



**Ringa v NCBA Bank Kenya PLC (Cause E206 of 2023)  
[2025] KEELRC 1053 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1053 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E206 OF 2023**

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

**BETWEEN**

**CHILUMO KAINGU RINGA ..... CLAIMANT**

**AND**

**NCBA BANK KENYA PLC ..... RESPONDENT**

**JUDGMENT**

1. Chilumo Kaingu Ringa, the Claimant in this case, was an employee of NCBA Bank Kenya PLC, having been first employed by the then NIC Bank Kenya Limited on 7<sup>th</sup> November 2011, and later transitioning to the Respondent, following a merger between NIC Bank Kenya Limited and CBA Bank Kenya Limited.
2. The Claimant continued working until the termination of his employment was terminated on 16<sup>th</sup> December 2022. Following the termination, the Claimant brought the present claim against the Respondent Bank, alleging unlawful and unfair termination of employment.
3. The Claimant documents his claim in a Statement of Claim dated 14<sup>th</sup> March 2023 and the Respondent defends itself by way of a Statement of Response dated 6<sup>th</sup> October 2023.
4. At the trial, the Claimant testified on his own behalf and the Respondent called its Senior Legal Counsel, Christine Wahome. The parties also filed written submissions.

**The Claimant's Case**

5. The Claimant was employed by the then NIC Bank Kenya Limited on 7<sup>th</sup> November 2011, in the position of Branch Operations Assistant, subject to a six (6) months' probation period. He was deployed at the Karen Branch.



6. By letter dated 13<sup>th</sup> July 2012, the Claimant was confirmed in his appointment, effective 1<sup>st</sup> July 2012. From 1<sup>st</sup> December 2012, the Claimant's terms of service were converted from a one-year fixed term contract, to permanent and pensionable.
7. Effective 1<sup>st</sup> April 2016, the Claimant was appointed to the position of Customer Service Officer within the Technology and Operations Division at NIC House Branch.
8. Up to this point, the Claimant was working under NIC Bank Kenya Limited, which later merged with CBA Bank to form NCBA Bank Kenya Limited, the named Respondent. Vide a letter dated 30<sup>th</sup> September 2019, the Claimant's employment with NIC Bank was terminated and the Claimant was advised to enter into a new contract with NCBA Bank, on substantially similar terms of employment.
9. Under the new contract of employment, the Respondent was to assume all accrued liabilities and obligations, in favour of the Claimant. Effective 1<sup>st</sup> October 2019, the Claimant was appointed as Senior Customer Experience Officer, within KMA Centre Branch. By letter dated 15<sup>th</sup> January 2020, he was appointed as Acting Branch Manager.
10. On 9<sup>th</sup> November 2022, the Claimant was issued with a show cause letter, containing five (5) allegations, which he terms as ambiguous and unclear. The Claimant claims to have been denied the benefit of efficient understanding and specific response to the allegations.
11. There is no record of a response to the show cause letter, although the Claimant wrote two statements in the course of investigations. By letter dated 14<sup>th</sup> November 2022, the Claimant was summoned to a disciplinary hearing, scheduled for 21<sup>st</sup> November 2022. The Claimant complains that he was deprived of a fair hearing, as he was not availed an opportunity for legal representation.
12. 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.
13. The Claimant claims that the charges for which he was found culpable were new and not contained in the show cause letter.
14. The Claimant goes further to challenge the constitutionality of the Respondent's Group Human Resource Policy, which he fingers for seeking to limit the right to own property under Article 40 of *the Constitution* of Kenya.
15. The Claimant further avers that to the extent that the Policy restricts and prohibits economic freedom to make economic empowerment choices, it is unconstitutional and goes against Article 41 of *the Constitution*.



16. 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**

17. In its Statement of Response dated 6<sup>th</sup> October 2023, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim.
18. The Respondent however denies the allegations of unfair termination laid by the Claimant. The Respondent states that the Claimant was fully involved in the investigation process, in addition to being issued with a show cause letter dated 9<sup>th</sup> November 2022. Thereafter, the Claimant was invited to attend a disciplinary hearing on 21<sup>st</sup> November 2022.
19. The Respondent avers that the Claimant was subjected to a fair disciplinary hearing. According to the Respondent, the Claimant was involved in the investigation process and even recorded two statements. He did not seek any further information.
20. The Respondent challenges the Claimant's claim of constitutional violations, which it terms as vague and general allegations, with no indication in what way the Respondent's Human Resource Policy violates Articles 40 and 41 of *the Constitution*.
21. The Respondent states that there is nothing in its Human Resource Policy which curtails an employee's economic empowerment, as long as the employee does not engage in competing business or one that would give rise to a conflict of interest.
22. The Respondent states that the Claimant participated in the investigations but did not request for a copy of the investigation report.
23. The Respondent asserts that the termination of the Claimant's employment was founded on the same charges levelled against him.
24. The Respondent concludes that the Claimant's certificate of service has been prepared and is ready for collection.

### **Findings and Determination**

25. 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

26. In determining a claim of unlawful or unfair termination of employment, such as the dispute now before me, the Court is required to determine two questions; first, whether the employer has established a valid reason for the termination, and second, whether in executing the termination, the Respondent observed due procedure.
27. The standard for establishing a valid reason for termination of employment is set by Section 43 of the [Employment Act](#) 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.
28. The Claimant's employment was terminated by letter dated 16<sup>th</sup> December 2022, stating as follows:

“Dear Chilumo,

### Termination

Reference is made to a disciplinary hearing invitation letter sent to you on 14<sup>th</sup> 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 21<sup>st</sup> 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. Being an Assistant Relationship Manager based at Prestige Branch you initiated a stock loan application for Zhamo Agencies for a cash covered facility of Kes. 7 Million where M/S Mbature Traders Ltd, a company you were a director and shareholder financed the 50% cash cover causing a conflict of interest in the process. It was observed that after the disbursement of the Kes. 7 Million facility, the beneficiary was M/S Mbature Traders Ltd through their KCB Bank account.
2. You used your position as an Assistant Relationship Manager, Prestige Branch to trade with customers of the bank particularly M/S Mbature Traders Ltd and Harmony Properties Ltd.
3. You used your company M/S Mbature Traders Ltd to engage in borrowing and lending of funds with staff of NCBA.
4. Undeclared business interests where you, being a Director of M/S Mbature Traders Ltd conducted business without the knowledge of your line Manager and Human Resources.

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 5.2.15 which prohibits staff from engaging in any other profession, trade or business either directly or indirectly as principal, agent or nominee whether for profit or otherwise that creates conflict of interest of the employee's duties with the Bank.

You were also in breach of the Group Human Resources policy section 5.2.11 which states that staff are not allowed to borrow from moneylenders or customers, or lend to any member of staff of the Bank or engage in betting or gambling and speculative transactions.

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 16<sup>th</sup> December 2022. You will be paid a salary up to 16<sup>th</sup> December 2022 and one month's salary in lieu of notice. As per our leave records, you have 12 (twelve) 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 15<sup>th</sup> 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. 4,927,139.59, car loan of kes. 201,144.74 and personal unsecured loan of kes. 933,042.15 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 15<sup>th</sup> 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 15<sup>th</sup> 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”

29. This letter accuses the Claimant of initiating a customer loan, whose partial cash cover was provided by his company; using the customer as a proxy to acquire the loan on behalf of his company; engaging with bank staff and customers in a manner likely to impair his objectivity; engaging in undeclared business; and engaging in borrowing from and lending to colleagues.
30. From the evidence on record, the Claimant initiated a Kshs. 7 million loan application in favour of the Respondent’s customer by the name Zhamo Agencies. The Claimant’s company, Mbature Traders Limited provided the required cash cover of Kshs. 3.5 million and Zhamo Agencies channelled the loan funds to Mbature Traders Limited.
31. In the course of investigations and at the disciplinary hearing, the Claimant admitted having lent money to his colleague, Stephen Wainaina, on what he referred to as ‘friendship basis’ He added that he himself had borrowed money from yet another colleague, by the name Janet, which he was to repay with a return.
32. 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.
33. But the Claimant faults this restriction, which he terms as unconstitutional. In its final submissions dated 12<sup>th</sup> 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.
34. 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.”
35. 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.”
36. 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.

37. 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.

38. There is evidence on record that the Claimant was duly involved at the investigation stage where he recorded two statements. He was further issued with a show cause letter and was invited to a disciplinary hearing, which he attended.

39. 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.

40. 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.

41. 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.

42. Finally, the Claimant challenges the authenticity of the minutes of the disciplinary proceedings; yet, he signed them without any reservations.

43. Ultimately, I find and hold that the procedural fairness requirements set by Section 41 were fully satisfied.

44. Consequently, the final verdict is that the termination of the Claimant's employment was substantively and procedurally fair.

45. His entire claim therefore fails and is dismissed with costs to the Respondent.

46. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF APRIL 2025**

**LINNET NDOLO**



## **JUDGE**

Appearance:

Mr. Wanyingi for the Claimant

Mr. Kongere for the Respondent

