



**Musumba v NCBA Bank Kenya Plc (Cause E030 of 2024)
[2025] KEELRC 634 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 634 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E030 OF 2024
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

KELVIS M MUSUMBA CLAIMANT

AND

NCBA BANK KENYA PLC RESPONDENT

JUDGMENT

1. It is common cause that the Claimant was employed by the Commercial Bank of Africa in 2017 prior to its merger with the NIC Bank thus resulting in the creation of the Respondent. Subsequent to the merger, the Claimant was employed by the Respondent. He started off as a Customer Service Representative and was subsequently promoted to the position of Contact Center Supervisor. At the time of the Claimant's termination from employment, he had risen in rank and was working at the Respondent's Credit Risk Management Department in the position of Assistant Manager.
2. It is evident from the record that the employment relationship started deteriorating sometimes in July 2023 when reports emerged of fraudulent transactions relating to unauthorized reactivation of customer's accounts as well as unauthorized debit transactions from customer's accounts.
3. It is subsequent to these reports that the Claimant was subjected to a disciplinary process culminating in his termination from employment with effect from 21st December 2023.
4. It is the Claimant's case that his termination from employment was unfair and did not meet the prerequisites outlined in the *Employment Act*. Consequently, the Claimant has prayed for the following reliefs:
 - a. A declaration to issue that termination of the Claimant's employment was unfair and that the same amounts to unfair labour practices.
 - b. Damages for unlawful and unfair termination of employment.



- c. In the alternative to prayer (b) above, an order that the Claimant's employment and benefits be reinstated with backpay.
 - d. Damages for discrimination and unfair labour practices.
 - e. A permanent injunction restraining the Respondent from converting the Applicant's staff mortgage and staff loan facility to commercial rates.
 - f. Costs of this Suit and interest thereto.
 - g. Any other award that the court may deem fit.
5. The Claim did not go unopposed. Through its Statement of Response dated 9th August 2024, the Respondent avers that the allegations against the Claimant were sufficiently proven to the required standard. The Respondent has further contended that the reliefs are incapable of being granted as sought and are not merited. To this end, the Respondent has asked the Court to dismiss the Claim with costs.
 6. The matter proceeded for hearing on 3rd December 2024, during which both sides called oral evidence.

Claimant's Case

7. The Claimant who testified in support of his case, started by adopting his initial witness statement, further witness statement, the initial list and bundle of documents and the supplementary list and bundle of documents filed on his behalf to constitute his evidence in chief.
8. It was the Claimant's evidence that on the 28th day of July 2023, he received a Notice to Show Cause why he shouldn't be subjected to disciplinary process for allegedly authorizing activation and debit of some accounts.
9. He averred that from the outset, he was not furnished with the details of the accounts that had allegedly been irregularly authorized to enable him have proper visibility of the allegations and properly respond. That he did indicate as much in his response to the show cause letter.
10. That he was however aware of some transactions that had been initiated by another employee by the name Benson Kamau who had on the 25th day of July, 2023 clearly indicated that he initiated the said transactions erroneously and had requested that the same be reversed.
11. He therefore proceeded to respond to the show cause letter generally and on the basis of the email admission by the said Benson Kamau.
12. The Claimant further averred that he was based in the consumer collections which is within the Business Remedial Management Department and part of his duties was to authorize transactions.
13. That he proceeded to explain that there is a marker-checker control in the process which means that he cannot input transactions and authorize them at the same time. That the inputter is the one supposed to ensure that all the prerequisites are met prior to initiating re-activation or debiting of accounts.
14. The Claimant further averred that the inputter in this case, Benson Kamau had already admitted that he had initiated those transactions erroneously and subsequently requested for them to be reversed.
15. He was also aware that the said Benson Kamau was scheduled to travel abroad for further studies and he (Claimant) informed the Respondent of the same in an attempt to make the latter fast-track investigations before Benson Kamau travelled out of the Country. However, this was to no avail as



- the Respondent never made any attempt to have Benson Kamau answer to the allegations before he eventually left the country.
16. In the Claimant's view, the Respondent ought to have sought the intervention of law enforcement in having Benson apprehended before he left the country considering some of the allegations in question were issues of fraud.
 17. The Claimant further stated that he could not adequately respond to the allegations since he had already been locked out of the bank's system.
 18. That further, the Respondent failed to furnish him with an audit trail which contains details of the inputter and authorizer of any specific transaction and therefore, without this information, he was unable to confirm which of the seven transactions he had authorized. That this made it even harder considering that in his capacity then, he was authorizing between 150 and 200 transactions and therefore, without access to the system or an extract of the audit trail, he couldn't fully recall the details of the transactions off head.
 19. The Claimant further averred that according to the invitation, the disciplinary hearing was supposed to take place on the 16th day of November 2023, he received a last-minute call from the Human Resource Department rescheduling the meeting to the 20th day of November 2023. The disciplinary hearing culminated in the letter of termination dated the 21st day of December 2023.
 20. According to the Claimant, the termination of his employment was unfair and did not meet the prerequisites outlined in the *Employment Act*. That for instance, on the 20th of November, 2023, the hearing did not start until 12:00 pm. This rendered him unable to bring a representative considering that the person he intended to accompany him to the meeting was a colleague, and the unpredictability of the entire process was putting their job at risk.
 21. That in addition to procedural irregularities, his employment was not terminated on valid and fair reasons in that;
 - a. The intention to defraud the bank or participate in any criminal syndicate was not established. That there was no evidence that he benefited from the alleged fraudulent operations.
 - b. The disciplinary committee ignored the existing group dynamics of the team where he worked and the standard practice of the department.
 - c. The panel failed to consider whether there was a standard or system manual against which his actions could be weighed. The fact that there was no standard operation procedure or system manual to guide him was not considered by the bank and he was basically left to his own devices.
 - d. Failure by the committee to interrogate the applicability of the branch banking policy in their collection environment. That the policy is silent on activities when it comes to remedial cases.
 - e. Loans have to be paid through accounts, and it is not possible to pay a loan without passing through an account. That it is therefore a normal business practice in the remedial department to activate such accounts in order to pay what they owe the bank in arrears.
 22. The Claimant further averred that even after the incident, the customer whose accounts were largely involved in the alleged fraudulent transactions continued getting favours from the Respondent whereby the Head of Department would intervene to have bank-financed vehicles released upon repossession by the auctioneers.



23. The Claimant further contended that the Respondent further allowed Benson Kamau, who was at the center of the alleged fraud herein, to walk away without reporting the matter in time so as to be arrested.
24. The Claimant further averred that three authorizers were involved in the matter; himself and other two colleagues. However, two got a green light and were to resume normal duties, while he was terminated. In his view, this is a clear case of discrimination.
25. He firmly believes that he was unfairly targeted and his termination did not meet the threshold outlined under Section 45 of the *Employment Act*.

Respondent's Case

26. The Respondent called oral evidence through Ms. Christine Wahome who testified as RW1. Ms. Wahome identified herself as the Respondent's Senior Legal Counsel.
27. Similarly, she adopted her witness statement and all the documents filed on behalf of the Respondent to constitute her evidence in chief.
28. It was RW1's evidence that in July 2023, the Respondent's Team Leader - Control Assurance, flagged some five dormant accounts that had been reactivated and monies debited from them. The common feature in all the accounts was that the transactions were initiated by Benson Kamau and authorized by the Claimant.
29. Since there was no documentation to support the transactions, the Team Leader-Control Assurance considered this to be a possible case of fraud, thus escalated the matter to the Fraud Risk Management Department.
30. Upon preliminary investigations, the Respondent formed the view that the Claimant may be culpable for gross misconduct. He was therefore asked to show cause vide a letter dated 28th July 2023. The Claimant responded vide a letter dated 31st July 2023.
31. According to RW1, the Claimant never asked for the details of the transactions in issue before responding. That it is only those transactions inputted by Benson Kamau that the Claimant was required to respond to. There were no others that concerned him and therefore, he had all the information he needed to respond.
32. RW1 further averred that Benson Kamau, the inputter, was also required to show cause vide a letter dated 28th July 2023. That Benson Kamau responded vide a letter dated 31st July 2023, essentially admitting the accusations. Unfortunately, he resigned with effect from 4th August 2023, before any further action could be taken against him.
33. To this end, RW1 denied the Claimant's allegations that the Respondent did not seek any information from Benson Kamau. She averred that with his resignation, the Respondent lost the right to exercise any disciplinary power over him.
34. RW1 further stated that because of the nature of the allegations and the responses received from the Claimant and Benson Kamau, the Respondent was required to conduct further investigations.
35. As part of the investigations, the Respondent's investigation team obtained two statements from the Claimant on 7th August 2023 and 21st August 2023.
36. That after carrying out all necessary inquiries, the Respondent's Fraud Risk Management Department presented an investigation report dated 19th October 2023.



37. RW1 averred that from the depth of the investigation report, the inquiries could not be concluded within a shorter period hence the extension of the Claimant's suspension from time to time, and why he could not be invited for a disciplinary hearing earlier than he was.
38. That the investigations confirmed the accusations levelled against the Claimant, particularly, that the reactivations of the dormant accounts were done without any instructions from, or communication with, the customer. That further, the debits from those accounts, alleged to be for repayment of existing loans, were in fact not for that purpose.
39. According to RW1, in both instances, the Claimant as the authorizer was required to confirm that the inputter (Benson Kamau), had obtained all necessary documents, before granting the approval.
40. She added that the Claimant should also have confirmed that the alleged loans being repaid, were in existence and were owed by the customer whose account was being debited.
41. According to RW1, the aforesaid requirements are not only elementary to anyone in the banking industry but are also specifically spelt out in the Respondent's Policy on Handling of Inactive Accounts.
42. That given the findings in the investigation report, the Claimant was invited to a disciplinary hearing to be held on 16th November 2023.
43. The hearing was postponed to 20th November 2023 and a notification of that change was given to the Claimant. She added that the Claimant did not protest the change, nor did he indicate that the new date was inconvenient to his proposed representative.
44. That when the Claimant attended the hearing on 20th November 2023, he was asked and confirmed that he was happy to proceed without a representative. In RW1's view, the complaint the Claimant now presents is an afterthought.
45. It was RW1's further evidence that the Claimant attended the disciplinary hearing on 20th November 2023 and signed off on the minutes.
46. That upon considering the evidence and the Claimant's explanation, the disciplinary panel was satisfied that there was sufficient basis to dismiss the Claimant. It therefore recommended, and the Respondent's Group MD accepted, that the Claimant be dismissed from employment. The Claimant was dismissed vide a letter dated 20th December 2023.
47. As to the Claimant's assertion that the affected customer "continued getting favors from the bank", RW1 termed the complaint vague with no particulars of the vehicle allegedly repossessed and released. According to her, there is nothing unusual in releasing repossessed vehicles.
48. With respect to the Claimant's assertions that two other authorizers were not dismissed RW1 averred that; the Claimant did not present any admissible evidence that the said authorizers were not subjected to disciplinary action; That further, the said authorizers are not shown to have grossly misconducted themselves in the same manner as the Claimant; and that whatever action was taken against the said authorizers does not negate the Claimant's gross misconduct.

Submissions

49. Upon close of the hearing, both parties filed closing submissions. On his part, the Claimant posited that he was not accorded any procedural fairness in the events leading to his termination from



employment by the Respondent. In support of this position, the Claimant placed reliance on the case of Janet Nyandiko vs Kenya Commercial Bank Limited [2017] eKLR.

50. In the same vein, the Claimant submitted that not only was the hearing on 20th November 2023 inordinately delayed even after the rescheduling, but it was at the same hearing where he was issued with a list of the said transactions alleged to have been irregularly authorized. Still on this issue, the Claimant proceeded to submit that it is the same list he had severally requested for, to enable him prepare his defence but was ignored by the Respondent. According to the Claimant, the said transactions were new to him.
51. Referencing the case of Martin Nyaga Wambora & 4 others vs Speaker of the Senate & 6 others, the Claimant further submitted that the Respondent did not only go against his rights as espoused in the Employment Act but also derogated his rights and went against every principle of natural justice, by failing to be fair and just to him.
52. The Claimant further submitted that he made several requests for the recording of the disciplinary hearing to enable him lodge a competent appeal. That the requests fell on deaf ears and the same was never issued to him, thus prompting him to lodge the appeal without the recording. In the Claimant's view, the Respondent decided to suspend the principles of natural justice as it had already premeditated the outcome of the appeal and did not want to accord him a chance to be heard justly and fairly.
53. The Claimant further contended that he was subjected to discrimination derogating his fundamental rights as enshrined under Article 27 of the Constitution of Kenya, 2010. With respect to this, the Claimant submitted that he was charged together with two other colleagues yet he was the only one whose employment was terminated.
54. The Claimant further submitted that he was only charged with a single offence and asked to give a response with respect to the single charge while at the disciplinary hearing, he was asked to defend himself against three charges which had been brought under a different policy.
55. In conclusion, the Claimant submitted that he has successfully illustrated beyond peradventure that his termination was unprocedural, unlawful and illegal and this Court should not aid the Respondent in contravening his fundamental rights.
56. On its part, the Respondent posited that it is settled in banking law that banks have no right to permit debits from a customer's account without the customer's instructions. To support this argument, the Respondent placed reliance on the case of Simba Commodities Limited vs Citibank N. A. (2013) KEHC 5859 (KLR).
57. In the same breath, the Respondent argued that even without reference to any of its procedures, it should be obvious that the Claimant's authorization of debits from the customers' accounts without their instructions was, at the very least, a violation of that settled principle.
58. The Respondent further posited that the Claimant knows too well that he acted with wanton disregard for the duty of care expected of an employee in his position. To this end, the Respondent cited the case of Sande vs NCBA Bank Kenya PLC (2023) KEELRC 808 (KLR).
59. In further submission, the Respondent stated that the Claimant was subjected to a fair procedure.

Analysis and Determination

60. Having considered the pleadings by both parties, the evidentiary material on record, as well as the rival submissions, the Court isolates the following issues for determination: -



- i. Whether the Respondent has proved that there was a valid and fair reason to terminate the employment of the Claimant;
- ii. Whether the Claimant was taken through a fair process prior to termination from employment;
- iii. Whether the Claimant has made a case for discrimination; and
- iv. Is the Claimant entitled to the reliefs sought?

Valid and fair reason for termination?

61. As can be discerned from the record, the Claimant was terminated from employment on two broad grounds being; unauthorized reactivation of customers' accounts; and approval of unauthorized debit transactions from customer accounts.
62. With respect to the first ground, it was alleged that on diverse dates, between 14th December 2023 and 17th July 2023, the Claimant authorized the reactivation of six inactive accounts/dormant customer accounts which were initiated by an inputter, Benson Kamau, an operations Assistant, without activation instructions from the respective account holders which was in contravention of clause 1.1 of the Branch Banking NCBA Handling of Inactive Accounts Procedure.
63. On the second charge, it was alleged that on diverse dates, between 14th December 2023 and 17th July 2023, the Claimant approved seven unauthorized debit transactions amounting to Kes 3,231,600.00 without requisite validation to note that they were either direct debits from active accounts and therefore no justification for the debits. That further, approval instructions only had the respective FT reference numbers, without supporting documentation.
64. Refuting the allegations levelled against him, the Claimant has averred that the inputter was the one who was supposed to ensure that all the prerequisites were met prior to initiating the reactivation or debiting of accounts. That in this case, the inputter Benson Kamau had already admitted that he had initiated the transactions erroneously and requested them to be reversed. In the Claimant's view, he was exonerated by the said Benson Kamau from any wrongdoing.
65. On the other hand, the Respondent has argued that the Claimant as the authorizer was required to confirm that the inputter had obtained all necessary documents before granting approval. That further, the Claimant should have confirmed that the alleged loans being repaid were in existence and were owed by the customer whose account was being debited.
66. It is notable that the Claimant did not deny authorizing the transactions. As the Court understands, the Claimant's standpoint is that his role as an authorizer did not extend to confirming that the prerequisites were met prior to initiating the reactivation or debiting of customers' bank accounts. In his view, this was the role of the inputter.
67. In view of the Claimant's argument, I cannot help but question what purpose the maker checker system was to serve. As I see it, the system was a control tool hence the checker who was the Claimant in this case, was to act as a second eye and undertake further verification to confirm that the transaction was regular and met all the basic requirements prior to authorizing it.
68. For instance, it is apparent in this case that given the nature of the transactions involved (reactivation and debiting of customers' bank accounts), it was critical that the Claimant ascertain that the customer had given appropriate instructions. It is evident from the record that the Claimant missed this crucial step seeing that in the end, the transactions in question turned out to be fraudulent.



69. The Claimant has further argued that there was no standard operation procedure or system manual to guide him and he was basically left to his own devices.
70. Refuting the Claimant's position, the Respondent exhibited a copy of its Policy on Handling of Inactive Accounts in support of its case. On his part, the Claimant has argued that the said Policy is not applicable within the collection/remedial environment. According to him, the said policy applies to dormant /inactive accounts domiciled at the branches. That the Policy is silent on activities when it comes to remedial cases.
71. The Claimant's argument in this case does not hold water noting the Scope of the policy, which goes as follows; "This process covers activities at all points of customer account activation input."
72. In this case, the authorization undertaken by the Claimant related to transactions which had a bearing on the customer's accounts. Differently expressed, the subject herein was the Respondent's customers' bank accounts. Indeed, a perusal of the said Policy reveals that it provides the procedural steps to be undertaken with respect to activation of customer accounts. As it came to be, the transactions approved by the Claimant involved activation of the customers' accounts. It thus goes without saying that the Policy on Handling of Inactive Accounts was applicable.
73. Further disputing the allegations leveled against him, the Claimant has argued that there are a number of customers in arrears and non-performing loans and it is the duty of the remedial department to recover from them as it is common to find such customers with funds in accounts that have since been rendered inactive.
74. Still on this issue, the Claimant has contended that loans are paid through accounts and it is not possible to pay a loan without passing through an account. That it is therefore a practice in the remedial department to activate such accounts in order to pay what a customer owes the bank in arrears.
75. Cross-examined on this issue, the Claimant conceded that if a customer was desirous of activating an account to repay a loan, there must be an existing loan in the first place. Further cross-examined, the Claimant stated that he did not confirm whether the customers whose accounts were affected, had existing loans.
76. In addition to the foregoing, the Claimant confirmed in the statements which he recorded in the course of the investigations that the transactions did not go to settle any loan arrears. He further stated that he authorized the transactions believing that they were being directed to loan repayment and that he believed that the transactions were part of Benson Kamau's collections.
77. What manifests from the foregoing is that the Claimant's line of defence in this regard does not hold water and further goes to confirm that he did not verify the existence of a loan prior to authorization of the transactions. It further confirms that the Claimant did not verify that the money debited from the customer's accounts was being applied for loan repayment.
78. In light of the foregoing analysis, it becomes apparent that the Claimant authorized the transactions in question without exercising diligence and the duty of care expected of him. As such, he was negligent in the performance of his duties.
79. Granted, the Claimant may have authorized the transactions without an intention to commit fraud or better still, may not have been a beneficiary of the fraudulent transactions. Nonetheless, this does not absolve him from negligence seeing that his failure to exercise diligence in the performance of his duty exposed the Respondent bank to financial risk.



80. To this end, the Court finds that the Respondent has proved on a balance of probabilities that the Claimant was negligent in the performance of his duties. Therefore, the Claimant's conduct availed the Respondent a fair and valid reason to commence termination of his employment within the meaning of Section 45(2) (a) and (b) of the *Employment Act*.

Fair process?

81. With respect to procedural fairness, Section 45 (2) (c) of the *Employment Act* places the burden on the employer to prove that termination of employment was in line with a process that is fair. In this regard, Section 41 makes specific requirements regarding the process to be complied with by an employer. This process entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.

82. In this case, the Claimant has impugned the process he was subjected to prior to his termination from employment on a number of grounds.

83. One of the procedural irregularities cited by the Claimant is that he was not furnished with sufficient information to adequately respond and or defend himself. In this regard, the Claimant has averred that he was unable to confirm the transactions he had authorized.

84. The record bears that in the Notice to Show Cause dated 28th July 2023, reference was made to the ongoing investigations on the suspicious transactions initiated by Benson Kamau.

85. From the record, the Claimant was suspended from duty shortly after he had been issued with the Notice to Show Cause.

86. Seemingly, investigations were ongoing during the suspension of the Claimant noting that his responses were recorded in an interview conducted by the Respondent on 21st August 2021. Notably, the transactions in question were highlighted in the interview instrument through which the Claimant was giving his responses. It is also notable that in the same instrument, the Claimant was reminded that the interview was in relation to the approval for reactivation of dormant and or inactive accounts and subsequent debit transfers.

87. Judging from the Claimant's responses in the interview instrument, he was well versed with the transactions which was the subject of the investigations.

88. Further to the foregoing, the letter dated 8th November 2023, inviting the Claimant to the disciplinary hearing was quite elaborate and contained details of the allegations leveled against him and more specifically, the transactions involved.

89. In the circumstances, it is evident that the Claimant was well informed of the allegations he was to face at the disciplinary hearing and indeed, the reason for which the Respondent was contemplating termination of his employment.

90. As such, it is not accurate for the Claimant to state that the list of the transactions in question was availed to him at the hearing. In as much as the transactions may not have been specified in the Notice to Show Cause, this aspect was remedied in subsequent communication as the transactions were disclosed to the Claimant in the course of the investigations and through the invitation for the disciplinary hearing. This was way before the disciplinary hearing.

91. Still on procedure, the Claimant has averred that the disciplinary hearing was rescheduled from 16th November 2023 at 2:30 pm to 20th November 2023. In this regard, he has contended that the hearing



did not start until 12:00 pm and as a result, this rendered him incapable of bringing a representative to the hearing due to the unpredictability of the entire process.

92. From the record of the disciplinary proceedings, the Claimant confirmed at the start of the hearing that he was comfortable proceeding without a representative. Notably, the Claimant appended his signature to the minutes of the disciplinary hearing hence confirming the authenticity of the record. As such, his assertions to this end, comes across as an afterthought.
93. The other aspect of procedure raised by the Claimant is the number of the charges leveled against him. In this regard, he has argued that whereas the Notice to show Cause had a single charge, the invitation to the disciplinary hearing contained three charges.
94. With respect to this issue, the Respondent has averred that the Notice to Show Cause was issued before the investigations were concluded and that it is only after conclusion of the investigations that more offences were disclosed.
95. It is this court's view that the variance in the number of the charges raised against the Claimant did not impair the disciplinary hearing for the reason that he was made aware of the allegations against him and which constituted the reasons the Respondent was contemplating termination of his employment ahead of the disciplinary hearing.
96. As such, it is this Court's view that the Claimant had time to process the allegations levelled against him and prepare adequately, seeing that the invitation to the disciplinary hearing was issued on 8th November 2023 while the hearing was scheduled for 16th November 2023 and which was later rescheduled to 20th November 2023.
97. The Claimant has further accused the Respondent of not availing the recording of the disciplinary hearing thus impacting his appeal negatively. Notably, the Claimant has not denied that he had access to the physical copy of the disciplinary proceedings. Therefore, the Claimant cannot say that he could not proceed with his appeal solely due to lack of the recording.
98. In sum, I have not discerned any procedural aspect from the case herein that would render the Claimant's termination from employment procedurally unfair. This is bearing in mind the decision of the Court of Appeal in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR. In that case, the Cort considered the import of Section 41 of the *Employment Act* and held as follows: -

“ Four elements must thus be discernible for the procedure to pass muster:-

- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

99. Applying the above decision to the instant case, I am satisfied that the Respondent complied with the minimum requirements stipulated under Section 41 of the *Employment Act*.



100. I say so noting that the Claimant was informed of the allegations levelled against him ahead of the disciplinary hearing and was given an opportunity to be heard in person and to respond to the said allegations. To that extent, the Respondent cannot be faulted.
101. For the foregoing reasons, I am led to conclude that the termination of the Claimant was neither unfair nor unlawful.

Discrimination?

102. The Claimant has further cited the Respondent for discrimination. In this regard, he has argued that two of his colleagues who authorized similar transactions got the green light to resume duty while he was terminated from employment.
103. In terms of the Black's Law Dictionary, (10th Edition), "discrimination" is defined to mean: "Differential treatment; a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured."
104. As was held by the Court of Appeal in the case of Barclays Bank of Kenya Ltd & another vs Gladys Muthoni & 20 Others [2018] eKLR, arbitrary discrimination in the workplace is outlawed at the highest level of the Constitution and has always been. Therefore, a claim of discrimination is a serious claim that must be supported by evidence.
105. In this case, the Claimant did not adduce evidence to confirm his assertions that the said authorizers were let off the hook despite committing the same infractions he was accused of and in the same degree. If anything, the record bears that two of the Claimants' colleagues received Notices to Show Cause on the basis of authorizing suspicious transactions. Beyond this, there is no evidence that in the end, the said employees were not sanctioned.
106. In the circumstances, the Court finds that the claim for discrimination has not been substantiated.

Reliefs?

107. As the Court has found that the Claimant's termination from employment was for a valid and fair reason and that the Respondent applied the process contemplated under Section 41 of the Employment Act in effecting the said termination, the claim for compensatory damages cannot be sustained. In the same measure, the claim for reinstatement flops.
108. As the Court has found that discrimination has not been proved, the claim for damages in that regard does not lie.

Orders

109. In the final analysis, the Claim is dismissed in its entirety with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Ikua



For the Respondent Ms. Cheruiyot instructed by Mr. Kongere

Court Assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

