



REPUBLIC OF KENYA



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Kuria v Cooperative Bank of Kenya Limited (Employment and Labour Relations Cause E301 of 2022) [2025] KEELRC 470 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 470 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E301 OF 2022**

K OCHARO, J

FEBRUARY 20, 2025

BETWEEN

ALLAN MAINA KURIA CLAIMANT

AND

COOPERATIVE BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. At all material times, the Claimant was an employee of the Respondent whose employment was terminated by the latter on the 7th of June 2019. Contending that the events preceding the termination were unconstitutional, and the termination unfair, the Claimant by a Statement of Claim 5th May 2022, sued the Respondent seeking the following orders and reliefs;
 - i. A declaration that the Respondent's act of accessing and extracting the Claimant's bank statements without his consent was a violation of the Claimant's right to privacy and a breach of the Data Protection Act.
 - ii. A declaration that the termination of the Claimant's employment on the basis of the criminal case that was then pending at Kiambu Law Courts, and whose charges against the Claimant were later dropped/withdrawn amounted to unlawful and unfair termination.
 - iii. The Respondent pays the Claimant KES 1, 340, 553.84 being damages for unlawful termination.
 - iv. The Respondent pays the Claimant KES 645, 000, being the amount of allowance, the Claimant would have earned had he served his full term as a Trustee and Director of the Board, Menno Plaza.
 - v. The Respondent pays the Claimant KShs. 1,324, 805.25 being the amount for the overtime hours he had worked and was not compensated.



- vi. Costs of this suit and interest.
 - vii. Any other relief that the Honourable Court may deem fair to grant.
2. The Respondent resisted the Claimant's claim through their Memorandum of Response and Counterclaim dated 17th August 2022, which was subsequently amended on 31st October 2022. In the Memorandum of Response, they denied that the Claimant's employment was unfairly terminated and his entitlement to the reliefs sought. By the Counterclaim, they sought against the Claimant; a declaration that he is liable to settle all outstanding loans due to the Respondent together with interest at the prevailing commercial bank interest rates until payment in full; the sum of KShs. 3, 032, 798.26 being the outstanding loan liabilities due from him to them on account of the facilities advanced by the Respondent; interest on the sum sought at prevailing commercial bank interest rates from 7th July 2019 until payment in full; and costs of the claim and counterclaim together with interest at court rates.
 3. At the hearing, the Claimant, and the Respondent's witness adopted their witness statements as their evidence in chief. They produced the documents filed herein as documentary evidence of the respective cases.

The Claimant's Case

4. The Claimant stated that he first came into the employment of the Respondent under two years fixed-term contract on 3rd May 2013. The contract ran up to 2nd May 2015. Subsequently, he was engaged by the Respondent under permanent and pensionable terms.
5. By their letter dated 30th April 2015, the Respondent reviewed his employment terms as a Graduate Clerk to permanent and pensionable terms effective 3rd May 2015. Upon conversion to the new terms of employment, his gross salary was reviewed to KShs. 71, 855.00, per month.
6. He served the Respondent diligently as a Graduate Clerk in the Credit Operations Unit and was separately privileged to serve his colleagues as a Trustee and equally sat as a Board Member and or Director of the Board of Trustees MENNO Plaza.
7. On 13th May 2017, he was elected by his colleagues to join the Board of Trustees to represent unionisable members of the Cooperative Bank Staff Retirement Scheme. He was supposed to serve in this capacity for three years. As such, his term was meant to end on 15th May 2020. By being a Trustee, one would automatically become a Board Member.
8. The Trustees and Board of Directors would separately have four meetings annually besides the Annual General Meetings which could earn them allowances per meeting. The Trustee meetings would earn him KShs. 10,000 per seating while the Annual General Meeting, KShs. 50,000. On the other hand, as a Board Member, he would be paid KShs. 25, 000 per every ordinary meeting, and KShs. 150,000. for the AGM.
9. On or about 24th March 2019, he was arrested, arraigned in court and charged with a criminal offence. He asserted that this was maliciously done as he didn't perpetrate any offence, he was just a victim of cybercrime. On 7th June 2019, the Respondent unlawfully terminated his employment on this account. The criminal case was not related in any way to his employment and neither did it affect his employment.
10. The termination of his employment contract was in breach of Clause 5 of the Collective Bargaining Agreement [CBA] which provided for the periodic suspension of an employee facing criminal charges until final determination of the matter. The provision protected an employee facing criminal charges



from any victimisation until the criminal was adjudged guilty or not in the criminal matter. If adjudged guilty, termination of his employment could automatically set in.

11. The termination was a culmination of a witch hunt that the Respondent embarked on, immediately he was arraigned in court over the criminal offence. They started a fishing expedition for evidence to sanitize his exclusion from employment and eventual termination. Through a letter dated 26th March 2019, the Respondent suspended him from employment, pending the criminal case at Kiambu Law Courts.
12. On 26th April 2019, the Respondent served him with a show-cause letter. The subject matter thereof was the criminal case, notwithstanding that the same was not related to his place of work and did not affect the employee-employer relationship between him and them.
13. He responded to the show cause and suspension letters on the 3rd of May 2019, insisting on his innocence and pleading not to be victimised as he hadn't committed any infraction.
14. Subsequently, the Respondent issued him with another show cause letter, with a different subject of accusation. They alleged that he had overpriced a loan facility that he had taken from them. In his view, the second show cause letter was a product of a witch hunt. It was based on events that took place in January 2016. More so, the transaction was handled by an Advocate who was on the Panel of the Respondent. If there was something improper with the transaction, he would have raised an alarm. It was difficult for him to fathom why the Respondent had to wait till 2019, to raise the issue.
15. The Respondent went as far as unlawfully extracting his bank statements to see how he had utilized the facility and his transactions generally. This amounted to an intrusion into his privacy as a customer, and a violation of the Data Protection Act. Notwithstanding that he was an employee of the Respondent Bank, as regards matters of his account, he was entitled to the rights and protection that an ordinary customer enjoyed.
16. The Respondent further accused him of borrowing money from and or lending money to, his colleagues and asked him to explain. In his letter dated 9th May 2019, he answered all the allegations that had been levelled against him. Regarding borrowing money from his colleagues, he responded that he borrowed without a condition of paying interest on top of the principal amount borrowed and that it was done to enable him to offset an existing loan with the Respondent.
17. Discriminatorily, the Respondent issued him with a warning letter, without doing the same to those who accepted the non-interest or profit-related financial assistance. This raised a concern as to whether the Respondent was genuine in their actions.
18. On 15th May 2019, he was invited to a disciplinary hearing scheduled for 20th May 2019 to respond to the charges that were set out in the 1st show cause letter. As regards the subject matter of the 2nd show cause letter, he was issued a warning letter dated 16th May 2019.
19. The disciplinary hearing proceeded even though he was not accompanied by a colleague or a representative of the Central Staff Union. He raised the issue with the Disciplinary Committee but the panellists ignored the same.
20. He further stated that he was served with the minutes of the disciplinary hearing to confirm and sign, however, he noticed that the same had been altered and didn't accurately represent what had transpired. He timeously brought this to the attention of the panellists, but instead of being given a corrected version of the minutes, he was served with a termination letter.



21. In his view, the disciplinary process against him was infested with bias. Further, the merits of his defence were not considered.
22. The fact that the termination of his employment was anchored on a criminal case that was pending in a court of law, equated to a violation of his constitutional right of being presumed innocent until proven guilty.
23. He had a legitimate expectation that he would serve as a Trustee, and Director of MENNO Plaza, which were elective seats to his full term of three years. The two positions were all pegged on his employment with the Respondent and were cut short as a result of the unlawful termination of his employment. Consequently, he suffered a substantial loss.
24. At the time of the termination, he had only attended one meeting as a Trustee and one as a Board Member. As such, the termination denied him KShs. 645, 000, which he could have earned had he served his full term.
25. On 8th August 2021, the Director of Public Prosecutions, after failing to secure any evidence that could link him to the charges, withdrew the charges against him. Resultantly, the Court set him free. Had the Respondent complied with the stipulations of Clause 5 of the CBA, he couldn't have suffered the prejudice he suffered.
26. Clause AB 20 of the CBA and his contract of employment provided the standard working hours for section heads, clerks and typists as, 8:00 am to 5:15 pm, for weekdays and 8: 30 am to 1:00 pm for Saturdays. Clause AB 21 provided that clerks and section heads who work overtime are paid for the extra hours. The Clause sets out the formula for the computation of compensation of the extra time worked.
27. At the time of separation, he had overtime compensation that was due and owing from the Respondent. 2015- 2018 [four years], 336 hrs x 4=1,344 hours and 2019 [10 weeks], 7 hours x 10 weeks=70 hours.
28. At the time of termination, he was earning a gross salary of KShs. 110, 973 per month.
29. Cross examined by Counsel for the Respondent, the Claimant testified that actions of an employee don't in any way affect the image of the bank.
30. In the criminal case he was charged with twelve counts. However, all of them were later withdrawn by the prosecution.
31. On 26th March 2019, he was suspended from duty on account of suspected involvement in criminal activities, outside the place of work. This action was in accord with the terms of the CBA.
32. On 26th April 2019, the Respondent issued him with a show-cause notice over the suspected criminal activities that had led to his arraignment before a criminal court.
33. On 6th May 2019, he was issued with a show cause letter about the overvaluation of his property he offered as security for repayment of a facility advance by the Respondent Bank to him.
34. He further testified that through the Respondent's letter dated 15th May 2019, he was invited for a disciplinary hearing slated for 20th May 2019. The letter did set out the reasons for the hearing, and that he had a right of accompaniment.
35. On 16th May 2019, he was issued with a first warning letter, concerning the show cause letter of 6th May 2019.



36. On 20th May 2019 he appeared before a Disciplinary Committee. At the hearing, the charges levelled against him were explained to him. However, he was allowed to defend himself.
37. It was alleged that he was uncooperative with the Bank investigators. The impression was created because the Bank was trying to do a parallel investigation while the criminal proceedings were pending, and he expressed displeasure with the situation. The bank didn't have the right to conduct parallel investigations while the matter was pending.
38. The minutes supplied to him did not reflect the happenings during the hearing. He protested this via email. One of the issues raised in his protest was that at the time, the Respondent didn't have five a central Staff Unit which could comprise five members and who would accompany unionisable staff to a disciplinary hearing.
39. After receiving the termination letter dated 7th June 2019, he appealed against the Respondent's decision to terminate his employment.
40. He was paid one month's salary.
41. He alleged that he wasn't aware of any policy of the Respondent governing overtime. As such he was unaware that any overtime compensation was supposed to be claimed within two months of the date of the overtime work.
42. Out of the various loans that he borrowed at different times from the Respondent, as at the time he was testifying before this Court, he owed the Respondent a sum of KShs. 3, 032, 798.
43. In his evidence under re-examination, the Claimant testified that in the criminal case, he was among fourteen people who were charged. He didn't know the other accused persons personally or at all. He stated that he brought to the attention of the Respondent, the existence of the Respondent.
44. The item on the minutes that he was opposed to was the recording thereon that he admitted that if SACCO discovered that he was working with the Respondent, their relationship would be strained. Further, that was comfortable without accompaniment.
45. Further, he protested the incorrect indication that he had admitted the accusation against him of overpricing his parcel of land.
46. On couldn't be a Trustee of the pension Scheme, if he wasn't a member of the Trade Union. He was representing the Respondent's Members of staff who were union members.

The Respondent's case

47. The Respondent presented one witness, Leah Kerich, its Head-Employee Relations & Welfare to testify on its behalf. The witness stated that the Claimant was employed by the Respondent as a Graduate Clerk commencing on 2nd May 2013 and was posted to the Respondent's Credit Operations Unit. He was subject to the provisions of the Collective Bargaining Agreement for unionsable members of staff, the Respondent's Business Code of Conduct and Ethics, Staff manual in place and administrative circulars issued from time to time.
48. He was confirmed into employment with effect from 1st November 2013 after he successfully completed his probation period. Following his satisfactory performance, the Respondent changed his terms of employment to permanent and pensionable with effect, 3rd May 2015.
49. The witness stated that during his employment the Claimant had several disciplinary issues ultimately leading to his dismissal.



50. On 26th March 2019, the Respondent suspended the Claimant from duty on suspicion of being involved in fraudulent activities occasioning his arrest and arraignment before Kiambu Law Courts. The action by the Respondent was in line with Clause A5 of the Collective Bargaining Agreement.
51. Investigations conducted by the Respondent's Security Department revealed that the Claimant committed a breach of security relating to matters affecting the Respondent's business by committing acts that amounted to moral turpitude in that, he was suspected of being involved in cyber-attacks against several Saccos namely, Stima, Ukulima, Safaricom, Nyati, Tembo, Achievers, Elimu, United Nations, Bandari and Boresha in 2018 leading to his arrest on 24th March 2019.
52. The investigations further established that the Claimant was charged in the forestate court with twelve [12] counts of fraud offences one of which was conspiracy to commit a felony namely stealing a sum of KShs. 57, 179,986 the property of the abovenamed Saccos who were the Respondent's Customers thus exposing the Respondent to reputational risk.
53. Another investigation by the Respondent's Security Department, revealed that sometime in the month of January 2016, the Claimant had signed a statement in an official document which to his knowledge was false. He applied for a land purchase agreement loan of KShs. 1,670,000 purporting the sum to be the purchase price but instead irregularly diverted part of the money to his own personal use.
54. These actions amounted to gross misconduct and contravened the provisions of the Respondent's Operating Manual, Staff Manual and Business Code of Conduct and Ethics calling to question his integrity as an employee of the Respondent.
55. On 29th April 2019, the Respondent issued the Claimant with a show cause letter requiring him to explain his actions of being involved in fraudulent activities against the Respondent's customers and why disciplinary action couldn't be taken against him in accordance with Clause 5A of the Collective Bargaining Agreement. The show cause letter was particular on the accusations against the Claimant, It gave him an opportunity to respond to the charge of breach of security.
56. Through his letter dated 3rd May 2019, the Claimant responded to the suspension letter and show cause notice, denying the allegations that he was involved in fraudulent activities against the Respondent's customers.
57. On 15th May 2019, the Respondent invited the Claimant to a disciplinary hearing before the Staff Disciplinary Hearing Panel. The letter informed him that he had the right to tender documents in evidence to support his case during the hearing, and that he was entitled to be accompanied by a member of staff or a Union official.
58. On the appointed date, 20th May 2019, the Claimant appeared before the Respondent's Disciplinary Hearing panel. He was informed of his right of accompaniment. However, he stated that he didn't get someone to accompany him. That notwithstanding, he was comfortable with the proceedings going on without representation.
59. The particulars of the charges were read out ton him. He confirmed that he had been arrested on suspicion of committing fraudulent activities and arraigned in court.
60. During the proceedings, the Claimant acknowledged that the Respondent was entitled to carry out it own internal investigations. Further, the proceedings in the criminal case could affect his work, and the Respondent's customers, the Saccos, would question the Respondent's reputation in the event it came to light that one of its employees was the main suspect in a fraud case involving their funds at the Respondent's.



61. On 7th June 2019, the Respondent terminated the Claimant's employment on account of being involved in criminal activities, and issued a formal letter. The termination letter informed the Claimant that, the Respondent would pay him one month's salary in lieu of notice, he had a right to appeal against the decision within 21 days, and the facilities accorded to him by virtue of his status as a staff of the Respondent became repayable immediately and would start attracting interest at the prevailing commercial interest rate, thirty days from the date of termination until the same was fully paid.
62. On 27th June 2019, the Claimant appealed against the decision. However, the appeal was dismissed. The Claimant was so informed through the letter dated 4th July 2019.
63. The termination of the Claimant's employment was procedurally and substantively fair.
64. Considering the Respondent's policy, overtime claims were supposed to be made not later than two months from the date it was expended. In this matter, the Claimant is claiming for the same after 4 years, contrary to the policy.
65. At various times, the Claimant applied for and was advanced loans which had not been cleared at as the dated of separation. Cumulatively, he had a loan balance of KSHs. 2,895, 678.82. The amount continues to attract interest at commercial rates. By way of counterclaim, the Respondent seeks payment of the amount plus interest as the same remains unpaid.
66. In her evidence under cross examination the witness stated that the Respondent suspended the Claimant after he had been charged with the criminal offences.
67. The witness testified further that she was aware that it is the Claimant who informed the Respondent that he had been arrested and arraigned in court. The bank was not the complainant in the criminal matter. Its officer[s] didn't record any statement with the police investigation officers as regards the alleged offences. The Claimant was charged alongside eight other people.
68. The witness admitted that the Respondent had A CBA with the Claimant's Union, and under Clause 5 thereof a periodic suspension was provided. The clause was aimed at ensuring that the employee was presumed innocent until proven guilty.
69. The Claimant declined to sign the minutes of the disciplinary proceedings arguing that they were not reflective of the deliberations that were during the disciplinary hearing.

Analysis and Determination

70. I have carefully considered the pleadings filed herein by the parties, their evidence, and lengthy submissions by their Counsel. The following issues emerge for determination: -
 - i. Was the termination of the Claimant's unfair?
 - ii. Is the Claimant entitled to the reliefs sought?
 - iii. Is the Respondent's Counterclaim merited?
 - iv. Who should bear the costs of the claim and counterclaim?

Was the termination of the Claimant's Counterclaim unfair?

71. Tasked to interrogate whether or otherwise termination of an employee's employment was fair, the court must interrogate whether there was present two statutory aspects, procedural fairness and substantive justification, in the process leading to the decision to terminate and for the decision, respectively.



72. In the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, the Court stated;
- “For a termination of employment to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.”
73. In a more elaborate manner the Court of Appeal stated in case of *Pius Macha Isundu vs Lavington Security Guards Limited* [2017] eKLR thus-
- “There can be no doubt that the Act which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove reasons for termination/ dismissal (section 43) prove reasons are valid and fair (section 45)among other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.....
74. Section 41 of the *Employment Act*, 2007 provides a mandatory and elaborate procedure that an employer contemplating terminating an employee’s employment must adhere to. The procedure embodies three components, the; notification [the employer must inform the employee in a language he understands it intention of taking adverse action against him, and the grounds stirring the contemplation]; hearing [the employee must be accorded adequate opportunity to prepare and make representations on the grounds];and consideration[the employer shall consider the representations made by the employee and or the person accompanying him, before tasking a final decision]. The absence of any of or all these components shall render the termination procedurally unfair.
75. It is pertinent to point out that this provision of the law, is never read in isolation from constitutional stipulations [Article 47, and 50, of *the Constitution* of Kenya], statutory provisions [for instance those in the Fair Administrative Actions Act], postulations of a Collective Bargaining Agreement, and Organizational policies and practices, as and when they are relevant to circumstances of a particular case.
76. I have carefully considered the material placed by the parties and undoubtedly;
- i. Through the notice to show cause, the 1st notice to show cause, the Claimant was clearly notified of the Respondent’s contemplation and the reasons spurring the same.
 - ii. The Claimant was invited to a disciplinary hearing through the letter dated 15th May 2019. The letter informed him of his right to, tender documentary evidence during the hearing, and be accompanied to the hearing by a member of staff or a Central Staff Union representative.
 - iii. During the hearing, the Claimant made representations.
 - iv. The Panel considered the representations and made recommendations for the termination of his employment.
77. This far, the Court is convinced that Respondent adhered to the provisions of section 41 of the *Employment Act*, in the process leading to the decision to terminate the Claimant’s employment, all the procedural ingredients mentioned above were present.
78. It was undisputed that the Claimant was a member of a Trade Union which had Collective Bargaining Agreement between it and the Respondent. It bears repeating that Collective Bargaining Agreement are binding on the parties thereto for the entire duration of the agreement. The general principle is



that Collective Bargaining Agreements have contractual effect on the parties. I agree with the holding in *Said Ndege v Steel Makers Ltd* [2014] eKLR where Radido J held: -

“Under section 59 [1] of the Act, a collective agreement binds the parties to the agreement, all unionisable employees employed by the employer, group of employees or members of the employers’ organization party to the agreement, while section 59[3] of the Act provides that the terms of a collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.”

79. The Claimant contended that the Respondent terminated his employment in complete ignorance of a vital term and or procedure set out under Clause A5 of the collective Bargaining agreement, and total diminishment of the protection it was intended to avail to employees covered by the agreement.

80. As there is a great controversy over the import of Clause A5 [c], which needs to be resolved, for clarity of record, it becomes imperative that it be set out in extenso, thus;

“Suspension

- i. Where the employer requires to carry out investigations in acts of gross misconduct and /or serious neglect as detailed in paragraph A5[a] above, an employee may be suspended for a period not exceeding thirty [30] days during which period the employee shall be entitled to be paid at the rate of half his basic salary. The suspension may be extended at the discretion of the employer.
- ii. However, in the event that in the event that an employee is awaiting trial either on remand or at large and prosecution is pending on a matter involving moral turpitude as laid down in paragraph 5[a][iv] above, the suspension period shall be 90 days which may be extended at the discretion of the employer until such time as the case has been finalised by the Courts during which period the employee shall be entitled to be paid at the rate of half basic salary.”

81. Clause A5[a][iv] reads;

“If she is convicted of on a criminal charge of an offence involving, on his part, moral turpitude of if after the employer’s due investigations, her/she is found guilty. for the purpose of this Clause, an offence involving moral turpitude on the part of an employee is an offence involving active dishonesty and also an offence involving actual violence.

The following would involve moral turpitude: -

1. All crimes concerning the misappropriation of property belonging to third parties [i.e. larceny, burglary, embezzlement, house breaking, fraud]
2. Fighting and assault, or engaging in riotous, disorderly or immoral behaviour during working hours or on the Bank’s premises or within precincts”

82. Considering the foregoing, I have no doubt, that as correctly testified by the Respondent’s witness the Claimant was administratively charged with moral turpitude misconduct.

83. The questions that springs up then are, did Clause A5 [c] [II] bind the Respondent to continue extending the Claimant’s suspension until the conclusion of the criminal case? Did the stipulation forbid the Respondent from commencing and proceeding with an internal disciplinary process, pending determination of the case? I have no difficulty in concluding that it didn’t. The stipulation



speaks to two periods, the 90 days of the date of suspension, and the period after the 90th day, while the criminal case remained not concluded.

84. One can safely conclude that during the first 90 days, the employee could remain excluded from employment pending the criminal case, but if the case wasn't concluded within the 90 days, the employer had the discretion of extending or not the exclusion. If they decided not to, upon basis of findings of an internal investigation, disciplinary proceedings would properly be initiated and undertaken against an employee on account of moral turpitude. Put in another way, the employer could, decide to be subject to the external process and wait for the conclusion and outcome of the criminal case to inform its action against the employee, or as the Respondent did in the instant matter, commence and proceed with internal proceedings against the employee without waiting for the conclusion of the criminal case.
85. In sum, therefore, I do not agree with the Claimant that the Respondent affronted the procedure set out in Clause A5[c] of the CBA.
86. I now turn to consider the aspect of substantive fairness. Section 43 of the *Employment Act* places a legal obligation on the part of the employer to prove the reason for the termination of the employee whenever there is a dispute regarding the same. It is pertinent to state at this point that it doesn't suffice for the employer to just state that they terminated the employee's employment for this or that reason. They are enjoined to go further and show that the reason[s] for the termination is valid and fair, related to the employee's conduct, capacity, or compatibility, or the employer's operational requirements. See section 45[2] of the Act. Otherwise, the termination shall be deemed by operation of the law, unfair.
87. The Claimant attacked the substantive justification of the Respondent's decision to terminate his employment, asserting that improperly administratively charged him with the infraction that they did, and founded their decision to terminate his employment, on the fact that he had been charged with a criminal offence. I think the Claimant missed a point here, the infraction was not that he was charged in a court of law, but that he grossly misconducted by committing acts of moral turpitude.
88. The Respondent contended and the Claimant admitted in his evidence under examination that, he refused to subject himself to the Respondent's internal investigators to give a statement on the issue. This I must state was a result of his mistaken belief that the Respondent had no authority to conduct an internal investigation whilst there were criminal proceedings on going. He failed to duly comprehend the provision of the CBA under Clause A5[a][iv].
89. The Claimant argued that there wasn't a valid reason to terminate his employment, as the matters in issue didn't relate to the Respondent and his workplace. With great respect, this line of thinking is wholly erroneous. It is ignorant of the fact that under the CBA, moral turpitude has been broadly defined to include actions against third parties.
90. Additionally, the position taken by the Respondent was without a valid reason as it related to matters allegedly committed outside his place of work, is totally without any reasonable foundation. In my view, an employee's misconduct outside the workplace can be a basis for institution of disciplinary process against an employee and eventually action such as dismissal, if the action significantly and negatively impacts the employment relationship and the employer's business.
91. The Respondent asserted that the criminal activities in issue targeted its customers, the Saccos, the involvement of the Claimant in the activities, and I state this because the Claimant did not discount the Respondent's position that its internal investigations revealed that the Claimant was in the web of the fraudsters, had the impact of impacting the Respondent's reputation and business negatively. This Court takes judicial notice that Respondent just like any bank operates in a very sensitive space,



that requires a very high degree of integrity, ability to, be trusted and attract confidence, both on its part and that of its employees.

92. The actions by the Claimant definitely was one that could affect the employment relationship as it amounted to a breach of the implied duty of trust and confidence on his part.
93. By reason of the foregoing premises, I hold that the termination of the Claimant's employment was substantively justified.

Whether the Claimant is entitled to the reliefs sought.

94. The reliefs sought for the compensatory relief of twelve months gross salary, and the loss on income as a result of loss of his positions as a Trustee and Board Member were closely tied to his claim for unfair termination. Having rejected the claim on account that it is destitute of merit, I have no reason to avail the reliefs to the Claimant.
95. The Claim for overtime is normally independent of that of unfair termination. Thus, where proved it can be granted notwithstanding the failure of the unfair termination claim. However, in this case the compensation sought cannot be granted for the reason that the figures in Claimant's pleadings and witness statement were just thrown to court. The Claimant didn't present any evidence to demonstrate when exactly the overtime was expended. See also *Rogoli Ole Manadiegi v General Cargo Services Limited* [2016] eKLR, cited by Counsel for the Respondent.
96. The Claimant didn't file any defence to the counterclaim, as such it remained admitted. Further in his evidence under cross examination, he admitted that as at the time he was testifying before this Court, he was owing the Respondent outstanding loan sum of KShs. 3,032,798.26.
97. In the upshot: -
 - i. The Claimant's claim herein is hereby dismissed with costs.
 - ii. Judgment is entered in favour of the Respondent on its Counterclaim in the sum of KShs. 3,032, 798.26, with interest at commercial bank rates.
 - iii. Costs of the Counterclaim shall be in favour of the Respondent.

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

OCHARO KEBIRA

JUDGE

In the Presence of :-

Mr. Onganya for the Claimant.

Mr. Okeyo for the Respondent.

