



**Mwangi v Cooperative Bank of Kenya Limited (Cause 1480 of 2018)
[2025] KEELRC 456 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 456 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1480 OF 2018
L NDOLO, J
FEBRUARY 20, 2025**

BETWEEN

KENNEDY WANJOHI MWANGI CLAIMANT

AND

COOPERATIVE BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

Introduction

1. Sometime in the year 2012, the Claimant, Kennedy Wanjohi Mwangi, borrowed Kshs. 1,200,000 from his colleague, Eric Mwangi Karaba, on the promise that he would repay the borrowed amount plus 10% interest, within a period of 90 days. The Claimant went ahead to issue post-dated cheques to Karaba, which were dishonoured on presentation, because there were no funds in his bank account to pay the cheques.
2. It would appear that the debt remained outstanding for a while and in May 2018, Karaba lodged a complaint with the Claimant's employer, the Cooperative Bank of Kenya, a commercial bank regulated by the Central Bank of Kenya, who called the Claimant to account. Following a disciplinary process, the Claimant was dismissed, giving rise to this dispute.
3. The Claimant's claim, which he documents through a Statement of Claim dated 30th October 2018, is that his dismissal was unlawful and unfair. The Respondent filed a Statement of Response and Counterclaim dated 5th December 2018, to which the Claimant responded on 7th January 2019. Thereafter, the Respondent filed a Reply to the Claimant's Response to Counterclaim.
4. The matter went to full trial where the Claimant testified on his own behalf, with the Respondent calling its Head of Employee Relations and Welfare, Leah Kerich. Thereafter, the parties filed written submissions.



The Claimant's Case

5. By a letter dated 17th November 2010, the Claimant was employed by the Respondent Bank, as a Graduate Clerk earning a basic monthly salary of Kshs. 48,338. He was confirmed in his appointment upon completion of a six (6) months' probation period.
6. The Claimant worked in several positions within the Bank, culminating with the position of Management Information Systems/ Signature Verification Officer, earning a basic monthly salary of Kshs. 157,750 as at 26th March 2018. On 18th October 2017, the Claimant was transferred to the Respondent's Green House Mall Branch.
7. In addition to his duties at the Bank, the Claimant served as the Chairman of the Central Staff Committee, having been elected at a meeting of all shop stewards held on 29th May 2017. In this capacity, the Claimant was nominated as a member of the Workers Council Joint Negotiating Committee, which was concerned with negotiating terms of service for unionisable employees.
8. The Claimant claims to have begun experiencing harassment from the Respondent, upon assuming the chairmanship of the Central Staff Committee. He cites the following particulars in this regard:
 - a. Transfer from the Head Office to Nairobi Business Centre to train as a teller, which affected his attendance at staff disciplinary meetings as required by the Staff Manual;
 - b. Inadequate notice of transfer contrary to the Staff Manual, which stipulates two (2) weeks' notice;
 - c. Show cause letter and warning letter for lateness despite reporting to work as required and having notified the Manager in good time. In his response to these letters, the Claimant explained a few instances of lateness, citing his role of accompanying employees to disciplinary meetings.
9. The Claimant states that in the performance of his responsibilities as Chairman of the Central Staff Committee, he advocated for stoppage of illegal medical insurance deductions and refund of monies already deducted.
10. The Claimant accuses the Respondent of discriminating against unionisable employees who were getting inferior medical insurance compared to those in management, who were not subjected to any deductions.
11. According to the Claimant, the issue of illegal medical deductions from unionisable employees brought him into conflict with the Respondent's top management, after the issue was brought to the attention of the Kenya Bankers Association.
12. The Kenya Bankers Association is said to have concurred with the Claimant's assertion that the said deductions were in contravention of Clause 36 of the Collective Bargaining Agreement (CBA) and the *Employment Act*.
13. The Claimant avers that officials of the Central Staff Committee complained to the Banking Insurance and Finance Union (BIFU) about the Respondent's decision to unilaterally award the tender for provision of medical insurance for unionisable employees to CIC Insurance Company, despite reservations by the Central Staff Committee.
14. The Claimant further avers that the Respondent did not take the challenge to the procurement of an inferior medical insurance cover from CIC Insurance Company, kindly. He flags a conflict of



- interest on account of the Respondent's Managing Director having a substantial shareholding in CIC Insurance Company.
15. The Claimant was issued with a show cause letter dated 17th May 2018, on allegations of pecuniary embarrassment and issuing bouncing cheques. He responded to the show cause letter on 28th May 2018.
 16. By letter dated 7th June 2018, the Claimant was invited to a disciplinary hearing scheduled for 12th June 2018. He was subsequently summarily dismissed vide letter dated 27th June 2018.
 17. The Claimant appealed against the dismissal by his letter dated 4th July 2018, citing the following grounds:
 - a. The Disciplinary Committee was not properly constituted as required by paragraph 10.14.4 of the Staff Manual;
 - b. The reason for dismissal is not covered by clause A5 of the CBA signed by Banking Insurance and Finance Union and the Kenya Bankers Association on 30th August 2017;
 - c. Paragraph 10.14.6 of the Staff Manual requires the invitation letter to a disciplinary hearing to be delivered at least three days before the date of the hearing;
 - d. There was no disciplinary hearing and the disciplinary procedures provided in paragraph 10.5 of the Staff Manual were not adhered to;
 - e. The alleged offence leading to the summary dismissal occurred in December 2012 and the disciplinary process was therefore not expeditious, efficient, lawful, reasonable and procedurally fair;
 - f. There was no prior and adequate notice of the nature of and reasons for the proposed administrative action, taking into account that the allegations were within the knowledge of the employer, and the Claimant had adequately responded in the year 2013;
 - g. The disciplinary action was malicious and procedurally unfair because the Claimant was being victimised for articulating employee welfare issues as the Chairman of the Central Staff Committee.
 18. The Claimant avers that the issue of illegal medical deductions and discriminatory differences were reported as a trade dispute to the Kenya Bankers Association.
 19. The Claimant claims to have been promoted on 26th March 2018, as an incentive for him to go slow on the medical issue, which was pending in court. The Claimant adds that, after obtaining an injunction stopping the Bank from awarding the tender to CIC Insurance Company, the promotion was not effected.
 20. The Claimant's appeal was declined and a letter to that effect was issued on 20th July 2018.
 21. The Claimant's case is that his dismissal was wrongful and unfair. He therefore claims the following:
 - a. Severance pay for 8 years.....Kshs. 679,812
 - b. 1 month's salary in lieu of notice.....169,953
 - c. 12 months' salary in compensation.....2,039,436
 - d. Certificate of service



- e. Costs plus interest

The Respondent's Case

22. In its Statement of Response and Counterclaim dated 5th December 2018, the Respondent admits having employed the Claimant at the entry level of Graduate Clerk. The Claimant worked in several positions across the Respondent's branch network and on 26th July 2017, he was transferred to the Green House Mall Branch and was attached at the Nairobi Business Centre for two months' training.
23. The Respondent states that the Claimant reported to the Green House Mall Branch as a Sales and Service Advisor and was given the role profile for his new position, which he acknowledged.
24. The Respondent asserts that it was an express term of the Claimant's employment contract that he could be transferred to any of its branches as required by business needs.
25. The Respondent pleads that the Claimant had a negative employment record. In this regard, the Respondent claims to have issued warning letters to the Claimant regarding lateness and insubordination.
26. The Respondent avers that by a letter dated 9th May 2018, the Claimant admitted having been late for and missing morning branch meetings, for one and a half weeks.
27. The Respondent points out that issue of medical insurance deductions was the subject of separate court proceedings in ELRC Cause No 2466 of 2017: Banking Insurance & Finance Union (Kenya) v Cooperative Bank of Kenya Ltd & another.
28. The Respondent adds that the issue of award of a tender for provision of medical insurance to CIC Insurance Company is moot, as parties in ELRC Cause No 2466 of 2017 had recorded a consent by which the Respondent was allowed to enter into a contract with CIC Insurance Company for provision of medical insurance to unionisable employees.
29. The Respondent admits having issued the Claimant with a show cause letter dated 17th May 2018, on account of pecuniary embarrassment and issuing of bouncing cheques.
30. The Respondent claims to have received a complaint from Eric Mwangi Karaba on 8th May 2018, to the effect that the Claimant had failed to repay a loan he had advanced to him.
31. The Claimant responded to the show cause letter on 28th May 2018, admitting having borrowed Kshs. 1.2 Million from Eric Mwangi Karaba, sometime in December 2012, adding that he was unable to repay the money within 90 days as agreed.
32. The Respondent avers that by his contract of employment, the Claimant was prohibited from issuing post-dated cheques, without the written consent of the Respondent's Managing Director & Chief Executive Officer. Further, borrowing or lending money without the written consent of the Managing Director was prohibited.
33. The Respondent refers to Clause 19 of its Business Code of Conduct and Ethics which prohibited borrowing and lending money without the consent of the Group Managing Director & Chief Executive Officer.
34. The Respondent states that the Claimant was enjoined to operate his staff current account properly and was prohibited from overdrawing the account or issuing bouncing cheques or neglecting to settle his financial obligations as they fell due.



35. The Respondent states that the Claimant was invited to a disciplinary hearing which he duly attended in the company of a union representative from the Central Staff Committee.
36. The Claimant is said to have admitted that it was wrong for him to issue post-dated cheques and bouncing cheques arising from lack of funds in his account.
37. The Respondent's case is that the Claimant's summary dismissal for gross misconduct, arising from borrowing from unlicensed lenders and issuing bouncing cheques, was justifiable and fair. The Respondent asserts that the Claimant's actions were contrary to the provisions of the Employment Act, the Staff Manual and the Business Code of Conduct and Ethics.
38. In its Counterclaim against the Claimant, the Respondent states that as at 27th June 2018, the Claimant had outstanding loans as follows:
 - a. Personal loan.....Kshs. 350,000
 - b. Residential property loan.....1,360,568
 - c. Laptop loan.....26,642
 - Total.....1,737,210
39. The Respondent therefore claims from the Claimant the sum of Kshs. 1,737,210 plus interest at prevailing commercial rates from 28th July 2018, until payment in full.
40. In his Reply to the Respondent's Statement of Response and Counterclaim, the Claimant states that he has been unable to service his loan facilities after the Respondent terminated his employment.
41. The Claimant maintains that the issue of recovery of loan amounts is a commercial matter and not an employment one.
42. In its Reply to the Claimant's Response to Counterclaim, the Respondent states that the loans advanced to the Claimant were pegged on the employer-employee relationship and this Court therefore has jurisdiction to entertain the Counterclaim.

Findings and Determination

43. There are three (3) issues for determination in this case:
 - a. Whether the Claimant's dismissal was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought;
 - c. Whether the Respondent has proved its Counterclaim against the Claimant.

The Dismissal

44. The Claimant was dismissed by letter dated 27th June 2018 stating as follows:

“Summary dismissal-pecuniary embarrassment and issuing of bouncing cheques

We refer to previous correspondence on the above matter culminating in your appearance before the Staff Disciplinary Committee on 12th June 2018 and inform you that your explanation did not fully exonerate you from all the charges. It was established that you suffered pecuniary embarrassment and borrowed cash from unlicensed lenders or from Bank customers in that in December 2012, you borrowed Kshs 1,200,000 from Eric Mwangi



Karaba which you were to repay with an interest of Kshs 120,000 translating to 10% interest and which you failed to repay despite various commitments to do so. Further, on 1st April 2014, you further issued Eric Mwangi Karaba with two bouncing cheques No. 34 and 36 drawn against your staff current account No. 01125189514200 for Kshs 726,000 each while knowing very well that your account did not have sufficient funds since the cheques bounced upon deposit into the payee's account held at Equity Bank. As you are aware, it is a criminal offence for any person who draws or issues a cheque on an account if they know that the account has insufficient funds; knows that the account has been closed; or has previously instructed the bank or other institution at which the account is held not to honour the cheque. It was noted that you issued the cheque on 1st April 2018 when your account was overdrawn by Kshs 136.01 contrary to the rules and regulations governing operations of staff accounts.

As you are aware, financial integrity is key requirement for a Bank employee who is entrusted by the Bank to manage Bank customer's financial activities and your conduct demonstrates that you conducted yourself in a manner that does not befit your status as a Bank employee.

Your actions as above amounted to gross misconduct as you contravened provisions of Bank's Business Code of Conduct & Ethics and Staff Manual which states that it is an offence that amounts to gross misconduct if an employee suffers pecuniary embarrassment and/or is involved in shylocking and borrowing cash from unlicensed lenders, or from other members of staff or from Bank customers. Your actions further contravened provisions of your letter of employment which states in part that "You will not at any time hereafter become bail or surety bond or Guarantee or otherwise for any person or persons or accept Bills of Exchange or sign promissory notes as Maker or issue post-dated cheques or enter into any personal security whatever unless the consent in writing of the Group Managing Director & CEO shall have been first given thereto. The borrowing and lending of money without the consent in writing of the Group Managing Director & CEO of the Bank is strictly prohibited".

Consequently, the Bank has decided to summarily dismiss you from employment with immediate effect in accordance with the provisions of Clause A5 of the Collective Bargaining Agreement. You are notified of your right of appeal within 21 days from the date herein in accordance with provisions of Appendix 14 of the Staff Manual.

You are required to handover all Bank Inventory and/or documents that are under your control, together with the staff identification card to the Manager, Green House Mall Branch immediately upon receipt of this letter.

Note that facilities accorded to you by virtue of your status as a staff member in the Bank become repayable immediately and will start attracting interest at the prevailing commercial rate 30 days from the date of this letter until the same are fully repaid. All loan payments should be made through account number 01137-customer no.-00. In this regard, you are advised to liaise with the Head-Remedial Management Department on email address Securedremedial@co-opbank.co.ke within 30 days from the date herein to further discuss on the repayment of your outstanding liabilities below:-

Residential Property Loan - Kshs 1,360,568.00

Personal Loan - Kshs 350,000.00

Laptop Loan - Kshs 26,642.00



Any monies due to you less liabilities shall be determined and paid to you as soon as possible on receipt of the duly completed HRD/2.

Please note that your Certificate of Service is available for collection from this office.

(signed)

Evelyne Munyoki

Director

Human Resources Division”

45. The reason for the Claimant’s dismissal, as disclosed in the foregoing letter, is borrowing from an unlicensed lender and issuing cheques that were dishonoured for lack of sufficient funds in his bank account.
46. In his response to the show cause letter, the Claimant admits having borrowed Kshs. 1,200,000 from his colleague. He further admits having failed to repay the money as agreed. In addition, the Claimant concedes that cheques issued by him had been dishonoured for lack of sufficient funds in his bank account.
47. The question for determination is whether the foregoing constitutes a valid reason for dismissal as contemplated under Section 43 of the Employment Act, which provides as follows:
 43.
 - (1) In any claim arising out of termination of contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
48. In advancing its case against the Claimant, the Respondent relied on the Claimant’s Employment Contract, the Collective Bargaining Agreement, the Staff Manual and the Business Code of Conduct & Ethics.
49. Clauses 10 and 11 of the Employment Contract prohibited the Claimant from issuing post-dated cheques, borrowing and lending money, without the written consent of the Respondent’s Managing Director.
50. In similar fashion, Clause 19 of the Business Code of Conduct & Ethics prohibits Bank employees from borrowing and lending money without the consent of the Group Managing Director & CEO of the Bank. In addition, employees are barred from overdrawing their current accounts and issuing bouncing cheques.
51. Clause 28.9 of the Staff Manual cites pecuniary embarrassment and borrowing money from unlicensed lenders as gross misconduct, attracting the ultimate disciplinary action of summary dismissal.
52. In its decision in *Abraham Nyambane Asiago v Barclays Bank of Kenya Limited* [2015] eKLR this Court stated the following:

“Banks operate in an environment in which utmost trust and good faith are crucial. Their employees must therefore be held to these very virtues. As held in *Moses Chavani vs. Barclays*



Bank of Kenya Ltd (Cause No 694 of 2010) and Banking Insurance & Finance Union vs. Post Bank Ltd [2013] eKLR the relationship between bankers and their employees is premised on a high degree of honesty and integrity and where these are put into question, then the employment relationship becomes untenable. This is as it should be since banks are held to the same values by their customers who hold the lifeline of banking business. This Court must uphold those principles.”

53. Those who choose a career in banking must be prepared to operate their financial affairs in a manner that inspires confidence that they will be good stewards of customers’ resources under their care. This explains the restrictions on external borrowing imposed on bank employees, with the upside of preferential rated loan facilities advanced by banks to their employees.
54. In the present case, the Claimant breached express provisions of his Employment Contract, the Staff Manual and the Business Code of Conduct & Ethics. I therefore have no difficulty in reaching the conclusion that the Respondent had a valid reason for dismissing the Claimant, as required under Section 43 of the *Employment Act*.
55. The next question is whether in executing the dismissal, the Respondent observed the following procedural fairness requirements of Section 41 of the *Employment Act*:
- 41.
- (1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.
56. There is evidence that the Claimant was issued with a show cause letter, to which he duly responded. He was also invited to a disciplinary hearing, which he attended in the company of Mohamed Hawshi, a member of the Central Staff Committee.
57. The Claimant’s complaint that he was not allowed enough time and that the Disciplinary Committee was not properly constituted, was not supported by any evidence.
58. Consequently, I find and hold that the procedural fairness requirements of Section 41 of the *Employment Act* were fully satisfied.
59. The Claimant’s claims for compensation and notice pay are therefore without basis and are dismissed.
60. No basis was established for the claim for severance pay which also fails and is disallowed.

The Counterclaim

61. In opposing the Counterclaim, the Claimant challenges the jurisdiction of this Court to entertain it, stating that the matter is commercial in nature.



62. The issue of the jurisdiction of this Court to determine disputes arising from loan agreements between banks and their employees has been litigated severally.
63. In *Banking Insurance & Finance Union (Kenya) v Consolidated Bank of Kenya Limited* (Cause No 900 of 2012) Rika J stated as follows:
- “The loan agreement in the context of this dispute flowed from an employment relationship. The dispute over the charge created to secure the staff loan, is a matter of employment. The Environment and Land Court is not entirely divested of jurisdiction, but would in the view of this Court not be the appropriate forum.....to determine the final issues that may arise out of this dispute.”
64. In the *Abraham Nyambane Asiago Case* (supra) this Court stated thus:
- “By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these fall under employment and labour relations as intended by the law makers. To rule otherwise would be to create a situation where an employer or employee traverses different courts to enforce different rights arising from the employment relationship. That in my view could not have been the intention of the legislators.”
65. The loan facilities giving rise to the Counterclaim were advanced to the Claimant in his capacity as an employee of the Respondent. The logical conclusion therefore is that they are subject to the dominant cause of action, which arises from the employment relationship.
66. By his own pleadings, the Claimant admits owing the sums claimed by the Respondent in the Counterclaim.
67. I therefore enter judgment in favour of the Respondent as against the Claimant in the sum of Kshs. 1,737,210 plus accrued interest.
68. As the Claimant is heavily indebted to the Respondent, I will spare him the added burden of costs, and direct that each party will bear their own costs.
69. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF FEBRUARY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Mboya for the Claimant

Mr. Kiche for the Respondent

