



REPUBLIC OF KENYA



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Wambui v Wananchi Sacco Society Limited (Employment and Labour Relations Cause 451 of 2017) [2025] KEELRC 1475 (KLR) (16 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1475 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 451 OF 2017**

**ON MAKAU, J
MAY 16, 2025**

BETWEEN

PATRICK KAMUNYA WAMBUI CLAIMANT

AND

WANANCHI SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. By a Statement of Claim dated 27th November 2027 the claimant alleged that his employment was unlawfully terminated by the respondent. Therefore, he prayed for damages for the unlawful termination and for 16 years left before his normal retirement at the age of 60 years being Kshs13,871,664 plus costs of the suit.
2. The respondent filed response and counterclaim denying the alleged unlawful termination and averred that the termination was in accordance with his contract of employment. In counterclaimed Kshs.266,790.70 being the claimant's loan balance after taking into account his terminal dues.
3. The claimant denied the alleged loan and reiterated his claim as pleaded in his statement of claim.

Factual background

4. The facts of the case are straight forward. The claimant was employed by the respondent as an Office Messenger on 6th February 2000 for a monthly salary of Kshs.3,749. By a letter dated 2nd April 2012, he was appointed to the position of a Loan Officer with the role of credit manager in his branch in liaison with the Branch Manager. Other duties included default management/delinquency loans; credit portfolio management; mobilization of shares and deposits; appraising, posting and follow-up of loans; preparation of credit reports; and ensuring adherence to loans advances policy.
5. On 2nd August 2012, he was transferred from Othaya Branch to Gakindu Branch in the same capacity. On 1st October 2014 his salary was increased to Kshs.62,500.



6. By letters dated 6th September 2016 and 14th September 2016, the respondent alleged that there were irregularities discovered in relations to loans that the claimant had issued while at Gakindu Branch in 2013 and 2014. The claimant responded denying any wrong doing but then requested for time to pursue the loan defaulter for recovery of the outstanding loans.
7. He was unable to recover all the loan and he was suspended. Thereafter, he was summoned to a disciplinary hearing by the Board of Management (BOM) and he attended. However, he averred that he was not accorded fair hearing as the BOM denied his request to cross-examine the witnesses who had adversely mentioned him. Besides, he was not availed necessary evidence like an Audit Report to ascertain the veracity of the allegation.
8. He further averred that the BOM rejected his request to cross examine the factory managers of the factories where the irregular documents emanated. He averred that all the loan application were filled at the applicant's factory and his role was just to verify that all the documents were presented and then pass to the Branch Manager for final approval.
9. He denied any wrong doing and averred that there was no evidence linking him with the alleged irregularities in the said loan advances to the defaulters. He contended that he was not required to go to the field during appraisal of the loan to verify the applicants. But he relied on the goodwill of the factory officials. He further averred that the time given to pursue the defaulters for recovery was too short.
10. He was dismissed vide a letter dated 3rd July 2017 which did not state with clarity the particulars of the offence leading to his dismissal. Therefore, he averred that the dismissal was for no valid reason and was done without following due process.
11. On the other hand, the respondent's case was that the claimant's case was unmerited as the termination was in accordance with the terms and conditions of his contract of employment. It averred that the termination was on account of his misconduct, negligence and fundamental breach of his obligations to the employer.
12. It averred that as at the time of the separation the claimant's monthly salary was Kshs.68,881.25 and his employment terminal dues were Kshs.190,890.85. He had also deposited with the SACCO Kshs.344,481.13 and saving of Kshs.470 it summed up the claimant's benefits at Kshs.535,841.98 less his Sacco loan of Kshs.802,632.68 leaving a deficit of Kshs.266,790.70 which it counterclaimed against the claimant.
13. When the suit came up for fresh hearing as directed by the Court of Appeal, the parties adopted their pleadings, written statements and documents as their respective cases. They then filed submissions and asked me to render my decision.
14. I have considered the material files by both parties and their rival submissions and the following issues fall for determination: -
 - a. Whether the termination of the claimant's employment contract was unfair and unlawful.
 - b. Whether the claimant is entitled to the reliefs sought.
 - c. Whether the respondent's counterclaim is merited.

Unfair and unlawful termination

15. Section 45 (1) and (2) of the *Employment Act* provides that: -
 1. No employer shall terminate the employment of an employee unfairly.



2. A termination of employment by an employer is unfair if the employer fails to prove:
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason—
 - i. related to the employee’s conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.”
16. In this case, the claimant averred that the termination was not grounded on a valid reason and the procedure followed was not fair. The respondent was of a contrary view and maintained that the termination was due to claimant’s misconduct and he was accorded a fair hearing.
17. The termination letter dated 3rd June 2017 stated as follows: -

“Mr.Patrick Kamunya Wambui

Dear Sir,

REF: Termination Of Service

The above matter refers.

As you are aware, you appeared before the Board on 19th April 2017 when you had been invited to defend yourself following your suspension on 23rd February 2017.

However, after reviewing your oral presentation, defence and appeal, the Board decided to terminate your services with effect from 2nd June 2017 on grounds of gross misconduct, negligence and fundamentally breaching your obligations arising under your employment of service.

The Sacco will pay you three months’ salary in lieu of notice plus any other dues if any and as a procedure, you will be required to clear with the Sacco including settling any debts that you owe the Sacco before you are fully cleared.

Thank you.

Yours Faithfully, Confirmed by,

Watson Maina Njogu Geoffrey W Kagonda

Chief Executive Officer Chairman- Management Board

C.c Chief Operations Officer

Finance Manager

Human Resource Manager

I.C.T Manager

Business Development And Marketing Manager

Branch Manager-nyeri Branch”



18. The termination was on ground of gross misconduct, negligence and fundamental breach of obligations arising from his contract of service. The said offences were generalized and lacked particulars and therefore is not clear what offences led to the termination.
19. However, the letters dated 6th September 2016 and 14th September 2016 provide a clue of the offences. The offence was about irregularities in advancing loans and using fake documents and some to non-members which led to financial loss to the Sacco due to default in repayment.
20. The specific irregularities listed were: -
 - i. Some of the Bank Statements from Taifa Sacco were not genuine (have been tampered with) and do not bear Taifa Sacco official stamp.
 - ii. Some of the Official Stamps stamped in the Bank Statements are not from the Factories (not genuine and this has been investigated and confirmed.
 - iii. Some of the account holders (members) are not traceable at their respective locations and have no coffee bushes at all.
 - iv. Some of the account holders (members) are not members of the Coffee factories and this has been investigated and confirmed.
21. It would appear that the claimant was accused of negligence and breach of the respondent's loan policy and procedures by approving loan application made using fake documents by account holders who were not members of coffee factories.
22. However, the claimant denied the alleged offence and contended that he approved, posted or advised the customers contrary to the Sacco Policy and Procedures. However, he offered to assist in pursuing the defaulters. He contended that somebody had decided to destroy his reputation which he built for over 17 years he worked for the respondent.
23. Simon Mwangi, the respondent's Internal Auditor stated that in 2016 Gakindu Branch had over 40 percent loan default and the Branch and credit manager were requested to prepare a list of accounts by 29th July 2016. The investigation was then taken to the ground where that it was detected that there was fraud as some members complained that they never received the full loans.
24. He further stated that the credit officer compiled loan forms for 34 defaulters who had paid no single cent since the loans were issued. It was noted that 33 accounts had defects. The loans were issued in 2013 and 2014 and nothing had been recovered; the coffee factories said that the defaulters were not their members; some ID numbers in the system were different from the physical loan forms; some accounts had been edited in the system to remove or change the names or the ID numbers; some statements used to support the loan applications were fake; some signatures for factory manager/ clerk/ chairman had been forged; some stamps used in the forms were not for the respective coffee factories; was involved in approving and posting of the loans, for example 6-3269 Emilio Wambugu.
25. Having put all the above matters into consideration, I am satisfied that there were irregularities and breach of loan policy and procedures at Gakindu Branch in the year 2013 and 2014. There is however no evidence to link the claimant with the offence. The investigation report was not produced in this court to support the alleged fraud by the claimant.
26. Besides, the respondent has not rebutted the evidence by the claimant that the fake documents and statements were not prepared by him but by the respective banks and the factory managers. There is also evidence that the system was not secure as documents could be edited after approval and posting.



Consequently, I find that respondent has not proved by evidence that the alleged irregularities were done by the claimant. As such, I must hold that the reason for the termination was not valid.

27. As regards fair procedure, section 41 of the *Employment Act* provides that: -
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 or summarily dismissing 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.”
28. In this case, the respondent never pleaded that it accorded the claimant any hearing and none of its witnesses indicated that disciplinary hearing was done. All that was pleaded and stated in the statement of Watson Maina Njogu was that the termination was in accordance with the terms and conditions of service meaning that he was paid salary in lieu of notice.
29. In the case of *Kenfreight (EA) Ltd v Benson K Nguti* [2016] eKLR, the Court of Appeal held that: -
- “It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair, that reason related to the employee’s conduct, capacity and compatibility or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure...
- Apart from issuing proper Notice according to the contract (or payment in lieu of Notice as provided), an employer is duty-bound to explain to an employee in the presence of another employee or union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service.”
30. I have noted a letter dated 13th April 2017 by which the claimant was invited to appear before the Board on 19th April 2017 at the Othaya Sacco Boardroom at 10.00am. The letter was silent on the purpose of the invitation. I have seen the minutes of the Board meeting of 19th April 2017 especially Min 012/2017 STAFF MATTER under which the claimant plus other staff on suspension were taken through the disciplinary hearing.
31. Such process cannot amount to fair hearing. First, the notice was too short. Second, the letter did not indicate that meeting was for his disciplinary hearing. Thirdly, the respondent did not inform the claimant his right to be accompanied by another employee of his choice. Finally, his evidence that he was denied some documents and opportunity to cross examine factor managers and other persons who adversely mentioned him, was not rebutted.
32. Considering all the forgoing observations, I find that the respondent has proved that it followed a fair procedure before terminating the claimant’s employment. This finding plus the earlier finding that there was no valid reason to justify the termination, I proceed to hold that the termination of the claimant’s contract of employment was unfair and unlawful within the meaning of section 45 of the



Employment Act. I gather support from the case of *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, where the court held that:

“ 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the Employment Act or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”

Reliefs to the claimant

33. In view of the foregoing conclusion, the claimant is entitled to compensation for unfair termination of his employment. Considering his long service without proven misconduct, I award him ten (10) months’ salary as compensation for the unfair termination. His gross salary as at February 2017 was Kshs.72,248.25 (see pay slip Appendix B) and therefore the award is Kshs.722,482.50.
34. The claim for Kshs.13,871,664 being the salary he expected to earn before reaching normal retirement age of 60 years, is declined because it is not founded on any law or his written contract.

Counterclaim

35. The respondent counterclaim is for Kshs.266,790.70 being the outstanding SACCO loan after factoring the claimant’s terminal dues of Kshs.190,890.85, SACCO deposits of Kshs.344,481.13 and saving of Kshs.470. However, on 15th March 2019, the respondent acknowledged before the court that the loan was in fact Kshs.762,968.68 less Kshs.535,841.98 recovered from the claimant leaving an outstanding loan of Kshs.227,126. Consequently, I award the respondent Kshs.227,126 against the claimant.

Conclusion

36. I have found that the termination of the claimant’s employment contract by the respondent was unfair and unlawful within the meaning of section 45 of the Employment Act. I have further found that he is entitled to Kshs.722,482.50 being ten (10) months’ salary compensation for the unfair termination. I have also found that the respondent is entitled to Kshs.227,126 being loan balance from the claimant. The end result is that judgment is entered for the claimant as follows: -
 - a. Award of.....Kshs.722,482.50
 - b. Less loan balance.....Kshs.227,126.00
Net due Kshs.495,356.50
 - c. The award is subject to statutory deductions.
 - d. The claimant is awarded costs plus interest from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 16TH DAY OF MAY, 2025.



ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

