



REPUBLIC OF KENYA



KENYA LAW
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**Kamsa v KCB Bank Limited (Cause E005 of 2022)
[2025] KEELRC 740 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 740 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E005 OF 2022
MA ONYANGO, J
MARCH 6, 2025**

BETWEEN

COLLINS MACHEL OMBODO KAMSA CLAIMANT

AND

KCB BANK LIMITED RESPONDENT

JUDGMENT

1. The Respondent is a Commercial Bank registered as such under the *Banking Act* of Kenya. The Claimant herein was, until 15th April, 2019, an employee of the Respondent having been employed as a Clerk by letter of appointment dated 11th March, 2013.
2. The Claimant worked with the Respondent without incident or blemish until 13th March, 2017 when he received an Internal Memo from the Cash Manager, Eldoret Branch prompted by a complaint from one of the directors of a client, 'Fashions For You' in relation to account No. 117972690 held in the Bank, in respect of cash withdrawn from the account allegedly without the knowledge of the Director.
3. The Claimant avers that the termination of his employment was discriminatory as his employment was terminated yet his colleagues found guilty of the same irregularity as himself were not subjected to termination of employment as himself.
4. The Claimant further avers that his letter of termination was executed by the Branch Manager who was not the appointing authority and is therefore void.
5. In his Memorandum of Claim dated 15th January, 2022, the Claimant seeks the following remedies:
 - a. A declaration that the letter of termination of employment issued by the branch manager is void and the claimant be reinstated back to work without loss of income, rank or position and he be paid his accrued salary for the period he has been out of work since 15.4.2019 for a period which the court deems fit and just to grant.



- b. A declaration that the respondent's actions amounted to discrimination and in the circumstance the claimant is entitled to compensation as prayed for in paragraph 19 above.
 - c. Costs of this suit and interest at court rates.
 - d. Certificate of service as per section 51 of the *Employment Act*.
 - e. Any other relief that the Honourable Court may deem fit and just to grant.
6. At paragraph 9 of the Memorandum of Claim the Claimant prays for compensation which he particularises as follows:
- a. Compensation for unfair termination
Gross pay x 12 months (Kshs. 128,367x12) Kshs. 1,540,404
7. In response to the Memorandum of Claim the Respondent filed a Memorandum of Response to the Claim in which it admitted that the Claimant was its employee having been engaged as a graduate trainee from 15th March, 2012 to 15th March, 2013 after which he was employed as a Clerk with effect from 16th March, 2013.
8. The Respondent avers that around March, 2017 it received a complaint from one of the Joint Signatories of account No. 117972690 alleging that payments had been made from the said account without his authorization. That it is on the premise of this complaint that the Respondent asked the Claimant to explain the irregular payments out of the account.
9. The Respondent avers that the Claimant's explanation was that there was a culture of paying off one of the signatories of the account in all the Respondent's 3 branches in Eldoret which had started even before the Claimant's appointment as a Clerk. It is the Respondent's averment that the explanation by the Claimant was not satisfactory and the Claimant was subjected to disciplinary action that culminated in the termination of his employment.
10. The Respondent denied that the termination of the Claimant's employment was discriminatory. It explained that Evans Masika, a fellow employee, whom the Claimant alleged was found guilty of the same irregularities as himself but only issued with a warning, was not terminated like the Claimant because he sufficiently proved that the only reason he issued out 3 cheques from the relevant account was because of the Claimant's intervention. That the Claimant informed him that he (the Claimant) had been in contact with the 2nd signatory who allowed the Claimant to pass the cheques for payment and append his own signature on behalf of the 2nd signatory.
11. The Respondent further averred that the termination of the Claimant's employment was constitutional and in line with statutory and regulatory provisions for reason that:
- i. The Claimant was given an opportunity to be heard and was invited to respond to the charges set out in the notice to show cause letters dated 13th March 2017 and 4th September 2017 which he did;
 - ii. The Claimant was formally invited to appear before a disciplinary committee on 21st March 2019, where he appeared and made his representation;
 - iii. The Claimant was informed of the charges facing him and given adequate time to present his case before the disciplinary committee;



- iv. The disciplinary process was initiated after the Respondent had concluded its investigations on the conduct of the Claimant and found him culpable to answer for the allegations of gross misconduct;
 - v. The Respondent's disciplinary committee had the discretion to decide on the punishment to be meted out on an errant employee upon consideration of the evidence and defence presented. The Claimant had no discretion to decide on the punishment to be meted upon him; and
 - vi. The punishment meted by the Board was the one deemed to be suitable under the circumstances.
12. The Respondent prayed that the Claimant's suit be found undeserving for having no merit and being frivolous and an abuse of court process. The Respondent prayed that the suit be dismissed with costs.

Evidence

13. At the hearing of the claim the Claimant testified on his own behalf as CW1. The Respondent called Ali Humphrey Tunga, a forensic investigator attached to the Respondent's Forensic Department who testified as RW1 and Naitore Lukongodo, an Employee Relations Manager who testified as RW2. The parties thereafter filed and exchanged written submissions.
14. The evidence on record is not materially contested. The Respondent filed the investigation report as Respondent's Supplementary List of Documents dated 20th July, 2022 and filed on 21st July, 2022. The Executive Summary which captures the facts is reproduced below:

Executive Summary

Forensic services were mandated to investigate allegations of irregular payments on diverse dates between 5th January, and 7th November, 2017 made from account no.1117972690 held in the name of Fashions For You Limited at KCB Eldoret West Branch. These allegations were made by one of the account signatories, Samuel Wanguba, vide a demand letter dated 12th June, 2018, by M/S Mukabane & Kuagunza Advocates vide which the customer demanded a refund of Kes.6,993,000/=, on account of cheques allegedly irregularly paid to his co-director, Nancy Chepkoech Rono without his knowledge and consent. The customer's demand was premised on grounds that the Bank had contravened the terms of the account mandate by paying cheques bearing his co-signatory's single signature, as opposed to two signatures, as provided for on the account mandate.

Investigations into the allegations have partially confirmed as well as dispelled, some of the customer's claims. In particular, while it is alleged that the bank had colluded with the customer's co-signatory to defraud him of Kes. 6,993,000/=, no evidence was found in support of the conspiracy. Further, whereas the customer's demand was based on thirty-two (32) cheques with an aggregate value of Kes. 6,993,000/=. Our investigations have confirmed that only nineteen (19) cheque payments aggregating Kes.3,263,000/=, that were processed in contravention of the account mandate, in that the payments were made whereas the cheques bore a single signature as opposed to two signatures. The questionable payments were made at KCB Eldoret Main and Eldoret East branches.

Interviews conducted with the staff who processed the payments did not elicit any reasonable explanation as their acts, other than that they relied on aspects of "Trust" where they mostly relied on verbal promises from the complainant whenever they reached him on phone during callbacks and he appears to have routinely assured them of being aware of such payments with the promise to come over to the branch on future dates to regularize the payments, but which he did not do. Detailed analysis however disclosed that Collins Kamsa, a teller at KCB Eldoret Branch had proceed thirteen (13) cheques aggregating Kes.1,930,000/= that bore a single signature. On being interviewed



the cashier did not provide reasonable cause and/or justification for a single signature. We also found that there were eight other staff who were involved in the payments, but five of them who are based at KCB Eldoret Main claimed that they had paid the cheques on the assurance of the aforementioned teller, Collins Kamsa, to the effect that he had spoken to the main account signatory, Samuel Wanguba.

Further detailed investigations show that sixteen transactions aggregating Kes.2,450,000/= were processed at KCB Eldoret Main Branch while Three transactions aggregating Kes.813,000/= were processed at KCB Eldoret East Branch.

It is also our finding that the recipient of these payments, and co-signatory to the account, Nancy Rono, was arrested and charged with the theft, that notwithstanding, the bank is clearly liable for disputed withdrawals aggregating Kes. 3,263,000/= arising from the 19 cheques aggregating the said sum which were paid out while bearing one signature in place of two signatures; we recommend that the liability should be borne by KCB Eldoret Main and Eldoret East branches in their respective proportions of Kes.2,450,000/= (Eldoret Main), and Kes.838,000/= (Eldoret East).

It is also our further recommendation that severe disciplinary action be taken against staff no. 12146 Collins Kamsa, as well as, on staff no. 11792 both of whom are tellers attached to KCB Eldoret Main and Iten Branches for their involvement in the loss which was perpetrated through processing and payment of cheques, while well aware that the account mandate provided for “Both-to-sign”. While Collins Kamsa was found to have signed thirteen cheques, aggregating Kes.1,930,000/=. On the other hand, teller Evans Masika Nalika was found to have signed Ten cheques aggregating Kes. 1,580,000/=. Additionally we also recommend that appropriate disciplinary action be also taken against seven members of staff involved in the payments made contrary to the account mandate, as follows: -

1. Staff No. 11549 Getrude Imbati attached to KCB Eldoret East Branch. She paid cheq no. 450 for Kes.318,000/= on 05.01.2016.
2. Staff no. 6705 Domtila Maiyo attached to KCB Eldoret East Branch – She paid CHQ No. 476 for Kes. 300,000/= on 25.04.2016.
3. Staff 13344 Pius Echesa attached to Eldoret Main Branch – He paid Chq no. 493 for Kes.60,000/= on 24.05.2016.
4. Staff no. 11810 Edwin Odhiambo attached to Eldoret Mian Branch – He paid Chq no. 493 for Kes.60,000/= on 24.05.2016
5. Staff no. 11792 Evans Masika attached to Eldoret Main Branch – He paid Cheques aggregating Kes. 1,580,000/= on diverse dates between 11.07.2016 & 25.10.2016.
6. Staff no. Hellen Segei attached to Eldoret Mian Branch – She paid Chq no 507 for Kes.240,000/= on 13.10.2016
7. staff no. Collins Kamsa attached to Eldoret Main Branch – he paid assorted Cheques aggregating Kes.1,930,000/=.
8. Staff no 12108 Fridah Chepkemai Ketter attached to Eldoret Mian Branch – She paid Chq no. 510 for Kes. 110,000/= on 07.11.2016

It is also our further recommendation that Director Retail Banking sends out communication to Branches reiterating on the need for adherence to the Bank operational guidelines by processing transactions in accordance with the account mandate.

15. I have considered the evidence on record and the submissions by the parties. The issues arising for determination are the following:



- a. Whether the termination of the Claimant's employment was null and void for reason that the letter of termination was signed by the Branch Manager;
 - b. Whether the termination of the Claimant's employment was discriminatory;
 - c. Whether the Claimant is entitled to the remedies sought.
16. It was the Claimant's position that the Branch Manager who signed his letter of termination had no authority to do so as the Branch Manager was not the appointing authority. The Claimant did not adduce any evidence to support this position. He did not produce or refer to any document that provides for the persons authorized to issue letters of termination.
 17. It is evident that the process of discipline was commenced at the Branch. The first Internal memo was from the Cash Manager at Eldoret Branch. The Branch Manager signed the internal memos dated 4th October, 2017, which the Claimant responded to without questioning. The invitation to attend disciplinary hearing was also issued by the Branch Manager. Other than the disciplinary hearing every other action was taken at the Branch office.
 18. It is my finding that the Claimant did not lay any basis for the allegation that the Branch Manager had no authority to sign his letter of termination as to render the letter a nullity.
 19. On the second issue on discrimination, it was the Claimant's position that Evans Masika, a fellow employee of the Bank, was found to be culpable for issuing three cheques to one signatory for Fashions For You but was never treated in the same way as the Claimant whose employment was terminated while the said Evans Masika was only issued with a warning letter.
 20. According to the Respondent, Evans Masika was not given the same treatment as the Claimant because he sufficiently proved that the only reason he paid out the cheques was because of the intervention of the Claimant who informed the said Evans Masika that the Claimant had been in contact with the second signatory who had allowed the Claimant to pass the cheques and append his own signature on behalf of the second signatory for payment.
 21. The Respondent specifically submitted that-
 - i. The differences in the outcome of disciplinary processes involving employees facing similar allegations is not in and of itself an indication that there was discrimination. In any event the Respondent has four non-arbitrary, reasonable, and objective justifications to explain the divergence in the outcome for the various employees implicated.
 - ii. The first justification was that in the Eldoret Main Branch where the Claimant was based, he was found to have passed a total of 12 cheques that were paid out by his colleagues. None of the other 5 tellers in the same branch passed cheques to be paid out by their colleagues. The impugned cheques were passed solely by the Claimant as demonstrated in the table below:



S/n	Date Passed	Cheque No.	Passing Clerk/ clerk Who Signs	Teller/ paying Clerk	Value	Page (Respondent's Supplementary List Of documents dated 20 th July 2022)
11.01.2016	000451	Collins Ombodo	Collins Ombodo	110,000	28	
24.05.2016	000493	Collins Ombodo	Edwin Odhiambo	60,000	33/36	
05.07.2016	000496	Collins Ombodo	Collins Ombodo	150,000	35	
11.07.2016	000497	Collins Ombodo	Evans Masika	300,000	37	
14.07.2016	000498	Collins Ombodo	Evans Masika	50,000	38	
21.07.2016	000499	Collins Ombodo	Evans Masika	100,000	41	
11.08.2016	000501	Collins Ombodo	Evans Masika	150,000	42/ 43	
23.08.2016	000502	Collins Ombodo	Hellen Chepng'eno	200,000	44	
06.09.2016	000504	Collins Ombodo	Evans Masika	70,000	48	
03.08.2016	000506	Collins Ombodo	Evans Masika	240,000	52	
03.10.2016	000507	Collins Ombodo	Hellen Chepng'eno	240,000	54	
07.11.2016	000510	Collins Ombodo	Fridah Chepkemoi	110,000	58	



TOTAL	1,780,000
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- iii. The second reason why the Claimant was dismissed from employment while his colleagues were not is that he was found to have passed and paid a post - dated cheque no. 000451 while being fully aware that the said action was contrary to the Respondent's Cashier's Guide (See page 21 of the Respondent's List of Documents dated 10th June 2022 and page 28 of the Respondent's Supplementary list of documents dated 20th July 2022). This was a Classic case of sheer negligence or incompetence in the performance of his duties. None of the other employees were found to have passed and paid post- dated cheques.
 - iv. The third reason was that the Claimant was the only employee who was found to be operating outside the scope of his job description, responsibility, and authority by passing, and facilitating the encashment of cheques. The said actions were not included in his job description as a Credit Administrator (see the Claimant's job description in page 11-14 of the Respondent's List of documents dated 10th June 2022).
 - v. All the employees who paid out cheques, paid out cheques that were passed by the Claimant who had no business passing cheques. However, the paying out of the cheques so passed, was within their job descriptions of the other tellers. (See a teller's job description in the Respondent's Cashier's Guide page 15-20 the Respondent's List of documents dated 10th June 2022).
 - vi. The fourth reason the Claimant was dismissed while his colleagues were not is that, he was unable to demonstrate by way of documentary evidence that he had consulted the second signatory to the account. On the other hand, employees in the Eldoret East Branch provided documentary evidence by remarking on the face or back of the cheque the date and time when they called the co - signatory. Some of the employees in the said branch also gave cogent reasons for passing the said cheques:
 - a. Getrude Imbati, an employee at the Eldoret East branch passed cheque no. 000450 worth Ksh. 318,000 however, she called the co- signatory and remarked at the back of the said cheque the details of the call. (See a copy of the said cheque on page 26 & 27 of the Respondent's Supplementary List of documents dated 20th July 2022 and her testimony during investigations on page 22-25 of the Respondent's Further list of documents dated 18th January 2023);
 - b. Domitila Maiyo, an employee at the Eldoret East Branch passed cheque no. 000476 worth Kshs. 300,000 however, she demonstrated by way of documentary evidence that she called the co - signatory and remarked at the back of the said cheque the details of the call (See her testimony during investigations on page 26-30 of the Respondent's Further list of documents dated 18th January 2023).
 - c. Pius Echesa, an employee at the Eldoret East branch passed and paid out Cheque no. 000481 of Kshs. 195,000 only because it was credit card payment which was due, and the funds were transferred to a card thus no physical funds involved. (See page 14 of the Respondent's further list of documents dated 18th January 2023)
22. In his Statement of Claim at paragraph 13, the Claimant adversely mentions one of his former colleagues Evans Masika who was found to have passed/signed 3 cheques and paid them out but was



only served with a warning letter. The Claimant's offences can also be distinguished from that of Evans Masika for the following reasons:

- a. The value of the cheques passed by the Claimant far outweigh the value of the cheques passed by the Evans Masika. The Claimant exposed the bank to more liability compared to Evans Masika. The value of the cheques passed by Evans Masika was Kshs. 520,000 whereas the value of the cheques passed by the Claimant was Kshs.
 - b. Evans Masika also attributed his inability to follow the laid down procedures in passing cheques to the Claimant's persistent intervention and assurance that he had been in contact with the other signatory who had assured him that it was okay to pass the cheques. It was his testimony to the bank's forensic investigator that this conduct by the Claimant always gave him comfort to make the payments thus ultimately causing him to pass the cheques;
 - c. The other distinction that can be drawn between the conduct of the Claimant and that of Evans is that Evans did not pass cheques that were paid out by fellow employees. He did not facilitate the encashment of cheques unprocedurally by misleading other tellers to violate bank procedures by passing cheques on their behalf;
 - d. Unlike the Claimant, Evans Masika, by passing out the cheques, was operating within his job description, mandate, responsibility, and authority as a teller. At the time of facilitating the encashment of cheques, the Claimant was not a teller but a credit administrator and had no business passing cheques;
 - e. Unlike the Claimant, Evans Masika was not found culpable of other gross misconduct offences such as the passing of post-dated cheques.
23. Discrimination is defined in Black's Law Dictionary, 10th Edition as "failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured."
24. In *Peter K. Waweru v Republic* [2006] eKLR discrimination was defined as follows:
- "Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions by race, tribe, place of origin or residence or other local conviction, political opinions, colour, creed, or sex, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.
- Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured."
25. Not all cases of distinction amount to discrimination. The Court of Appeal in *Mohammed Abduba Dida v Debate Media Limited & another* [2018] eKLR quoted the case of *Kedar Nath v State of W.B.* (1953) SCR 835 (843) where the Supreme Court of India stated that:
- "Mere differentia or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislation has in view."



26. In the instant case the Respondent has demonstrated that the level of culpability between the Claimant and Pius Echesa, Edwin Otieno Odhiambo, Evans Masika Nalika, Fridah Chepkemboi Ketter, Gertrude Imbati and Domtila Maiyo were not comparable. It was demonstrated that the Claimant was much more culpable than the others.
27. I am satisfied that based on the explanation given by the Respondent, the termination of the Claimant's employment was not discriminatory.

Is the Claimant entitled to any of the remedies sought?

28. As I have already found above, the Claimant did not demonstrate that the Branch Manager who executed his letter of appointment did not have authority to do so. He is thus not entitled to the prayer on reinstatement back to work on the basis that the letter of termination was a nullity.
29. Even if the letter was a nullity, the Claimant would still not be entitled to the order of reinstatement for several reasons. The first is that he did not deny that what he did was against the Respondents regulations and the specific authorization in the account which required that both account holders sign.
30. Further, the right to reinstatement is only available where the termination is found to be unfair on grounds stated in section 41 and 43 of the *Employment Act*, which was not the case herein.
31. Again, the power of the court can only be exercised within 3 years of the date of termination. In this case the 3 years lapsed in April, 2022, the termination of his employment having been effected by letter dated 15th April, 2019. The suit was filed in January, 2022 exactly 3 months before the window for reinstatement lapsed.
32. For the foregoing reasons, I find no merit in the Claim herein with the result that the same is dismissed. Each party shall bear its costs.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 6TH DAY OF MARCH 2025

MAUREEN ONYANGO

JUDGE

