



REPUBLIC OF KENYA



KENYA LAW
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Mwangi v Chuna Cooperative Savings and Credit Society Limited (Cause E896 of 2021) [2025] KEELRC 523 (KLR) (24 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 523 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E896 OF 2021
NJ ABUODHA, J
FEBRUARY 24, 2025

BETWEEN

DANIEL WANJOHI MWANGI CLAIMANT

AND

CHUNA COOPERATIVE SAVINGS AND CREDIT SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The Claimant through an amended Statement of Claim dated 29th September, 2023 and pleaded inter alia as follows: -
 - a. The Respondent retained the Claimant as an Accountant effective from 1st July 2009 and the Claimant agreed to the terms of the contractual offer whose terms of employment were enumerated in the contract of employment signed by the Claimant.
 - b. The Claimant averred that he discharged the obligations and expectations of his position as required thoroughly and competently and with no complaint, warning or sanction ever being made against him by the Respondent in the subsistence of his employment.
 - c. The Claimant averred that on 22nd January 2018, the Respondent was promoted to the post of Accountant Chuna grade 2, increased and adjusted the Claimant's salary to Kshs 72,295 together with house allowance of 32,675/=, a house to office allowance of Kshs 16,900/= and responsibility allowance of kshs 3,125 per month.
 - d. The Claimant averred that on 27th February 2018 the Respondent added the Claimant extra duties to his position by appointing him as an acting deputy CEO and added him an acting allowance at the rate of 15% of Basic Pay. That it was a term of the employment that termination by either party would be upon a four month notice or payment of salary in lieu thereof.



- e. The Claimant averred that in breach of the terms of the employment agreement and without any basis the Respondent issued to the Claimant a letter of interdiction from duty on 18th December 2020 purportedly on the grounds that the Claimant had during the periods of 2013 to 2018 misled the Respondent by providing financial statement with material misstatements and not reflecting the true and fair view financial position of the Respondent.
 - f. The Claimant averred that he appealed the interdiction on 21st December 2020 on the grounds that he had always performed his duties as outlined in his terms and conditions of service and had never neglected, failed or refused to perform his duties. That on 29th March, 2021 he was notified by the Respondent of the allegations of misconduct and invited to make representations and which he did orally on 17th April 2021 and in writing on 9th April 2021.
 - g. The Claimant averred that the Respondent went ahead to terminate his employment on 15th April 2021 unfairly and unlawfully against all established fair Labour practices as the purported grounds did not constitute nor warrant summary dismissal and only guised as such to avoid compensating him for unlawful termination and avoid paying his accrued terminal benefits.
 - h. The Claimant averred that he has taken effort to resolve the contractual and unfair termination issues with the Respondent but to no avail as the Respondent failed to give an acceptable response to the Claimant's appeal on summary dismissal since 25th August 2021. That he was terminated without fair and valid reason and without due procedure.
2. The Claimant in the upshot prayed for the following against the Respondent;
- a. A declaration that the Claimant's termination was unfair.
 - b. 12 months' compensation for unfair termination of employment-(Kshs 131,110*12) 1,573,320/=
 - c. In the alternative to (b), reinstatement of the Claimant to his position as accountant.
 - d. Outstanding salary for December 2020, January, February, March, April 2021-Kshs 218,028/=
 - e. Outstanding paternity leave in 2020-10 days (Kshs 54,887/=)
 - f. Four months' basic salary in lieu of notice-Kshs 524,440/=
 - g. Accrued medical benefits for the year 2021-Kshs 129,315/=
 - h. Two months' salary for every year worked upon leaving employment at Kshs 3,219,720/=.
 - i. General damages for character assassination.
 - j. Certificate of service.
 - k. Costs of the suit plus interest thereon.
3. The Respondent filed its Amended Statement of Defense dated 11th December 2023 and averred inter alia as follows;
- a. The Respondent refuted that the Claimant discharged his obligations and expectations of his position as required thoroughly and competently and with no complaint as the same could be disapproved by the Respondent from the Human Resource Records.
 - b. The Respondent averred that 4 months notice or payment in lieu does not apply to the termination of an employee for good cause as envisaged under part 6(b) of the Employment



Agreement which states that any member may be removed without notice if the management committee is of the opinion that the member concerned carried out their duties in a manner amounting to gross inefficiency or has failed, or is unable to perform the duties of their office.

- c. The Respondent denied that there was not any basis or grounds of available facts leading to issuance of the letter of interdiction. That the Claimant did not appeal his interdiction. That the Respondent did invite the Claimant to make representations in so far his misconduct is concerned.
- d. The Respondent averred that the Respondent acted well within the scope of the Employment Agreement between themselves and the Claimant and further that the actions of the Respondents are well within the realm of the provisions of the Employment Act touching on Summary Dismissal of employees.
- e. The Respondent averred that the purported grounds of termination indeed warrant Summary dismissal as Claimant had clearly neglected his duties towards the Respondent and the Claimant's claim that the summary dismissal is only a guise so as not to compensate the claimant for unlawful termination is frivolous.
- f. The Respondent denied the claim of two months' salary for every year worked stating that this was only available to the employees who retire from its employment and not those who were procedurally terminated as is the position with the Claimant.
- g. The Respondent averred that it did not receive a demand and notice of intention to sue from the Claimant. That the Statement of Claim is Res Judicata and prayed that the Claimant's suit be dismissed with costs.

Evidence

4. Both the Claimant's and Respondent's case was heard on 19th December, 2023. The Respondent's case was further heard on 11th April, 2024. The Claimant called one witness, the Claimant herein (CW1) who adopted his witness statement together with the pleadings filed in court dated 29th September, 2023 as his evidence in chief.
5. CW1 testified that he was employed in 2009 as an accountant and worked for the Respondent for 10 years and by the time of leaving employment he was the Deputy CEO. That he was in charge of the accounts department and during the period there was a lot of interference with his work by CEO and Board of Directors. That he wrote several memos to the CEO pointing out his concerns since some were unethical.
6. CW1 testified that he was interdicted in 2016 but the court overturned the interdiction and he was reinstated in (Cause 2360 of 2016) and continued working thereafter. That he never received any show letter or warning until 2019 when he was issued with a show cause letter.
7. CW1 testified that he responded to the accusations and was interdicted on 18/12/2020 and appealed the interdiction which appeal was overturned and asked to wait for disciplinary hearing. He attended the hearing and later received a dismissal letter. That the allegations had then been reduced to three.
8. CW1 testified that he requested for supporting documents but he was not given, he only saw the forensic audit report during the hearing and was only given 3 hours to go through the online accounting system which was not efficient enough.
9. CW1 testified that he appealed over the dismissal and the Respondent took too long to respond and he wrote a letter of inquiry but was not responded to.



10. CW1 testified that when he filed the current suit the Respondent thereafter responded to the Appeal stating that the dismissal had been held. CW1 further testified that he denied all the allegations and that he never applied for any top up loan and the allegations of cash withdrawal was never brought to his attention during the disciplinary hearing. That the audit fees were paid to third parties and that nothing was produced to trace the money to his accounts.
11. In Cross-examination CW1 testified that there was a disciplinary hearing which was not fair and some of the documents he asked for were not provided. That he appealed the dismissal (p 69 RBD) and requested for more documents. CW1 further confirmed that it was his duty to reconcile accounts but the system had a problem and they did the reconciliation manually. That he was concerned about the system not being able to reconcile the accounts and he wrote several memos on the issue and delivered the memos personally but CEO never acknowledged receipt of the memos either by stamping or signature.
12. CW1 confirmed that he had not provided any document showing when his child was born. That the 2 month's salary for year worked was provided for by clause 6d (page 18 RBD) on retirement. That the clause was available to those who worked until retirement.
13. CW1 confirmed that they were allowed to seek medical attention away from the university staff clinic when it could not offer the service. That the CEO instructed the clinic to delay his son's medical attention.
14. In Re-examination CW1 confirmed that he would have worked until retirement if he was not interdicted and unlawfully dismissed.
15. The Respondent on the other hand called one witness, Andrew Abuya, RW1 the Respondent's Internal Auditor Compliance, who adopted his witness statement of 17/5/2023 and the Respondent's bundle of documents filed in court dated 17/5/2023, 20/7/2023 and 19/2/2024 as his evidence in chief.
16. RW1 testified that the case started in 2016 when the regulator auditor audited the Sacco and reported serious irregularities which involved staff and board of directors and the Claimant accused of financial fraud. That the report prepared by the Claimant did not comply with international standards; the Claimant was also guilty of financial fraud. That the report was before the court.
17. RW1 testified that the Claimant was interdicted and invited for disciplinary hearing on 7th April 2021. That the Claimant was dismissed after hearing, appealed and the appeal was disallowed.
18. RW1 testified that the Respondent lost a lot of money as result of the Claimant's actions.
19. In Cross-examination RW1 confirmed that the Claimant was not surcharged for the loss. That he did not participate in the preparation of the inspection report which was done by an independent body. That the letter dated 29th March 2021 had credentials showing money was transferred to Claimant's account. That the Claimant overstated interest. That he was not the one who generated the report as the same was generated by auditors which report was before the court. That they had attached extracts of the report.
20. RW1 confirmed that the Claimant was not prosecuted over the allegations and the Sacco never reversed the monies paid in the Claimant's account, that they had no direct access to Claimant's account but could trace his user name.
21. RW1 confirmed that he did not attend disciplinary hearing and that the appeal was responded to in November after Claimant's inquiry; the Appeals committee was to communicate in November.



22. RW1 confirmed that even if the Claimant was given more time, it would not have made a difference; the Claimant admitted most of the allegations against him. That there was no loan application, it was a fraudulent transaction.

Claimants' Submissions

23. The Claimants' Advocates MKN & Company Advocates filed written submissions dated 10th September 2024. On the issue of whether the Respondent's disciplinary procedure was unfair and unlawful, counsel submitted that the Claimant was not accorded an opportunity for fair hearing, neither was any of the concerns addressed in his response to termination letter dated 20th April, 2021 and 18th June, 2021 addressed.
24. Counsel submitted that from the onset, the Respondent breached the claimant's right to a fair hearing, which include the right for sufficient time to prepare and to be given the necessary documents and materials to prepare for his case as envisaged under Articles 47 and 50 of *the Constitution*. That the same went against section 4(3) (a) and (g) of the *Fair Administrative Action Act*.
25. Counsel submitted that the Claimant sought for time to access the ecoop system in order for him to give his evidence to the allegations raised stating that the same were voluminous and required a proper time to do so but the same was never accorded and listed the number of documents he had requested that were never provided to him.
26. Counsel submitted that the Respondent during the filing of its list of documents, never provided the said documents but only provided the excerpts of the same. Counsel relied on the case of David Wanjau Muhoro Vs Ol Pejeta Ranching Limited (2014) eKLR while submitting that the principle of fair hearing requires the employee has sufficient opportunity to prepare.
27. Counsel submitted that the Claimant was not accorded a fair hearing for the main reason that there was no explanation as to why he was being charged with allegations of the year 2013 to 2017 and on the year ending 31st December, 2017 an audit was done and the audit indicated a clean bill of health.
28. On the issue of whether the Claimant was unfairly and unlawfully terminated, counsel submitted that the Respondent did not adduce any evidence to show that a disciplinary hearing was conducted to enable the Claimant to have a chance to defend himself as required by the *Employment Act*. That the Respondent did not adhere to section 41 and 45 of the *Employment Act* hence the termination was unfair.
29. Counsel relied on the case of Joshua Rodnev Marimba v Kenya Revenue Authority [2019] eKLR and submitted that termination of an employee's contract of service is unfair if the employer fails to prove that it was on valid and fair reasons and that a fair procedure was followed. He submitted that having failed to accord the Claimant his rights as provided under section 41 of the *Employment Act* before terminating his service, the termination became unfair, unlawful and unprocedural.
30. On the issue of whether the Claimant is entitled to damages as prayed, Counsel submitted that the Claimant prayed for compensation for wrongful termination and issuance of certificate of service and that the Claimant was entitled to compensation as per section 49 of the *Employment Act*. Counsel relied on the case of Kenya Broadcasting Corporation v Geoffrey Wakio (2019) eKLR and submitted that 12 months' salary be awarded for damages for unfair termination.
31. Counsel submitted that on prayer (f), the CHUNA SACCO terms and conditions document on clause 6(i) states that Notice or salary in lieu of notice for a staff who worked for over ten years is equivalent to 4 months' salary.



32. Counsel submitted that on prayer number (h) that were it not for the unfair termination, the Claimant ought to have worked for the respondent until retirement and thus entitled to the said relief.

Respondent's Submissions

33. The Respondent's Advocates Miller & Co. Advocates filed their submissions dated 9th December, 2024 and on the issue of whether the dismissal of the Claimant by the Respondent was procedurally fair submitted that Section 45(2)(c) of the [Employment Act](#), 2007 underscores the necessity for procedural fairness in all termination processes which is detailed at section 41 of the act. Counsel relied on the case of Corporation of Kenya v Andrew K Tanui (2019) eKLR and submitted on the elements for procedural fairness.
34. Counsel further submitted that the Claimant was interdicted by a letter dated 18th December 2020 to facilitate investigations into financial improprieties which complied with clause 12 of the Respondent's Employment Manual, which provides for interdiction in case of gross misconduct. That the Claimant was invited to a disciplinary hearing through a letter dated 29th March 2021. The hearing took place on 7th and 10th April, 2021 at Clarion Hotel. During the hearing: the charges were read to the Claimant and that he was provided with requested documents, the Claimant was given the opportunity to present both oral and written defences and the Claimant was informed of his right to bring a representative.
35. Counsel submitted that following dismissal, the Claimant lodged an appeal by letter dated 20th April 2021. The Respondent's Board convened an appeal hearing on 19th June 2021, granting the Claimant access to the E-COOP system and permitting him to bring a representative. Despite this, the Claimant failed to satisfactorily defend himself against the allegations.
36. Counsel submitted that the interdiction, hearing, and appeal processes adhered to both statutory and internal policy requirements.
37. Counsel relied on the case of Cargill Kenya Limited v Mwaka & Another (2021) eKLR, and submitted that procedural fairness is satisfied where the employee is fully informed of charges, given an opportunity to respond, and the employer adheres to due process.
38. On the issue of whether the dismissal of the Claimant by the Respondent was substantively fair, counsel relied on section 44(4) of the [Employment Act](#) on what amounts to gross misconduct specifically on employee willfully neglecting to perform work carefully and properly. Counsel relied on section 43 of the Act on the duty of the employer to prove reasons for termination failure to which termination would be unfair under section 45 of the Act.
39. Counsel further relied on the case of in Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR and submitted that the test for substantive fairness, an employer must demonstrate the existence of valid reasons leading to termination and that such reasons would justify dismissal from the perspective of a reasonable employer.
40. Counsel submitted that the Claimant failed to adhere to his job description as per the letter dated 8th June 2018 which detailed his job description and targets. That the Claimant admitted in charge 2 he was aware the final accounts were not fully accurate but failed to report the same. That it was his inherent duty as an Accountant to prepare final accounts which represent a true and fair view of the financial affairs of the Sacco as per his job description letter dated 8th June 2018.
41. Counsel submitted that on charge 3, the Claimant admitted to not preparing monthly financial reports, not reconciling treasury and other cash related books, posting transactions which were seemingly to conceal fraud contrary to his job description letter. That on charge 4, the Claimant



- admitted he never conducted the dividends tabulation which was a critical part of his job description and the tabulation had to be done by the system vendor contrary to his job description letter.
42. Counsel submitted that on charge 5, the Claimant denied the Respondent revenue by not charging the Respondent's loans the 10% top up fee and equally acted against the regulations on insider lending which he admitted he was aware existed contrary to his job description letter dated 8th June 2018.
 43. Counsel submitted that on charge 6, the Claimant feigned ignorance of the transactions relating to the variance in unsettled insurance claims despite being given the evidence and the same was contrary to his job description as per the letter dated 8th June 2018.
 44. Counsel submitted that on charge 7, the Claimant feigned ignorance of the transactions despite being given evidence of the same that he posted illogical and fraudulent journals meant to conceal fraud. This was contrary to his job description as stated in the letter dated 8th June 2018.
 45. Counsel submitted that on charge 8, the Claimant admitted that he never used to prepare the final accounts despite being part of his duty and the same constituted neglect of the duty contrary to his job description letter dated 8th June 2018.
 46. Counsel submitted that the misconduct as enumerated here above had occasioned a loss to the employer to a tune of more than Kshs.640, 000,000/= and that any reasonable employer in the shoes of the Respondent herein would have dismissed the Claimant. Counsel relied on among others the case of Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR and submitted that the burden lies with the employer to show that the summary dismissal was justified and the Claimant's actions, including negligence and gross misconduct, met this threshold.
 47. On the issue of whether the Claimant was entitled to the reliefs sought, counsel submitted that the termination of the Claimant was indeed substantially justified on both the procedural and substantial fronts. That he was summarily dismissed hence not entitled to the prayers sought.
 48. Counsel submitted on the Claimant's prayers and submitted among others that the Claimant should be held responsible for the loss of funds to the tone of Kshs. 640,000,000/= while disallowing the other reliefs claimed by the Claimant.

Determination

49. The Court has reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to the case. The Court has also considered authorities relied on by Counsel.
50. The Court has come up with two main issues;
 - i. Whether the Claimant was unfairly terminated.
 - ii. Whether the Claimant is entitled to the reliefs sought.

(a)Whether the Claimant was unfairly terminated

51. In this case, it is the Claimant's case that the Respondent issued him a letter of interdiction from duty on 18th December 2020 on the grounds that he had during the periods of 2013 to 2018 misled the Respondent by providing financial statements with material misstatements and not reflecting the true view of the financial position of the Respondent. The claimant contend that he was terminated unfairly and unlawfully against all established fair labour practices as the purported grounds did not constitute nor warrant summary dismissal.



52. Conversely, it was the Respondent's case that the independent report prepared by the auditor showed that the Claimant did not comply with international standards; the Claimant was also guilty of financial fraud and that the Claimant's termination met both substantive and procedural fairness.
53. On the substantive test the employer must give a fair and valid reason as per section 43 of the *Employment Act*. Section 45 of the Employment is clear that where there is no valid and fair reason such termination is unfair. In this case there were several charges as to what led to the termination of the claimant's service, which the Respondent stated amounted to gross misconduct by the Claimant as well as neglect of duty and resulted to loss to the employer to a tune of more than Kshs.640, 000,000/=.
54. However, it was the Claimant's testimony that the audit fees was paid to third parties and that nothing was produced to trace the money to his accounts. The Respondent equally testified that they never reversed the monies paid in the Claimant's account and no criminal proceedings were preferred against the Claimant. However it is immaterial that the money paid to external auditors was never traced to the claimant's account and that the money irregularly deposited in his account was never recovered by the respondent or any criminal charges preferred against him.
55. The claimant during the disciplinary hearing admitted to the fact that he was aware that the respondent's financial accounts were not accurate but did not lead any evidence to show that he did anything about it or escalated the issue to his supervisor for appropriate remedial action. The claimant further admitted to not preparing monthly financial reports, not reconciling Treasury and other cash related posting which the respondent reasonably deemed was deliberate concealment of fraud.
56. The foregoing were matters within the claimant's job description and failure to address them amounted to gross negligence. The claimant raised the issue that he was not given the charge supporting documents and that he only came to interact with them during the hearing of this claim and or during the disciplinary hearing. However, from the record there is no evidence to show the claimant asked for more time during the disciplinary hearing and was denied. It is the Court's view therefore that the respondent had valid reasons for terminating the claimant's service.
57. Concerning the procedural process as contemplated by section 43 of the *Employment Act*, the claimant was on 18th December, 2020 interdicted in accordance with section 5(a) of his terms of service. On 29th March, 2021, he was issued with a show cause letter which at paragraph 3 thereof detailed the charges against the claimant and he was invited to make representation in response to the charges which he did by a letter dated 9th April, 2021. He was subsequently invited for a disciplinary hearing on 10th April, 2021 which he attended and further responded to selfsame charges against him. The claimant was thereafter by a letter dated 15th April, 2021 summarily dismissed from employment. He unsuccessfully appealed the dismissal on 20th April, 2021.
58. From the foregoing chronology of events, the Court is satisfied that the claimant was accorded procedural fairness in processing the disciplinary proceedings against him as required by section 41 of the Act.
59. From the foregoing, this Court finds and holds that the respondent had valid reasons for terminating the claimant's service and that the termination was carried out through a fair procedure. The claim for unfair termination of employment therefore fails.
60. In conclusion the claim in its entirety is found without merit and is hereby dismissed with costs.
61. It is so ordered

DATED AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2025



DELIVERED VIRTUALLY THIS 24TH DAY OF FEBRUARY, 2025

Abuodha Nelson Jorum

Presiding Judge-Appeals Division

