



**Kingdom Bank Limited v Kirui (Appeal E003 of 2023)
[2025] KEELRC 1201 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1201 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
APPEAL E003 OF 2023**

J RIKA, J

APRIL 30, 2025

BETWEEN

KINGDOM BANK LIMITED APPELLANT

AND

COLLINS KOPTOO KIRUI RESPONDENT

(An Appeal from the Judgment and Decree of the Hon. Senior Resident Magistrate Kericho, C. Obulutsa, delivered on 7th February 2023, in Kericho CMCE&LRC Cause E007 OF 2020, between the parties herein)

JUDGMENT

1. The Respondent was employed by the Appellant Bank, as a Trade Support Officer, on 24th August 2018.
2. His contract was terminated by the Appellant, on 2nd October 2020 after a disciplinary process.
3. He presented the Claim at the Trial Court for unfair termination. He prayed for compensation equivalent of 12 months' salary at Kshs. 756,000; reinstatement; and in alternative to reinstatement, anticipatory salaries to the date of retirement, at Kshs. 21,924.000.
4. The Trial Court, in its Judgment delivered on 7th February 2023, agreed with the Respondent that termination was unfair, and awarded him equivalent of 12 months' salary in compensation, at Kshs. 756,000, with costs.
5. The Appellant filed this Appeal, setting out 9 Grounds of Appeal. These are summarized as follows: -
 - I. The Trial Court erred in finding that the Respondent was not granted a fair hearing by the Appellant, while observing that he was accorded a right of appeal which he chose not to exercise.



- II. The Trial Court erred by failing to consider that the Respondent was dismissed on valid ground, having neglected to perform his work properly.
 - III. The Trial Court erred by taking into account mitigating circumstances, leading to the finding that termination was unfair.
 - IV. The Trial Court erred by failing to dismiss the Claim based on the evidence against the Respondent.
 - V. The Trial Court erred by ignoring Section 44 [4] [c] of the [Employment Act](#).
 - VI. The Trial Court erred by not addressing itself to the Counterclaim.
 - VII. The Trial Court erred by not considering that the Respondent had outstanding loans, granted to him by the Appellant.
6. The Appellant proposes that the Judgment of the Trial Court is set aside, with costs to the Appellant.
 7. Parties agreed that the Appeal is considered and determined on the strength of the Record and Submissions. They confirmed filing and exchange of Submissions at the last appearance before the Court on 6th March 2025.

The Court Finds: -

8. The Trial Court found that the allegations against the Respondent were investigated by the security department; he was involved in the investigations; he was issued a letter to show cause; he responded; he was heard; and summarily dismissed. He received the letter of summary dismissal dated 2nd October 2020. He was informed that he had a right of appeal of 10 days, from the date of dismissal.
9. The Trial Court concluded at page 31 of 36 of the Judgment, that procedurally, the Appellant made effort, to comply with the provisions of the [Employment Act](#).
10. Termination was found to have been procedurally fair.
11. The Trial Court found that substantively, termination was not fair. Valid reason was not established. The Trial Court noted that the Appellant, did not exhibit the minutes of the disciplinary hearing, and it was therefore impossible, to tell what evidence was presented, to establish valid reason[s].
12. The Trial Court reasoned that a record of the disciplinary hearing would have shown what charges were tabled against the Respondent; which witnesses were called; what evidence was adduced; what the Respondent stated in his response; the decision arrived at, and the reasons for that decision.
13. The Court does not see any fault with the Judgment of the Trial Court, on substantiation. The Trial Court cited the case of *Naima Khamis v. Oxford University Press E.A. Limited* [2017] e-KLR, among other decisions, which held that reasons justifying termination, are matters that an Employer can genuinely support by evidence, at the time of termination.
14. Substantiation, especially in a case where the Employer alleges that an Employee participated in banking fraud, requires that evidence of wrongdoing is availed at the disciplinary hearing.
15. The Trial Court listed the 7 documents filed by the Appellant before the Court, none of which related to substantiation of the employment offences alleged against the Respondent. These included the letter of employment; suspension letter; invitation to attend investigation by the security department; letter to show cause; response to letter to show cause; invitation to attend disciplinary hearing; letter of termination; demand letter; and a pay slip.



16. These are not documents that could assist in establishing valid reason, and in the absence of minutes of the disciplinary hearing, showing other evidence that was availed to establish valid reasons, the Trial Court cannot be faulted, in finding that the Appellant, did not substantiate the allegations against the Respondent.
17. The 7 documents related mainly to procedural requirements, which the Court found to have been satisfied by the Appellant.
18. The grant of a right of appeal, would only go into establishing that the Appellant granted the Respondent full procedural rights; it would not show that valid reasons were demonstrated by the Respondent, to justify termination.
19. Grounds [i] and [ii] of the Appeal, at paragraph 5 of the Judgment are rejected. Ground [iii] is likewise rejected. It was for the Appellant, through evidence, to establish wilful neglect and improper performance of duty, on the part of the Respondent.
20. The Court does not understand from the record of the Trial Court's proceedings, where the Trial Court is alleged to have disregarded substantiation by the Appellant, and instead upheld mitigating circumstances, presented by the Respondent.
21. Ground [iv] is a general statement about the Trial Court having failed to dismiss the Claim, based on overwhelming evidence against the Respondent. Where is the overwhelming evidence, in the 7 documents presented by the Appellant at the Trial? This ground is declined.
22. Ground [v] is that the Trial Court disregarded Section 44[4][c] of the *Employment Act*. This is not a fair challenge. As concluded elsewhere in this Judgment, it was for the Appellant to establish that the Respondent committed an employment offence, under Section 44 [4] [c] of the *Employment Act*. The Appellant did not do so, and it was not for the Trial Court to agree on its bare pleading and submission, that the Respondent performed his work negligently, carelessly or improperly, resulting in gross misconduct.
23. The last 2 Grounds [vi] and [vii] above, relate the Counterclaim. The Appellant states that the Trial Court did not address the Counterclaim, and erred by awarding costs to the Respondent.
24. The Trial Court addressed these Grounds, at page 35 of 36, of the Judgment. It was found that the Appellant repossessed and sold the Respondent's car, subject matter of the Counterclaim. It did not account for the proceeds of sale. It did not exhibit statement of accounts before the Trial Court, to show what was recovered upon sale, and what was outstanding. What was the error in awarding costs to a successful litigant? The 2 Grounds have no merit and are declined.

it is ordered: -

- a. The Appeal lacks merit and is declined.
- b. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, THIS 30TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

