he had been absolved of the responsibilities of a Treasury Sales Officer. The position of a Treasury Sales Officer attracted a salary of Kshs.90,000 per month
48. The respondent submitted that the claimant had been moved from the Treasury Sales Officer role because he was underperforming and was not evaluated for that role for 2020 and 2021. No evidence was presented to show that the claimant worked in two roles simultaneously.
49. The respondent's witness, Mr. Sato, testified that on 7 September 2021, with the aid of video evidence, the claimant stopped customer B from occupying an unoccupied chair, which incensed him. The claimant was asked to apologize to the customer, but he refused to. By the time he agreed to apologize, the customer had already made up his mind to sever ties with the respondent. This amounted to gross misconduct, which warranted dismissal.
50. The court in the case of *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] eKLR* the court held that Under Section 43 of the Act, the onus is on an employer to prove the reason or reasons for the termination, failing which the termination shall be deemed to be unfair. The test is, however, a partly subjective one in that all an employer is required to prove are the reasons that he "genuinely believed to exist," causing him to terminate the employee's services.
51. The respondent believes that the claimant denied the customer the chance to occupy the unoccupied chair because they did not get along. In cross-examination, the claimant admitted to feeling belittled by the customer on the occasions they met at the mosque. This court in the case of *Edison Safari Kusa v NIC Bank (K) PLC [2021] eKLR*, cautioned bankers that they operate in a highly sensitive sector that requires the highest degree of diligence.
52. The claimant's allegation that he was not provided with the CCTV footage in advance is immaterial as the CCTV footage merely shows what happened in the presence of the Claimant, and it would not



have assisted. The claim that he was dismissed because it was not contained in the notice to show cause but only sprouted during the disciplinary hearing is also unfounded. The phrases "not a team player" and "being pushed to do his work" merely explain the specific allegation against the claimant. There was a valid reason to terminate the claimant's employment, and the procedure was followed.

53. The respondent submitted that section 12(3) of the *Employment and Labour Relations Court Act* bars the court from ordering reinstatement, however compelling the case may be, three (3) years after termination.

Determination

54. Through a letter dated 16 September 2021, the respondent terminated the claimant in his employment for failing to meet the bank's expectation of providing an excellent customer experience to all customers at all times. The allegations against the claimant were that he denied a customer the use of a chair that was placed for use by customers which was improper and violated the bank's Customer First philosophy. This was hence found to be in breach of Section 44(4) (c) of the *Employment Act*.

55. Section 44(4) (c) of the Employment Provides that;

(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 was his duty, under his contract, to have performed carefully and properly;

56. The respondent's witness Mr. Sato testified that under the employment contract issued to the claimant, he was bound under shariah-compliant banking values and principles. The key principle and value was Customer First.

57. Sato further testified that the claimant failed in his duties to the bank customers when he denied a customer the use of a chair that was unoccupied. The claimant did so on the basis that he was expecting another customer.

58. The claimant admitted that he knew this particular customer, customer B. He knew him as a hot-tempered person. He testified to the fact that customer B had mocked him when they met at the mosque.

59. Indeed, by its very nature, the employment relationship places certain obligations upon the employee, two aspects of which are the generic duties of the employee to maintain a harmonious relationship and to cooperate with his employer. The employee's obligation to ensure a harmonious relationship with the employer and other staff requires that he should do nothing to undermine it. Employers and the managers through whom they enforce their will are likewise entitled to respect and failure to demonstrate this amounts to insubordination.

60. In the case of *Public Servants Association of SA on behalf of Khan v Tsabadi NO and Others* (2012) 33 ILJ 2117 (LC) the court in addressing a case of alleged insubordination held that;

The employment relationship entails a quid pro quo. In exchange for a salary and other benefits, the employee agrees inter alia to place her services at the disposal of the employer and to obey the lawful and reasonable instructions of the employer on how those services are utilized. The employee cannot refuse to obey the lawful instructions of the employer whilst at the same time drawing a salary.



61. The respondent filed the Human Resource Policy dated 10 December 2018. Under the policy, the preamble outlines the policies of the bank which include the values of being a customer-centric, relationship-oriented bank.
62. The claimant testified to the fact that he was conversant with the human resource policy regulating his terms and conditions of employment.
63. The claimant, aware of the nature of his employment, in a sector highly regulated and customer-centric, failing to offer a customer an unoccupied chair in anticipation of another customer went contrary to what a reasonable employee ought to have done. By testifying to the background events between him and customer B, indeed, he placed himself directly in violation of the very tenets, values and principles of the respondent bank.
64. There were justified grounds leading to termination of employment as held in *Adera v Sukari Industries* [2023] KECA 1086 (KLR).
65. That addressed, save for having a reason for termination of employment, the employee should be taken through procedural fairness, the due process as held in *Freddy Kipkorir Lang'at v Co-operative University of Kenya* [2021] KEELRC 101 (KLR) and in the case of *Oyombe v Eco Bank Limited* (Civil Appeal 185 of 2017) [2022] KECA that before termination of employment, the employer must adhere to four elements;
 - ... four elements must thus be satisfied for the summary dismissal procedure to be said to be fair, being: -
 - a) An explanation of the grounds of termination in a language understood by the employee;
 - b) The reason for which the employer is considering termination;
 - c) Entitlement of an employee to have a representative of his choice when the explanation of grounds of terminations is being made;
 - d) Hearing and considering any representation made by the employee and the representative chosen by the employee.
66. The claimant was invited to the disciplinary hearing on 16 September 2021. He was reminded of his right to attend in the company of another employee, and he acknowledged being aware of this right but opted to participate alone. He defended himself to the extent that customer B had come to the bank to see Hajra, but there was no chair near Hajra. Customer B pulled the empty chair next to the claimant.
67. The claimant was not able to explain his conduct during the disciplinary hearing. The rationale was that the chair pulled by customer B was unoccupied. Yet, he had anticipated customer A using the seat, which was not what a reasonable person bound by customer-centric values would do. Under the human resource policy, a breach of the respondents' values and principles was defined as gross misconduct.
68. Under Section 12 of the *Employment Act*, an employer is allowed to formulate policies to regulate the nature of its business.
69. The claimant has also argued that his employment terms and conditions were changed and additional duties were given, but he was not paid for the additional duties.



70. The response is that the claimant was reassigned to Officer, Customer Experience after poor performance as a Treasury Sales officer.
71. The employment letter and contract of the claimant with the respondent was that of the Treasury Sales Officer. There is no letter of reassignment to other duties. The change of title and position to Officer, Customer Experience on alleged poor performance was not procedurally addressed with the claimant as required under Section 41(1) and 10(5) of the *Employment Act*. Before taking a sanction against the employee over alleged poor performance, the employer has a legal duty to take the employee through due process as held in *National Bank of Kenya v Samuel Nguru Mutonya* [2019] KECA 404 (KLR) and the case of *Star Publications Ltd v Simiyu* [2023] KECA 23 (KLR). The employer cannot justify acting suo motto without the involvement of the subject employee. Such is contrary to Section 41 of the *Employment Act*.
72. Equally, before changing and reassigning the employee to new duties as a result of alleged poor performance, the written approval of the employee is mandatory as held in *Muthui v Kenya Rural Roads Authority (KERRA)* [2023] KECA 331 (KLR) and the case of *Reuben Ikatwa & 17 Others v Commanding Officer British Army Training Unit Kenya & British Army Training Unit Kenya* [2017] KECA 274 (KLR); and the case of *Board of Governors, Cardinal Otunga High School, Mosoch, Nyariki Zachary & Jeremiah Nyakundi v Elizabeth Kwamboka Khaemba* [2016] KECA 486 (KLR) where the Court of Appeal held that;
- The respondent was not consulted before the assignment of the new duties. We agree with the trial judge that this omission violated section 10(5) of the *Employment Act*, which requires an employer to consult with an employee before revising a contract of employment.
73. This was a fundamental flaw on the part of the respondent. When the claimant was terminated, his employment status and position changes negatively impacted his work performance. This was to his detriment and led to the events of 7 September 2021, when he had an exchange with customer B.
74. In his evidence in court, the claimant observed that he had a problem with customer B. Matters started outside the workplace, where customer B mocked him and made negative remarks against him while at the mosque. It follows that when Customer B found the claimant at his workplace and decided to take the empty seat in front of him without asking, he simply escalated the ridicule he had for him outside the workplace.

Did the respondent protect the claimant from customer B?

75. As much as the respondent policy was to ensure customer-oriented service and a secure customer base, the employees on the shop floor had rights, too. To be protected against angry and agitated customers. Because the matters taking place on 7 September 2021 were captured on video, such material leading to customer B withdrawing from banking with the respondent, inherently, employees attending to their duties should be protected by the employer. This is the essence of fair labour practices. Allowing every customer to harass and mistreat employees to retain them as customers would defeat the very nature of having employees attend to customers at the banking hall.
76. Ultimately, the reasons applied to terminate employment related to events taking place on 7 September 2021, not the claimant's performance, which was a simmering issue. His case is that his rights to fair labour practices were violated.



77. As analysed above, the employer must protect employees on the shop floor. Whereas the claimant had a duty to undertake his duties properly, the respondent, as the employer, had an equal duty to ensure he worked in a conducive environment. This duty is not apparent in this case.
78. There is no response to these averments save for the respondent urging the court that there was a review in 2017, and the claimant performed poorly. Instead of being dismissed from employment, he was redeployed. That sweeping of the issue under the carpet resulted in unfair labour practices.
79. The concept of unfair labour practices is defined by the Supreme Court in *Kenya Ports Authority v Munyao & 4 others* [2023] KESC 112 (KLR) to include;
- ... the right to “fair labour practices” encompasses the constitutional and statutory provisions and the established workplace conventions or usages that give effect to the elaborations set out in article 41 or promote and protect fairness at work. These include provisions for basic fair treatment of employees, procedures for collective representation at work, and of late, policies that enhance family life while making it easier for men, women and persons with disabilities to go to work
80. The court further held that;
- From the above definition unfair labour practice encompasses all conduct prior to, in the course of employment, during and after termination of employment. The provisions of Article 41 therefore encompass the full spectrum of labour practices. The provisions of Article 41 are borne from the realization that employment and/or the right to work is a human right. The right is also linked to other rights in the Bill of Rights more so the protection of life and the dignity of a person. The right is therefore a principle with legal obligations.
81. In this case, the rights on the shop floor are not empty. The employee’s right at work should be secured, protected and not violated at will by the employer. Third parties bear the same responsibility.
82. In *Kenya Ports Authority v Munyao & 4 others* [2023] KESC 112 (KLR) the Supreme Court confirmed an award of Ksh.800,000 in general damages for violation of employees’ rights. That was in the year 2011. With the passage of time and the claimant having lost his employment in the year 2021. It is only fair and just that an award of Ksh.1,000,000 be awarded.
83. Before conclusion, the claimant raised the issue of the mortgage on the basis that while employed by the respondent, he obtained a mortgage facility for a house whose title deed was charged to the respondent bank. He is unable to repay the loan upon loss of employment.
84. In a ruling delivered on 28 July 2022, the court held it had no jurisdiction to entertain a dispute about exercising the chargee’s statutory power under the *Land Act* and the claim related to alleged unfair termination of employment. The ruling took into account that the court had the advantage of hearing the claim on the merits, and the findings that there were unfair labour practices visited against the claimant, leading to the termination of his employment, went to the root of his mortgage facility. The rights accrued with employment were lost with his employment. To allow the sale of his property to recover the house he had secured due to his employment and legitimately expected to repay using his salary was lost due to unfair labour practices.
85. In the case of *Jackson Ngovi, Francis Mutuku, Bernard Musau, Bensley Mathuku, Timothy Maneno, Sharack Mwau & Gideon Mwango v County Assembly of Makueni* [2020] KEHC 9339 (KLR) the court held that where a right accrues in employment including a mortgage facility, such is secured



upon unfair termination of employment. In the case of *Mulinge v Cooperative Bank of Kenya Limited* [2023] KEELRC 847 (KLR), the court held that;

... the loan agreement by which he was granted the loan facilities that are the subject of this application, was inextricably tied to his employment contract. For this reason, I find and hold that the jurisdiction to adjudicate on the terms of the loan agreement, including the applicable interest rates resides in this Court.

86. In this case, the loan facility cannot be removed from the employment relationship and the termination thereof.
87. The claimant shall repay the due mortgage facility as agreed upon during his employment unless he wishes to repay it in advance. Accordingly, judgment is hereby issued for the claimant against the respondent with the following orders;
- a. There were violations of the claimant's constitutional rights to fair labour practices;
 - b. General damages awarded at Ksh.1,000,000;
 - c. The claimant shall continue to service his mortgage repayments at staff rate unless otherwise brought forward for early repayment;

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 30 DAY OF JANUARY 2025.

M. MBARŪ

JUDGE

