



Wambui v Standard Chartered Bank of Kenya Limited (Employment and Labour Relations Cause 383 of 2019) [2025] KEELRC 1495 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1495 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 383 OF 2019**

**AN MWAURE, J
MAY 23, 2025**

BETWEEN

ANASTACIA NYAMBURA WAMBUI CLAIMANT

AND

STANDARD CHARTERED BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant commenced this cause vide a Statement of Claim dated 12th June 2019.

Claimant's case

2. The Claimant avers that she was employed by the Respondent as an enquiries clerk in the year 2005, and she rose through the ranks, becoming a Branch Manager based at the Respondent's Thika Road Mall Branch.
3. The Claimant avers that she served the Respondent's Bank with diligence, commitment, and honesty throughout her employment.
4. The Claimant avers that in the course of her employment, while she was the Branch Manager at the Respondent's Thika Road Branch, she got acquainted with Mr. James Thuita, who was a frequent high-level client and served him like any other client. Furthermore, she was not the only employee in the branch serving Mr. James Thuita.
5. The Claimant avers that she had no personal dealings with Mr. Thuita and did not know him in any other capacity outside her employment.
6. The Claimant avers that the events leading to her dismissal were that on 11th September 2018, the Respondent terminated her on the grounds of allegations of giving Mr. James Thuita her personal



- bag to carry money he had withdrawn on 2nd and 11th May 2018 respectively accusing her of keeping monies that Mr. Thuita had withdrawn from the bank.
7. The Claimant avers that she learnt of the involvement of Mr. James Thuita in the National Youth Service scandal and immediately notified the Respondent's senior management and Financial Prime Risk Team, who confirmed that they were aware and would advise on the way forward.
 8. The Claimant avers that her termination was unlawfully done without any notice, reasonable cause and/or justification and that she was summarily dismissed from employment on account of alleged gross misconduct due to conflict of interest which allegations were not only invalid but also without any basis and/or proof as required under Section 44 of the [Employment Act](#).
 9. The Claimant avers that the dismissal was maliciously affecting her welfare and rights as the Respondent discriminated against her by victimising her for giving a customer exemplary service.
 10. The Claimant avers that the Respondent dismissed her without adhering to sections 41 and 43 of the [Employment Act](#).
 11. The Claimant prays for:
 - a. A declaration that the Claimant suffered unfair and unlawful termination by the Respondent
 - b. An order for reinstatement to her previous position without any loss of benefits
 - c. Damages for the harassment and discrimination
 - d. In the alternative payment of all her lawful dues as set out above
 - e. Exemplary damages for loss of opportunity to work
 - f. Costs and interest.

Respondent's memorandum of reply

12. In opposition to the Statement of Claim, the Respondent filed a memorandum of reply dated 26th February 2020.
13. The Respondent avers that the Claimant was employed on 14th September 2005 as a Graduate clerk earning a monthly salary of Kshs.27,999/= with a house allowance of Kshs.2,321/=.
14. The Respondent admitted that she was a Branch Manager at its Thika Road Branch at the time of her termination.
15. The Respondent avers that the Claimant's termination was not malicious, discriminatory, unlawful, unfair or without basis, as it followed proper procedure in terminating her.
16. The Respondent avers that in August 2018, investigations were carried out into 6 transactions relating to a client named Mr. James Thuita and in the said investigations, it was revealed that the Claimant violated the Bank's Conflict of Interest policy by keeping money on behalf of Mr. Thuita and providing him with a bag in which he used to carry money.
17. Consequently, the Respondent avers that it suspended the Claimant on 13th August 2018, pending further investigations and invited her for a disciplinary hearing which was scheduled for 27th August 2018, and the invitation letter was sent on 22nd August 2018.
18. The Respondent avers that the issues raised during the disciplinary hearing are that, as per the CCTV footage for 22nd May 2018 at 1121 hours showed the Claimant arrived at the Thika Road branch



- carrying a red bag and met a client in her office who withdrew Kshs.2,000,000/= which was brought by Mr. Wanjiru, a teller. Mr. Thuita was seen leaving the Claimant's office carrying the same red bag.
19. Additionally, the Respondent further avers that there was another incident on 11th May 2018, as the CCTV footage showed that Mr. Thuita withdrew Kshs.4,500,000/= and left the Claimant's office without any cash, leading to the suspicion of personal dealings.
 20. The Respondent avers that the Claimant attended the disciplinary hearing on 30th August 2018, where she was given a chance to defend herself. Following the hearing, her employment was terminated on 11th September, 2018, due to gross misconduct.
 21. The Respondent avers that the reasons cited included irregular dealings with a client which she denied during the disciplinary hearing, despite evidence showing a client leaving her office with her personal handbag containing Kshs.2,000,000 in cash. Additionally, she failed to disclose a personal connection with the client, violating the Conflict of Interest Policy. Her actions exposed the bank to potential legal, financial, and reputational risks.
 22. The Respondent avers that on 19th September 2018, the Claimant appealed the termination, and was invited to an appeal meeting on 2nd October 2018. During the appeal hearing, she was accompanied by her colleague, Mr. Kevin Kyalo.
 23. The Respondent avers that the Claimant's appeal against termination was denied on 5th November 2018, with the panel citing CCTV footage as evidence that she was involved in cash handling misconduct. The footage showed her personal bag being used to transfer money, violating bank procedures and conflict of interest rules.
 24. The Respondent denied claims of discrimination and malice, stating that the termination was justified.
 25. The Claimant received one month's notice pay and compensation for unused leave but was denied a discretionary bonus and damages, as the Respondent upheld that due process was followed.
 26. The Respondent urged this Honourable Court to dismiss the Statement of Claim with costs.

Claimant's evidence in court

27. The Claimant (CW1) adopted her witness statement dated 12th June 2019 as her evidence in chief and reiterated the contents of the Statement of Claim. She also adopted her list of documents dated even date marked as exhibits 1 to 14 respectively.
28. CW1 testified that she was suspended on allegations of personal dealings with Mr. James Thuita, and she was furnished with an investigation report by the Respondent dated 9th August, 2018. She was also accused that on 11th May 2018 Mr. Thuita received Kshs.4,500,000/= and Mr. Wanjiru, a customer manager, took the withdrawal receipts to her. She avers that the customer did a withdrawal and also did a banking of Kshs.3,000,000/= as he went with Kshs.1,500,000/=.
29. CW1 avers that she was called for a disciplinary hearing on 30th August 2018, and Mr. Thuita was not called to testify on the issue of where he got the bag in question from. She avers that no witnesses were called for cross-examination, thus, she was terminated on 11th September 2018 on the grounds of having connections with the customer when she gave him a bag to carry Kshs.2,000,000/=.
30. CW1 avers that she was sent to the Directorate of Criminal Investigations Office, and investigations were done. The investigation revealed that she had no relationship with the Mr. Thuita, and she was not charged before any court of law. She avers that she was earning Kshs.320,000/= at termination and



so she is claiming notice pay of one month. She also avers that she is entitled to 20 days of her leave, compensation for unlawful termination and discrimination.

31. In cross-examination, CW1 avers that she had worked for the Respondent for 13 years and she was well conversant with the code of conduct. She avers that she was committed to the said Code of conduct. She avers that Mr. Thuita received more funds than he should have received. She avers that Mr. Thuita was a supplier to the National Youth Service (NYS), and the said money was part of the NYS funds being investigated by the government.
32. CW1 stated that the handbag she carried was different and clarified that she did not give Mr. Thuita her bag to carry money. She explained that clients are expected to use their own bags or envelopes for handling cash. According to her, Mr. Thuita had his own bag, which could have been pink or brown. She further noted that he had withdrawn Kshs.4,500,000, deposited Kshs.3,000,000, and carried Kshs.1,500,000.
33. CW1 avers that she was informed of her right to use any document during the disciplinary hearing and to have an employee accompany her, but she chose to proceed alone. She avers that the issues raised in the hearing were the same as those in the notification letter. Her termination was immediate, prompting her to appeal, during which she was accompanied by a colleague named Kyalo. She argued that the termination was unfair, as there were no witnesses to testify or cross-examine her.
34. In re-examination, CW1 avers that the images presented as per the bundle of documents were pictures modified. She avers that she was told that she might have breached the code of conduct.

Respondent's evidence in court

35. RW1, Morris Mandere, the Respondent's Human Resource Business Partner (HRBP), adopted his witness statement dated 28th February 2020, a bundle of documents dated even date, and a supplementary bundle of documents dated 23rd January 2024 marked as exhibits 1 to 73 as his evidence in chief.
36. In cross-examination, RW1 stated that the investigation report did not explicitly confirm how Kshs.1,500,000/= was carried. However, the report indicates that the Claimant had personal dealings with Mr. Thuita. RW1 noted that Mr. Thuita left the Claimant's office carrying a bag, and that the Claimant was not the only one serving him as there was the teller, Mr. Wanjiru, who was also involved in handling the money. RW1 further stated that on 11th May 2018, Mr. Thuita withdrew Kshs.1,500,000/=, left the money with the Claimant, but later walked out without any cash. According to the report, Mr. Thuita was the one who carried the money.
37. RW1 avers that the Claimant was paid her terminal dues, including leave days. He avers that he could not see the records, but there was proof.
38. In re-examination, RW1 avers that the investigation report stated that Mr. Thuita received Kshs.4,500,000/= and he carried Kshs.1,500,000/= according to the CCTV footage of 11th May, 2018.
39. Parties were directed to file their written submissions.

Claimant's written submissions

40. The Claimant submitted that she was employed by the Respondent and had an unblemished employment record with the Respondent, free of any prior disciplinary concerns. Despite this, her employment was terminated abruptly on 11th September 2018, without prior notice. The Claimant



argued that, given the lack of required notice, the termination qualifies as summary dismissal under Section 44(1) of the [Employment Act](#), which provides as follows:

“Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.”

41. The Claimant relied on section 45(1) and 45(2) of the [Employment Act](#) which provides that unfair termination occurs when an employer dismisses an employee without a valid reason. To be considered fair, the employer must prove that the termination is justified based on the employee’s conduct, capacity, compatibility, or operational requirements. Additionally, the termination must follow proper procedures to ensure fairness.
42. The Claimant submitted that her employment was terminated on 11th September 2018, citing alleged violation of clause 4.1 of the Respondent’s Conflict of Interest policy. However, the Claimant argues that clause 4.1 does not exist within the policy, making her termination substantively unfair since it was based on a non-existent provision.
43. The Claimant argues that her termination, which was based on alleged irregular dealings with a client on 2nd May 2018, was supposedly supported by CCTV footage. The Claimant also argued about the discrepancies in the footage, including the absence of images showing the client entering the banking hall, raising doubts about whether he carried a bag initially. The footage only captures the client leaving with a bag, with no confirmation that the Claimant handed it to him. Additionally, the Respondent did not reach out to the client for verification. The authenticity of the footage is also questioned due to incorrect timestamps, modification indications, and inconsistencies in the displayed times.
44. The Claimant submitted that the Respondent failed to comply with Section 106(B) of the [Evidence Act](#) by not submitting a certificate for electronic evidence and urges the Court to dismiss the footage.
45. The Claimant submitted that the termination letter also alleged personal dealings with the client, and argued that the Respondent has failed to provide evidence proving a personal connection between her and the client. Additionally, the Respondent’s witness admitted under oath that the client was not contacted to verify the charges, making the allegations unsubstantiated and unfair. The Claimant submitted that the Respondent did not meet the burden of proof required under Section 43(1) of the [Employment Act](#), which mandates employers to justify termination decisions. Since the Respondent failed to prove valid reasons for termination, the Claimant stated that her dismissal was substantively unfair under Sections 43(1), 44, and 45 of the [Employment Act](#).
46. The Claimant relied on Section 45(2)(c) of the [Employment Act](#), which provides that a termination is considered unfair if the employer fails to demonstrate that the dismissal followed a fair procedure, including proper justification and adherence to legal requirements.
47. The Claimant submitted that she was suspended on 9th August 2018, pending investigations and later received an investigation report on the same date. A disciplinary hearing was scheduled for 24th August 2018. The Claimant was accused of a conflict of interest, but the Respondent failed to call the client as a witness, denying the Claimant the opportunity to cross-examine him. The Claimant submitted that it was a violation of Article 47 of [the Constitution](#) 2010, and section 4 of the Fair Administrative Actions Act, which should guarantee fair administrative procedures which should be expeditious, efficient, lawful, reasonable, and procedurally fair. Also, the affected individuals receive written reasons for any administrative decisions.



48. The Claimant submitted that her appeal was lodged but not ever addressed by the Respondent, violating Clause 20.2.1 of the HR Manual and Section 4(3)(c) of the Employment Act, which guarantees the right to appeal. Consequently, the Claimant's dismissal is argued to be procedurally unfair.
49. The Claimant submitted that her termination was discriminatory under Section 5(2) and 5(3)(b) of the Employment Act, which prohibits employers from discriminating against employees. The termination letter dated 11th September 2018, cited a violation of clause 4.1 of the Respondent's Conflict of Interest policy. However, the Claimant contended that clause 4.1 does not exist, making its application unfair and discriminatory, as it was not applicable to other employees. The Claimant relied on the case of *Ol Pejeta Ranching Limited v David Wanjau Muhoro* [2017] KECA 329 (KLR), where the court awarded Kshs.7,500,000/= as damages for discrimination.
50. The Claimant submitted that she was earning a monthly salary of Kshs.320,000/= and sought one month's salary notice since she was not paid upon exit. The Claimant also submitted that she was not paid in lieu of her 20 untaken leave days. The Claimant submitted that she should be awarded the maximum 12 months' salary as compensation of Kshs.3,840,000/= given the abrupt and unconscionable manner of the dismissal.
51. The Claimant urged this Honourable Court to allow the Statement of Claim as prayed with costs.

Respondent's written submissions

52. The Respondent submitted that the Claimant violated its Conflict of Interest policy by handling cash in irregularly dealings with a client, which was against its policy. The Respondent submitted that this breach allegedly damaged the trust, and confidence necessary for the employment relationship, making continued employment untenable. As a result, disciplinary action was taken, leading to the Claimant's termination. The Respondent maintained that the dismissal was not malicious, discriminatory, unlawful, or unfair, asserting that it met the dual threshold of fair procedure and valid procedure, thereby making it lawful and justified
53. The Respondent submitted that the Claimant was terminated due to gross misconduct under Section 44(1) of the Employment Act, which provides that an employer can summarily dismiss an employee without notice if misconduct warrants immediate termination. Section 44(3) of the Employment Act further allows dismissal when an employee fundamentally breaches contractual obligations. The Respondent cited clause 16 of the Claimant's employment offer, which prohibited the Claimant from introducing business to external entities or having financial interests in transactions involving the Group without prior disclosure and approval from the Board. The Respondent maintained that the termination was lawful and justified under these provisions.
54. The Respondent cited clause 21 of the Claimant's employment contract which required compliance with the Group Code of Conduct. Clause 4.1 of the Conflict of Interest Policy mandates that all staff must identify, record, and manage potential, actual, or perceived conflicts of interest in line with procedures, regulatory requirements, and relevant policies. Employees are expected to act in accordance with this policy and other guidance materials when dealing with conflicts of interest.
55. The Respondent submitted that the Claimant had personal dealings with Mr. Thuita amounting to conflict of interest justifying the decision to terminate the Claimant's employment on the basis of gross misconduct. The dismissal was therefore fair as the Respondent can prove that the reason for the termination was valid, fair and related to the Claimant's conduct. The Respondent relied on the case of *Kenfreight (EA) Limited v Nguti* [2019] KESC 79 (KLR) where the Supreme Court stated that



termination of employment will be unfair if the court finds that in all circumstances of the case, it is based on invalid reason. In *Joseph Mwaniki Nganga v United Millers Limited* [2022] KEELRC 732 (KLR) the court quoted the case of *British Leyland UK Ltd v Swift* [1981] I.R.L.R. 91 where Lord Denning described the test for reasonableness as follows:

“The correct test is; was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair-but if a reasonable employer might have reasonably dismissed him, the dismissal was fair.”

56. The Respondent submitted that the burden of proving the termination was reasonable lay on the employer pursuant to Sections 43(1) and 47(5) of the *Employment Act*. The Respondent submitted that he had discharged the burden by giving a detailed explanation of the reason for terminating the Claimant on grounds of gross misconduct by acting in contravention of its Conflict of Interest Policy citing the case of *CMC Aviation Limited v Mohammed Noor* [2015] eKLR in support of that proposition.

57. In *Gas Kenya Limited v Odhiambo* [2022] KEELRC 3930 (KLR) Abuodha J quoted the case of *National Union of Water and Sewerage Employees v Meru Water & Sewerage Service ELRC Cause No. 44 of 2012* where gross misconduct was defined as:

“An act of misconduct serious enough to justify the employee’s immediate dismissal.”

58. The Respondent submitted that the Claimant had alleged discrimination and termination based on clause 4.1, which she claimed was a non-existent clause in the Conflict of Interest Policy. However, the Respondent affirmed the existence and applicability of the clause, asserting that the termination was fair, valid, and based on the Claimant’s conduct, meeting the substantive test.

59. The Respondent submitted that its bundle of documents dated 20th February 2020, together with the supplementary bundle dated 23rd January 2024 both contained photographs capturing events from 2nd May 2018 and 11th May 2019. The Respondent contended that these documents were admitted without objection from the Claimant during the defence hearing on 30th August 2024. Therefore, the Respondent submitted that the Claimant cannot now request the court to dismiss the photographs based on non-compliance with Section 106(B) of the *Evidence Act*.

60. The Respondent relied on the case of *Nonny Gathoni Njenga & Another v Catherine Masitsa and Another* [2014] eKLR, where the court handled the question of whether to admit electronic evidence filed without the accompanying certificate of electronic service and it held that the Plaintiff’s DVDs are inadmissible as evidence due to the absence of a required certificate under the *Evidence Act*. However, in the interest of justice, the Plaintiff is allowed to submit the certificate to establish admissibility. Once provided, the court can assess the probative value and authenticity of the DVDs. The Respondent claimed the DVDs were obtained illegally, but this cannot be verified until the certificate is filed and the court examines their source.

61. In *Dry Associates Co. Ltd & 3 others v Timonthy Karungu Karanja & 7 Others* [2019] eKLR the Court observed that:

“Section 78 and 106 of the *Evidence Act* are mandatory to admissibility of records and/or documents from electrical and digital devices in court as evidence. However, there is no time limit and specific stage that the issue maybe raised and similarly no compliance period. Therefore, counsel for the defendant was within their legal right to raise the question of



law and the Counsel for the Plaintiff shall on behalf of their client have sufficient period to comply with section 106B (4) of the *Evidence Act*.”

62. In *Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others* [2014] eKLR, where the Supreme Court emphasized that justice should be administered without excessive focus on technicalities, citing Article 159(2)(d) of *the Constitution*. It determined that this principle applies to the current case, allowing the appeal to proceed despite procedural shortcomings to prevent unnecessary dismissal. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 Others* [2013] eKLR the court quoted the case of *Githere v Kimungu* [1976-1985] E.A. 101 it was observed that the relation of rules of practice as a guiding tool rather than an absolute constraint. While procedural rules provide structure, they should not be applied so rigidly that they result in injustice. Courts must balance adherence to rules with the broader goal of ensuring fair and just outcomes in individual cases.

63. The Respondent submitted that this issue is an afterthought as the matter was filed in July 2019 and the defence documents were filed on 28th February 2020. The parties before this Honourable Court were present for pre-trial conference and they did not object to the production of the electronic evidence accompanied by a certificate. The Respondent relied on the case of *virginia Kathambiamangi v Nicholas Mwatika & 2 Others* [2021] eKLR, the court held as follows:

“The 1st Defendant’s counsel having failed to raise her objections on the production of the Plaintiff’s exhibits numbers 15, 16, 17 and 18 during the pre-trial conference is estopped from raising the objections at the hearing of this suit.”

64. The Respondent submitted that the fair procedure was followed in accordance with section 41 of the *Employment Act*. In *Gas Kenya Limited v Odhiambo* (Supra) the court cited the case of *Nicholas Otinyu Muruka v Equity Bank Limited* (2013) eKLR it was observed that disputes over summary dismissal must always be evaluated under Section 41 of the *Employment Act*, especially when employees argue that their case does not meet the criteria for gross misconduct. This section ensures that employees are given a fair hearing before termination, requiring employers to explain the reasons for dismissal and consider any representations made by the employee.

65. The Respondent submitted that it upheld the principles of audi alteram partem, enunciated by Justice Lenaola (as he then was), in the case of *Mandeep Chuhan v Kenyatta National Hospital & 2 Others* [2013] eKLR as follows:

“It is the cardinal rule of natural justice that no one be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rule enjoys superiority over all laws made by humankind and that any law that contrives or offends against any rules of natural justice, is null and void and of no effect.”

66. In *Kenfreight (EA) Limited* (supra), it was held that the employer must prove that the termination was in accordance with fair procedure, and it is for this very reason that the Respondent ensured adherence to all the relevant procedures in terminating the Claimant.

67. The Respondent stated that the Claimant was suspended on 13th August 2018 pending investigations. She was invited to a disciplinary hearing on 22nd August, scheduled for 27th August, and attended on 30th August. Her employment was terminated on 11th September 2018 due to gross misconduct. The Claimant appealed on 28th September and attended the appeal with a colleague, Kevin Kyalo. The Respondent upheld the termination as reasonable, while the Claimant argued that the absence of a client witness rendered the process substantively unfair. In *Sani v JSC* [2022] KEELRC 4000 (KLR)



the court stated that to the effect that, considering the nature of the disciplinary proceedings within the employment context, failure to call witnesses for cross-examination by itself would not render the disciplinary process unfair.

68. The Respondent submitted the Policy, which it had produced was inadvertently and erroneously did not contain the page of the policy clause 4.1 due to an error in the photocopying of the document and therefore cannot amount to discrimination.
69. The Respondent submitted that the Claimant is not entitled to any award for damages for wrongful and/or unfair termination, notice pay of 1 month, pay in lieu of 20 days, amounting to Kshs.266,666.60/=, 2018 bonus pay amounting to Kshs.1,000,000/= and 12 months' compensation amounting to Kshs.3,840,000/=. The Respondent relied on the cases of *Rose Njambi Mwangi v Point East Africa Limited* [2021] eKLR, *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, *Parliamentary Service Commission v Christine Mwambua* [2018] eKLR, *Kenya Chemical & Allied Workers Union v Bamburi Cement Limited* [2013] eKLR, *Kiambaa Dairy Farmers Co-operative Society Limited v Rhoda Njeri & 3 Others* [2018] eKLR and *Koki Muia v Samsung East Africa Limited* [2015] eKLR in support of that proposition.
70. The Respondent urged this Honourable Court to find that the Claim lacks merit and should be dismissed with costs.

Analysis and determination

71. This Honourable Court has considered the pleadings before it together with the submissions by counsel, and the court finds the issues for determination are as follows:
 - a. Whether the Respondent unfairly terminated the Claimant from her employment;
 - b. If (a) above is in the affirmative, whether the Claimant is entitled to the reliefs sought in the Statement of Claim
 - c. Who should bear the costs of the suit?
72. In *Overdrive Consultants (K) Ltd v Mazhar Sumra* [2020] KECA 293 (KLR) the Court of Appeal held as follows:

“For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness.

Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”
73. In *Ndugu Transport Company Limited v Sewe* [2024] KECA 127 (KLR) the Court of Appeal held that the question of whether or not a termination is unfair is dependent on whether or not an employer has adhered to the twin requirements of due procedure and substantive justification.
74. In this instant suit, the Claimant was terminated on allegations of irregular personal dealings with Mr. Thuita, and it was alleged that she received Kshs.1,500,000/= which she kept in her office for the customer. The Respondent failed to adduce evidence to confirm that the Claimant received Kshs.1,500,000/=. The investigative report solely concentrated on Mr. Thuita and not on the Claimant.



75. The Claimant was issued a suspension letter dated 9th August 2018 and the reason for suspension was to allow “investigations in connection with clients’ cash transaction dealings at the branch.”

The suspension was open ended but Claimant was to continue to receive her salary and benefits.

76. The investigation report worded “final” dated 9th August 2018” reads Inter-alia that when the customer in question Mr. Thuita left the bank on 2nd May 2018 at 11.48 a.m. he was carrying a red bag which “appeared to have been the same red bag Miss Wambui (the Claimant) was carrying when she entered the bank.” This was apparently captured in the CCTV Footage and Mr. Thuita was said to have carried out Kshs.2,000,000/= using Claimant’s bag.

77. During the disciplinary hearing on 30th August 2018 the Claimant had stated that Mr. Thuita had withdrawn Kshs.4,500,000/= but later she found he rebanked Kshs.3,000,000/= and so must have carried out Kshs.1,500,000/=.

She says she had served Mr. Thuita over 100 times and cannot recall this particular day how he carried out the money. She was also alleged to have kept the Kshs.3,000,000/= in the office and the customer carried out Kshs.1,500,000/=. In fact in the letter it states “Our only deduction from this transaction the client left the money he had withdrawn with you.” This was a deduction and was also a presumption that only the Claimant dealt with that client. The Claimant had indicated that she was not the only one who dealt with that client in the bank.

78. The Claimant was also accused of failing to declare her personal connection with the client but again the Respondent did not deduce evidence that she had a personal relationship with that particular client.

79. Section 47(5) of the [Employment Act](#) provides as follows:

“For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

80. It is obvious that the Claimant was terminated based on her alleged personal dealing with Mr. Thuita, which were not proven as no concrete evidence was adduced to directly or indirectly connect irregular dealings by the Claimant with the said client. The Honourable Court is of the view that the Claimant was unfairly terminated from her employment on grounds of gross misconduct which were not proven. The Respondent did not establish valid reason for terminating the Claimant.

81. Section 106B of the [Evidence Act](#) provides that digital records can be used as evidence without requiring the original, as long as they were generated during regular operations, stored correctly, and accurately reproduced. If multiple computers handled the data, they are treated as a single system. A certificate verifying the authenticity of the electronic record must be signed by a responsible individual. On the issue of photographs from the CCTV footage, there is no certificate accompanying the said investigation report.

82. In *Dry Associates Co. Ltd & 3 Others v Timothy Karungu Karanja & 7 Others* [2019] eKLR the Court observed that:

“Section 78 and 106 of the [Evidence Act](#) are mandatory to admissibility of records and/or documents from electrical and digital devices in court as evidence. However, there is no time limit and specific stage that the issue may be raised and similarly no compliance period. Therefore, counsel for the defendant was within their legal right to raise the question of



law and the Counsel for the Plaintiff shall on behalf of their client have sufficient period to comply with section 106B (4) of the *Evidence Act*.”

83. The court finds the Respondent failed to give valid reasons of terminating the Claimant. In view of the foregoing the Judgment is entered in favour of the Claimant and is awarded the following remedies:
- a. One-month notice amounting to Kshs.320,000/=
 - b. Compensation for unfair termination in accordance with Section 49(1)(c) of the *Employment Act* calculated as follows:
 $320,000 \times 8 = \text{Kshs.}2,560,000/=$
 - c. Pay in lieu of 20 leave days, this Honourable Court will award this claim as the Respondent did not prove they had awarded Claimant the entitled leave – Kshs.266,666/=
 - d. For 2018 bonus pay this Honourable Court will decline to award since the Claimant has not proved this claim.
84. The claim for discrimination is however not established as there is no comparisons of who she was discriminated against or reasons for discrimination. The law on proof of discrimination is very clear. The same is not proved. But all in all fairness, the court finds the claim for unfair termination is proved and judgment is entered in favour of the Claimant.
85. The Claimant is awarded total of Kshs.3,146,666/= plus interest at 14% per annum from date of judgment till payment.
86. The order for reinstatement is overtaken by events and also damages for harassment and discrimination are not proved and so are not granted.
87. Costs are awarded to the Claimant.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF MAY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

