



**Maina v NCBA Bank Kenya PLC (Cause E193 of 2023)
[2025] KEELRC 1055 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1055 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E193 OF 2023**

**L NDOLO, J
APRIL 3, 2025**

BETWEEN

STEPHEN WAINAINA MAINA CLAIMANT

AND

NCBA BANK KENYA PLC RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim as stated in his Statement of Claim dated 8th March 2023 is for unlawful and unfair termination of employment. The Respondent filed a Statement of Response dated 27th September 2023.
2. The matter went to full trial, where the Claimant testified on his own behalf and the Respondent called its Senior Legal Counsel, Christine Wahome. Thereafter, the parties filed written submissions.

The Claimant's Case

3. By a letter dated 11th June 2014, the Claimant was employed by the then NIC Bank Kenya Limited, in the position of Branch Operations Assistant, effective 16th June 2014, subject to a 6 months' probation period. NIC Bank later merged with CBA Bank to form the named Respondent, NCBA Bank Kenya PLC.
4. The Claimant was first deployed at Galleria Branch. By letter dated 24th July 2014, he was transferred to Karen Branch. He was confirmed on 20th January 2015. In the year 2021, he was appointed to the position of Relationship Manager.



5. On 9th November 2022, the Claimant was issued with a show cause letter, setting out four (4) allegations. He terms the allegations as ambiguous and unclear, which denied him the benefit of efficient understanding and response.
6. The Claimant responded to the show cause letter on the same day, upon which he was summoned to a disciplinary hearing on 21st November 2022. The Claimant complains that he was deprived of a fair hearing, as he was not availed an opportunity for legal representation. According to the Claimant, the minutes filed by the Respondent are not a true reflection of the disciplinary proceedings.
7. The Claimant avers that the procedure invoked by the Respondent was unlawful, malicious and irregular for the following reasons:
 - a. The Claimant was not given an investigation report and evidence against him, even when the disciplinary proceedings were based purely on an investigation;
 - b. The Claimant was not informed who conducted the investigation and when it was done;
 - c. The Claimant was not afforded an opportunity to challenge the content of the investigation report and any evidence or witnesses who participated in its preparation;
 - d. The disciplinary procedure adopted by the Respondent goes against the procedure laid down in the Group Human Resource Policy;
 - e. The ambiguous charges against the Claimant in the show cause letter and his subsequent written explanation were not the reason for termination.
8. The Claimant claims that the charges for which he was found culpable were new and not contained in the show cause letter. At the time of separation, the Claimant earned a gross monthly salary of Kshs. 162,160.33.
9. The Claimant seeks the following remedies:
 - a. Kshs. 486,481 being 3 months' salary in lieu of notice;
 - b. Kshs. 1,945,927.56 being 12 months' salary in compensation;
 - c. Kshs. 29,188,913.40 as loss of income until retirement age;
 - d. General damages for constitutional violations, oppressive treatment, psychological anguish and reputational injury;
 - e. General damages for discrimination in respect of termination of employment contrary to Section 5(3)(b) of the *Employment Act*;
 - f. Certificate of service.

The Respondent's Case

10. In its Statement of Response dated 27th September 2023, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim.
11. The Respondent however denies the allegations of unfair termination laid by the Claimant and states that a show cause letter was issued to the Claimant on 9th November 2022, to which he responded on the same day.



12. The Respondent avers that the Claimant was subjected to a fair disciplinary hearing. According to the Respondent, the Claimant did not make a request to be accompanied by an Advocate.
13. The Respondent asserts that the minutes of the disciplinary proceedings, filed in court constitute a fair and accurate reflection of the hearing conducted on 21st November 2022.
14. The Respondent states that the Claimant participated in the investigations but did not request for a copy of the investigation report.
15. The Respondent asserts that the termination of the Claimant's employment was founded on the same charges levelled against the Claimant.
16. The Respondent concludes that the Claimant's certificate of service has been prepared and is ready for collection.

Findings and Determination

17. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

18. The Claimant's employment was terminated by letter dated 16th December 2022, stating as follows:

“Dear Stephen,

Termination

Reference is made to a disciplinary hearing invitation letter sent to you on 14th November 2022 following an investigation into your involvement in outside business interests, causing a conflict of interest in your work. Subsequently, you attended the disciplinary hearing on 21st November 2022 to give your explanations on the matters raised.

Our investigations and the disciplinary hearing revealed that you were culpable of the following;

1. Borrowing money from a Bank customer - M/S Mbature Traders Limited
2. Colluding with a member of staff – Chilumo Ringa, an Assistant Relationship Manager to facilitate a Stock Loan application for Zhamo Agencies Ltd where the final beneficiary of the loan was M/S Mbature Traders LTD, a company that Chilumo was a director and shareholder. In your capacity as an Assistant Relationship Manager, you supported and endorsed the stock loan application.

Following a review of your explanations into the concerns raised, Management is of the opinion that your actions as outlined and discussed with you constituted gross misconduct. Your actions were in violation of the Group Human Resource policy section 5.13.1 which states that receiving money from a customer is a serious breach of the Bank's rules and may result in summary dismissal. You were also in breach of the Group Human Resources policy section 4.4 which states that all employees shall carry out their duties and responsibilities



while maintaining high standards of honesty and integrity and promoting and maintaining a corporate culture that adheres to the Bank's mission, vision and core values.

In accordance with clause 12 of your employment contract, and the provisions of the Employment Act 2007 Section 41 and 43, this letter serves to notify you that your employment has been terminated with effect from 16th December 2022. You will be paid a salary up to 16th December 2022 and one month's salary in lieu of notice. As per our leave records, you have 7 (seven) leave days which will be paid as part of your final dues.

You will be required to get in touch with your line manager and hand-over all Bank property in your possession and get the necessary clearance from all the relevant departments as per the attached clearance form. Kindly also take note that your credit card shall immediately be blocked and you shall be requested to fully clear any outstanding balances which if not done by 15th January 2023, shall be cleared using your terminal dues. In the event you may wish to retain the credit card, a fresh appraisal by our Credit Risk team will be required.

We also note that you have an outstanding mortgage balance of approximately Kshs. 6,734,516 in our Staff Loan Ledger. Please let us have your written proposal on how you intend to settle these debts before your exit. Your loans will be converted to applicable commercial rates on 15th January 2023 without further notice as below;

Commercial Rate = KBRR + Margin.

Payment of your Final dues will be subject to successful completion of the Bank's clearance procedure. Make appropriate arrangements to open your desired commercial account(s) before 15th January 2023 to avoid unnecessary inconveniences upon closure of your staff account(s).

All other staff benefits will be withdrawn with immediate effect. We take the opportunity to remind you of clause 14(14.9) of your employment contract which highlights the importance of confidentiality and you are expected to uphold the same after your exit from the Bank.

This letter comes in duplicate. Kindly acknowledge its receipt by signing the attached copy and returning the same to us.

Yours faithfully,

(signed)

Monica Kihia

Group Director, Human Resources & Culture"

19. This letter accuses the Claimant of borrowing money from a bank customer, M/S Mbature Traders Limited, and colluding with a member of staff, Chilumo Ringa, to facilitate a stock loan application for yet another customer, Zhamo Agencies Ltd, where the final beneficiary of the loan was M/S Mbature Traders Ltd, a company in which Chilumo was a director and shareholder.
20. The Claimant told the disciplinary panel that he borrowed money from his colleague, Chilumo Ringa, to renovate his house.
21. In cross examination by Counsel for the Respondent, the Claimant conceded that under the terms of his employment with the Bank, he was prohibited from lending to or borrowing from fellow employees or customers.



22. But the Claimant faults this restriction, which he terms as unconstitutional. In its final submissions dated 12th March 2025, the Respondent referred to the decision in *Agnes Murugi Mwangi v Barclays Bank of Kenya Limited* [2013] eKLR where this Court held that the restriction on borrowing imposed on bank employees was reasonable and served as a shield to the employer’s business reputation as well as protection of employees from financial ruin.
23. In its decision in *Abraham Nyambane Asiago v Barclays Bank of Kenya Limited* [2015] eKLR , which was affirmed by the Court of Appeal in *Abraham Nyambane Asiago v Barclays Bank of Kenya Limited* [2019] KECA 362 (KLR) , 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.”
24. In the more recent case of *Mwangi v Cooperative Bank of Kenya Limited* [2025] KEELRC 456 (KLR) this Court stated thus:
- “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.”
25. I have no reason to depart from this well-grounded principle and in the circumstances of this case, I have no hesitation in reaching a finding that the Respondent has established a valid reason for terminating the Claimant’s employment, as required under Section 43 of the *Employment Act*. There is nothing to support the Claimant’s proposition that these restrictions are unconstitutional.
26. Regarding procedural fairness, Section 41 of the Act requires the following:
- 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.



27. There is evidence on record that the Claimant was involved at the investigation stage, in addition to being issued with a show cause letter, to which he duly responded. He was also invited to a disciplinary hearing, which he attended.
28. The Claimant makes a number of complaints regarding the disciplinary process. First, he challenges the composition of the disciplinary panel on the ground that the Respondent had its Legal Counsel while he was denied an opportunity to bring his Advocate. It is on record that the Legal Counsel who attended the disciplinary hearing was in fact an employee of the Respondent, not external Counsel. At any rate, the Court did not see any record of a request by the Claimant, which was rejected by the Respondent.
29. Second, the Claimant complains that he was not issued with a copy of the investigation report; yet, there was no evidence of him making a request for it nor was there evidence that he was unable to prepare his defence because of the absence of the investigation report.
30. Third, the Claimant states that he did not have an opportunity to cross examine witnesses; the Respondent's response in this regard is that there were no witnesses to be availed because the evidence relied on is what the Claimant himself had told the investigating team.
31. Finally, the Claimant challenges the authenticity of the minutes of the disciplinary proceedings; yet, he signed them without any reservations.
32. Ultimately, I find and hold that the procedural fairness requirements set by Section 41 were fully satisfied.
33. Consequently, the final verdict is that the termination of the Claimant's employment was substantively and procedurally fair.
34. His entire claim therefore fails and is dismissed with costs to the Respondent.
35. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF APRIL 2025

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JUDGE

Appearance:

Mr. Wanyingi for the Claimant

Mr. Kongere for the Respondent

