



Munyoki v Family Bank Limited (Employment and Labour Relations Cause 188 of 2017) [2025] KEELRC 1137 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 1137 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 188 OF 2017
K OCHARO, J
FEBRUARY 20, 2025**

BETWEEN

HENRY SOMBA MUNYOKI CLAIMANT

AND

FAMILY BANK LIMITED RESPONDENT

JUDGMENT

Introduction

1. Contending that was an employee of the Respondent for a period of about seven [7] years and seven [7] months up to until 1st October, 2017 but who the latter dismissed from employment unfairly and unlawfully, the Claimant sued it vide a Statement of Claim dated 1st February 2017 for various reliefs, thus; KShs. 1,153, 350 as particularized in paragraph 9 of the Statement of Claim; an injunction compelling the Respondent to him a grace period of 6 months from January 2017 so as to restart servicing his loan over the property situated in Meru County and apply staff rate on the outstanding loan balance till full payment; costs and interest.
2. The Respondent resisted the claim through their Statement of Response dated 21st April 2017, denying that, the Claimant has a cause of action against it, and is entitled to the reliefs sought.
3. At the close of pleadings there was a joinder of issues, and the matter got destined for hearing inter-partes on merit.

Claimant's case

4. At the hearing the Claimant asked the Court to adopt her witness statement dated 1st February 2017, as part of his evidence in chief and admit the documents under the list dated the same day, as his documentary evidence. The Respondent didn't object to either the adoption or the admission.



5. The Claimant stated that he first came into the employment of the Respondent on 19th September 2009 as an Operations Officer. Due to his dedication, diligence and honesty, in the discharge of his duties, his salary was on or about September 2016, reviewed upwards from KShs. 18, 000 to 69,900.
6. He further stated that on 1st October 2016, the Respondent terminated his employment on the grounds [s] that he had violated its lending policy. The allegation was unfounded as it didn't fall under his duty to apply and implement the policy. The relevant person is the SME Loans Officer. It is the Officer who didn't follow up to confirm the authenticity of the documents [bank statements] that had been presented to support loan applications by the Respondent's customers.
7. He was in a committee of four, at the branch that that could consider loan applications by customers and then forward the same to the Respondent's Headquarters, the Credit Department for further appraisal. After making a decision on the application documents, the credit department could then send the documents back to the Loans Officer.
8. He alleged that the termination was malicious illegal, unlawful and wrongful, for no justifiable reason. Malicious as; the termination was on unproven and unsubstantiated allegations of questionable credibility and lack of confidence in him; the Respondent based the termination on an incident that the Claimant had no role in and which fell under the docket and control of a colleague who was his senior; and blaming the Claimant for a wrong and or impropriety of his colleague.
9. Prior to the termination, the Respondent served him with a show-cause letter dated 24th August 2016. He responded to the same, giving a detailed explanation and expressing his innocence.
10. Subsequently, he was summoned to appear before the Respondent's Disciplinary Committee. At the hearing, he was not accompanied by a colleague of his choice. Colleagues who were present were those who had been accused like him.
11. The branch manager lodged an appeal for him against the decision to terminate his employment, but the Respondent has never got back to him on its decision on the appeal.
12. He alleged that under his contract of employment, his employment was terminable with a one month's notice, and upon termination, he was entitled to service pay of 15 days' salary for each year worked. Therefore, KShs. 69, and 244,650, respectively.
13. He further stated that as the termination of his employment was malicious, unfair, illegal and unlawful, he is entitled to a compensatory relief to the extent of twelve months' gross salary of KShs. 838, 800.
14. The Claimant stated that he sought and was granted financial accommodation by the Respondent in the form of a loan. He had charged one of his properties as security for the repayment of the facility. The loan repayment was being effected through monthly deductions from his salary. As the termination of his employment by the Respondent was unlawful and unfair, the latter should allow him a grace period of six months to organize himself to offset the loan but with staff interest rates.
15. Cross-examined by Counsel for the Respondent, the Claimant testified that his letter of appointment contained the duties connected to his role. However, under Clause 7, thereof, the Branch Manager was bestowed with the authority to allocate him any other duties besides those listed in the letter.
16. In the show cause letter, they were accused of having been negligent in approving loan applications for three customers.
17. In the letter dated 2nd September 2016, the Respondent invited him to appear before a Disciplinary Committee. The letter informed him of his right of accompaniment.



18. He admitted that during the Disciplinary hearing, he told the Committee that he checked the documents in issue and was satisfied that they were authentic.
19. He Confirmed that he was paid notice pay and as such, the inclusion of the same as one of the reliefs he is seeking against the Respondent isn't in order.
20. The Claimant further testified that he was a member of the National Social Security Fund.
21. He further stated that he was paid for all his earned but untaken leave days.

Respondent's case

22. The Respondent presented one witness to testify, Joseph Gitau Karanja to testify on its behalf. The witness urged this Court to adopt his witness statement dated 3rd March 2023, as his evidence in chief. The witness stated that on 27th March 2010, the Respondent offered to employ the Claimant for the position of Operations Officer. The Claimant accepted the offer on 31st March 2010.
23. Upon successful completion of his probation, the Respondent confirmed him on 28th June 2010 as an Operations Officer and his salary and grade were adjusted to KShs. 30,000 per month and Officer Grade [FBG-2], respectively. On 31st August 2015 following a performance appraisal for the half year 2015, the Claimant's salary was reviewed to KShs. 69, 900.
24. Besides being an Operations Officer, the Claimant was a member of the Respondent's Gateway Branch Credit Committee whose duties were set out in the Respondent's Credit Policy.
25. The witness asserted that the Claimant's employment was fairly and lawfully terminated.
26. The Respondent conducted investigations into the issuance of credit facilities to its customers at its Gateway Mall Branch. The investigations revealed;
 - i. Account No. 039AFFxxxxxxxx, Account Name: Tabitha Mbesa
 - a. KShs. 8,200, 000.00 was disbursed as an asset finance loan;
 - b. There was no call back to authenticate the KCB Bank statements provided by the customer;
 - c. Upon default of the facility, investigations revealed that the bank statements provided were forgeries and the transactions on the statements didn't exist.
 - d. There was no evidence of the customer's contribution to the account as what was transferred to the dealer was only the amount that was financed by the Respondent; and
 - e. There was also no evidence of deposit paid directly to the dealer.
 - ii. Account N0. 039AFFLxxxxxxxx, Account Name: Stephen Masese Oriyo.
 - a. KShs. 7,100,000 was disbursed as an asset finance loan;
 - b. There was no call back to authenticate the Equity Bank statements provided by the customer;
 - c. Upon default of the facility, investigations revealed that the bank statements provided were forgeries and the account does not exist in the books of Equity Bank;



- d. There was no evidence of the customer's contribution in the account as what was transferred to the dealer was the amount that the Respondent financed only.
 - e. There was no transaction for the transfer of the deposit directly to the dealer.
- iii. Account N0. 039AFFLxxxxxxxx, Account Name: Douglas Nyakundi Bosire.
 - a. KShs. 7,100,000.00 was disbursed as an asset finance loan.
 - b. There was no call back to authenticate the Co-operative Bank statement provided by the customer.
 - c. Upon default in the repayment of the facility, investigations revealed that the bank statements provided were forgeries and the transactions in the statement did not exist; and
 - d. There was no evidence that the customer's contribution in his account.
- 27. The Respondent's Investigations and Security Department concluded that the Claimant as a member of the Branch Credit Committee in the capacity of Relationship Officer-Consumer was either negligent or deliberately abetted fraud by processing credit applications without authenticating bank statements provided by the said customer.
- 28. He was issued with a show cause letter on 24th August 2016. On 29th August 2016, he responded to show show-cause letter.
- 29. On 2nd September 2016, the Respondent invited the Claimant to attend a disciplinary hearing on 7th September 2016. He attended the hearing.
- 30. At the hearing, the Claimant stated that it had not occurred to him that he needed to scrutinize the bank statements provided by the three customers and it didn't occur to him that there was a possibility that bank statements wouldn't be genuine.
- 31. Upon being presented with the Equity Bank statements he observed that the statements did not have the bank and the branch name, and stated that he overlooked that.
- 32. The witness stated that on 1st October 2016, the Respondent informed the Claimant of the termination of his employment on account that he had failed to observe the Respondent's Credit Policy in the discharge of his duties.
- 33. On 5th October 2016, the Claimant appealed against the Respondent's decision to terminate his contract of employment. By a letter dated 11th November 2016, the Respondent informed the Claimant that it had deliberated on the appeal and found that there were no new facts or additional information presented to it to cause it to overturn the decision.
- 34. On 11th November 2016, the Respondent issued the Claimant with a certificate of service, and on 14th November 2016, it computed his final dues taking into account, inter alia, the salary for one [1] day the Claimant worked in October 2016, the payments of one month's salary in lieu of notice and unutilized leave days as well as liabilities owed to the Respondent as at 1st October 2016. On 2nd December 2016, the Claimant collected a Banker's Cheque for payment of his final dues.
- 35. The witness stated further that in terms of the Human Resource Policy, the Respondent informed the Claimant that upon termination of his services any liabilities that were owing to the Respondent and Sacco, if any were repayable immediately upon exit unless alternative repayment arrangements were made and that interest rates were to revert to commercial rates within thirty days.



36. He was further informed that the outstanding Shamba loan would be repaid every month on the 30th. As of the date of termination of his employment, the outstanding sum on the Shamba Loan was Kshs. 1, 162, 219.14.
37. Cross-examined by Counsel for the Claimant, the witness testified that the Claimant was a member of the Credit Committee at the Branch. The committee had four members in total. The Committee was charged with the responsibility of appraising loan applications by customers. The responsibility was collective.
38. The Committee could consider whether the customer qualified for a facility and verify the documents presented by the customer. Where 3rd party Bank statements were presented, the Committee was expected to exercise due diligence. After the verification and consideration, they were supposed to prepare a credit request and forward the same to the Credit Department for analysis.
39. There was no specific Committee member charged with the responsibility of calling back. This responsibility was a corporate one.

Issues for Determination

40. I have reviewed the parties' pleadings, their evidence, and submissions by their respective Advocates, and the following principal issues emerge for determination;
 - a. Was the summary dismissal against the Claimant unfair?
 - b. Is the Claimant entitled to the reliefs sought?
 - Was the summary dismissal against the Claimant fair?
41. The Claimant claims that the termination of his employment was unfair and unlawful. The Respondent holds otherwise. Tasked to resolve a dispute where parties have taken diametrically opposite positions as is in the instant matter, on the fairness of a termination of an employee's employment or summary dismissal of an employee from employment, there are two statutory aspects which the Court must consider. Procedural and substantive fairness.
42. Section 43 of the [Employment Act](#) places an obligation on the employer in a dispute regarding the termination of an employee's employment to prove the reason[s] for the termination. However, it is not enough for the employer to discharge this burden contemplated under the provision. There is a further legal burden that must be discharged for the termination to be held substantively fair, the burden contemplated under Section 45[2] of the Act, which provides;
 - “(2) A termination of employment by an employer is unfair if the employer fails to prove:-
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason:-
 - (i) related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and



(c) that the employment was terminated in accordance with fair procedure.”

43. Where the employer asserts that they rightfully and fairly summarily dismissed their employee from employment, the reason for the summary dismissal can only be fair and valid, if it is related to the employee’s conduct like those outlined in section 44[4] of the *Employment Act*. However, it is imperative to state that the list under the section is not exhaustive. Any conduct can amount to gross misconduct, sufficient to attract a summary dismissal sanction against the employee, if by the conduct, the employee fundamentally breaches his obligations under the contract. See. *Barasa Odhiambo v Wells Fargo Limited* [2012] eKLR, cited by Counsel for the Respondent.
44. There isn’t a doubt that the Claimant was part of the Credit Committee of the Respondent’s Gateway Mall Branch. Further, the role of the Committee was to appraise applications for financial accommodation by the Respondent’s customers. The committee had the duty inter alia to scrutinize documents presented by the customers and confirm their authenticity. The Respondent’s witness asserted that one of the ways to confirm the authenticity of the documents presented and more specifically those said to be emanating from 3rd parties was to undertake a call-back [calling the stated source of the document to confirm its existence and or authenticity].
45. I have carefully considered the Claimant’s evidence on the process [call-back], and what he stated before the Disciplinary Committee, and I am of the view, that he knew that undertaking the process regarding the three loan applications mentioned above, was very necessary.
46. His evidence before the Disciplinary Committee reveals an admission on his part that he didn’t undertake the process as a member of the committee, and none of the members did.
47. In his pleadings and witness statement, the Claimant painted the Respondent as a party who accused him of things that reasonably, he couldn’t have been accused of as a person, and blamed him for infractions of others. However, a keen analysis of his evidence before the Disciplinary Committee clearly shows him as a person who bore the responsibility to confirm the authenticity of the documents presented by the Respondent’s customers for loan processing, and, that much he knew.
48. Considering the industry within which the Respondent operates, its duty of care to its customers and stakeholders, and the central role of the Credit Committee prays in the appraisal of applications for facilities, no reasonable employer can continue accommodating an employee[s] of such a committee who inexplicably fails to perform crucial tasks which form part of due diligence in loan appraisals, leading them to lose finances unnecessarily, or exposed to the risk of.
49. By reason of the foregoing premises, I find that the Respondent had a valid and fair reason to summarily dismiss the Claimant from his employment.
50. Considering the pleadings by the Claimant, his witness statement, and the oral evidence in court, I do not doubt that procedural fairness wasn’t a contested issue in this matter. From the material before this Court by the parties, it is easy to discern that the process leading up to the decision to dismiss the Claimant summarily from his employment embodied the ingredients of notification, hearing and consideration.

Whether the Claimant is entitled to the reliefs sought.

51. Having found as I have hereinabove, that the summary dismissal against the Claimant was procedurally and substantively fair, and noting that none of the reliefs sought can be considered and granted



independent of the Claimant's claim for wrongful and unfair dismissal, I hold that the Claimant isn't entitled to any of the reliefs.

Conclusion

52. In the upshot, the Claimant's claim is without merit. I hereby dismiss the same. Each party is to bear its costs.

READ, DELIVERED AND SIGNED THIS 20TH DAY OF FEBRUARY 2025

OCHARO KEBIRA

JUDGE

In the presence of:

Ms. Chelengat for the Claimant

N/A for the Respondent

