



**Mwau v I & M Bank Kenya Ltd (Employment and Labour Relations Cause E321 of 2020) [2025] KEELRC 1933 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1933 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E321 OF 2020**

**MN NDUMA, J  
JUNE 30, 2025**

**BETWEEN**

**JOSEPH MULELA MWAU ..... CLAIMANT**

**AND**

**I & M BANK KENYA LTD ..... RESPONDENT**

**JUDGMENT**

1. This suit by the Claimant is dated 20<sup>th</sup> April 2020 and filed against the Respondent bank. The Claimant seeks the following reliefs: -
  - i. Service pay for six years amounting to Kshs. 340,000.00 and
  - ii. Equivalent of 12 months' salary in compensation for unlawful and unfair termination of employment.
2. The Claimant was employed by the Respondent on 14<sup>th</sup> June 2013 as an officer trainee in central operations, department. He earned a consolidated salary of Kshs. 40,000.00 a month.
3. That the Claimant worked diligently and continuously until 31<sup>st</sup> August 2019 when his employment was terminated by the Respondent by a letter of the same date.
4. The reason for termination is captured in the letter of termination as follows:-

“On diverse dates between April 2016 and November 2017, you verified entries amounting to Kshs. 917,462,000.00 in the core banking system. The amount was part of the Kshs. 16,865,352.47 which was fraudulently siphoned from the bank. As an officer of the bank entrusted with verification rights in the core banking system, you verified entries without confirming their authenticity on sighting supporting documentation to justify your action contrary to laid down procedures.”



5. The Claimant in his sworn testimony as (CW1) denied the said charges of negligence set out in the notice to show cause to which he had responded and had explained his position well at the disciplinary hearing that ensued.
6. The Claimant states that his explanation was valid and satisfactory stating that at all times he verified entries for payments and he would confirm their authenticity upon sight of relevant supporting documents.
7. The Claimant stated that contrary to the allegation by the Respondent, evidence showed that the Respondent had failed to have proper internal control systems leading to the passwords of the Claimant and other staff of the Respondent compromised.
8. That the Respondent was not able to rebut the evidence showing the said failure in the system that enabled a supervisor of the Claimant one Martin Mutwiri by using the passwords of the Claimant and other subordinate staff to pull through the fraud of Kshs. 16,865,352.47. The Claimant had explained this in his response to the notice to show cause and at the hearing as demonstrated by the minutes of the disciplinary hearing and the investigation report before court.
9. That the Claimant had explained this failure in his witness statement dated 20<sup>th</sup> April 2020, which he adopted as his evidence in chief and by production of exhibits 'j' to '5' together with his clear answers to very close, cross-examination by Ms. Bonyo, Advocate for the Respondent.
10. The Claimant cited system gaps that included weak internal control systems, poor handing over procedures and lack of segregation of duties.
11. The Claimant said that his credentials were used in authorizing the fraudulent transaction. That he was not the maker of the transactions in question. That he worked under Martin Mutwiri who had been found to be the key architect and only beneficiary of the fraud.
12. That the said Mutwiri had superior administrative rights and could create, edit and delete users in the system.
13. That the Respondent had admitted these weaknesses at page 19 of the Respondent's bundle in the committee observations and had no valid grounds to blame the Claimant for the fraud which arose out of the admitted system weaknesses and failure.
14. The Claimant therefore denied that he was negligent as alleged or at all and stated that the bank was to blame for the weakness.
15. The Claimant testified further that there was no evidence at all that he had committed or benefited from the alleged fraud which clearly was committed by his supervisor Martin Mutwiri and who was the sole beneficiary of the fraud.
16. That the disciplinary process was not fair as the committee ignored the evidence by the Claimant exonerating himself from negligence and or the fraudulent transactions.
17. The Claimant said that he was not given opportunity to produce and demonstrate vide the supporting documents that authored the transactions he was accused of having verified in the sum of Kshs. 917,462.00 as part of the total amount syphoned by Martin Mutwiri from the bank in the sum of Kshs. 16.8 million.
18. The Claimant explained that verification is by the maker and checker of a transaction. That three steps are usually done including entry of transaction; posting of that transaction and verification of the transaction entered.



19. That the system allowed a posted transaction to be edited or deleted. That once the money had left the bank what remained was to verify the transaction to remove it from the pending list.
20. That in respect of all the transactions of Kshs. 917,462.00, the Claimant was accused of failing to use supporting documents to verify the same; they were all posted by his supervisor Mr. Martin Mutwiri. The Claimant said after his supervisor had posted the transactions there was nothing he could do thereafter since Martin had supervisor co - banking rights higher than those held by himself. That the other affected employees were below the Claimant and so only the Claimant and Martin could verify the transaction. Martin used his superior rights to commit and conceal the fraudulent transactions.
21. The Claimant said that verification of a transaction posted by his superior was not a safeguard and was a step that did not make sense since he could not override a transaction posted by his senior.
22. The Claimant said further that in the co-banking system, he could edit or delete a transaction just like Martin could. The Claimant said he did not share his password with anyone but Martin somehow unlawfully, used the same to authorize fraudulent transactions. That himself and other staff in the department were disciplined but the real culprit was Martin Mutwiri, the supervisor.
23. The Claimant said he was not allowed access to the files during the disciplinary hearing to confirm what documents he had used to verify the transactions used by Martin Mutwiri.
24. That this process was unfair to him. That the statement he wrote on 13/2/2019 did not implicate him in the fraud and wrote the same while in suspension and without access to the relevant files, hence the protest at the disciplinary hearing and request to be given the files and defend himself.  
The Claimant prays to be awarded as prayed.
25. RW1, Maureen Wamaitha testified for the Respondent. She adopted a witness statement dated 10/2/2023 as her evidence in chief. She produced exhibits marked '1' to '7'.
26. RW1 said that in 2018, upon joining the alternative channels department which included internet, mobile and ATM banking, she noted some accounts were not balancing. That upon tracing back transactions via reconciliation, she noted transfers via MPESA portal were done out of the accounts without customer requests.
27. RW1 said that she noted also that these payments were done to certain numbers that were similar. RW1 said she then requested for documentation from the users (inputters) and verifiers. That she then found out that money in excess of Kshs. 16 million was the difference upon completing the conciliation. That the fraud involved MPESA and core banking transactions.  
That the users lacked customer request documents.
28. RW1 said that she then tabled her report to the line manager for further investigations. RW1 said that the Claimant was one of the users and was also a verifier. That the Claimant had no supporting documents for the transactions he had verified.
29. That the Claimant alleged that the false verifications were done by his supervisor one Martin Mutwiri who could override his password using superior rights. That Mr. Mutwiri could add, rectify or delete entries and could also reset password upon request.
30. That Martin could create himself as a user but could not authorize his own transactions. That a verifier had to do that and the Claimant negligently verified the identified transactions and could not produce the supporting documents in respect of those specific transactions.



31. That the transactions the Claimant verified amounted to Kshs. 917,462.00. That these were attributed to the Claimant's user ID. That the user policy did not allow sharing of passwords. RW1 said that there was no evidence in the system that the Claimant had benefited from the fraudulent transaction. RW1 said a banker could not verify a transaction without customer request documents.
32. Under cross-examination RW1 said specific details of the transactions alleged to have been authorized by the Claimant were not before court. RW1 admitted that Martin Mutwiri was blamed in the investigation report for the fraudulent transactions. That he was the sole beneficiary.
33. RW1 said that the Claimant was accused of negligence not fraud. RW1 said delayed conciliation by the bank gave opportunity to the fraudsters to continue with their transactions for a while.
34. RW1 admitted that there were operational gaps which contributed to the fraud. RW1 cited example of unchecked super administration rights which were available to one Martin Mutwiri. RW1 admitted that the bank was supposed to facilitate secure systems including proper supervisory structures and check systems. RW1 said Martin was the sole beneficiary of the fraud. That he had taken advantage of the trust bestowed on him and the weak system.
35. RW1 admitted that Martin Mutwiri had opportunity to hood wink his subordinates. RW1 said she was not part of the disciplinary committee. RW1 admitted that Martin Mutwiri was knowledgeable and could compromise other users' passwords to his advantage. That the investigation report acknowledged that.
36. RW1 admitted that once a password was compromised, one could use or verify a transaction on behalf of another staff without their knowledge. That this loophole was in the MPESA portal not in the core banking.
37. RW1 admitted that the alleged negligent transactions by the Claimant were not placed before court to demonstrate valid reasons for the termination.
38. RW1 said it was difficult to tell what type of invasion it was and the truth of transactions could not be concluded without the evidence of the actual transactions being placed before court, RW1 concluded.
39. RW1 said that the Claimant was unable to supply the supporting documents but it was not conclusive who actually did the transactions as the documents were not before court.
40. RW2, John Nyamwalo, was the acting group head of Human Resource. RW2 relied on a witness statement dated 10/2/2023 as his evidence in chief. RW2 produced exhibits '1' to '7' in support of the defence. RW2 said he dealt with disciplinary process. That the transaction documentation could only be produced by the investigators and so he could not produce them before court.
41. RW2 said that he did not sit at the disciplinary hearing but the Claimant was found guilty of negligence in that he had verified transactions without user documentation.
42. RW2 said Martin Mutwiri was the author and beneficiary of the fraudulent transactions. That Martin had admitted the offence. RW1 said he could not tell if the Claimant had benefited from the fraud. That there was no evidence to that effect.
43. RW2 admitted that the record show that Martin was the sole beneficiary of the fraud. RW2 said that Martin took advantage of the weak system of internal controls. RW2 admitted that Martin may have hoodwinked his colleagues but all of them were found guilty of negligence and their employment was terminated.



44. RW2 admitted that the Claimant had no access to bank documents while he was on suspension. That he had written a statement on the matter while under suspension.

### **Determination**

45. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1, RW1 and RW2. The issues for determination are: -
- i. Whether the Respondent had proved valid reason(s) to terminate employment of the Claimant following a fair procedure.
  - ii. Whether the Claimant is entitled to the reliefs sought
46. The evidence adduced by CW1, RW1 and RW2 is consistent on several key matters including that Martin Mutwiri, was a supervisor of the Claimant and other staff in the department concerned. That the bank lost a sum of Kshs. 16,865,352.47 to fraud on diverse dates between April 2016 and November 2017. That the sole beneficiary of the fraud was one Martin Mutwiri.
47. That though the system showed that the Claimant had authorized payment of Kshs. 917,462.00 there was no documentary evidence before court to demonstrate that the Claimant had authorized those transactions.
48. That the bank system had weakness in the co-banking system in that Martin Mutwiri had superior powers to change payment; to edit or delete a posted transaction and so there was no certainty as to whether the Claimant or Martin Mutwiri verified the specific transactions used to terminate the employment of the Claimant.
49. The court is also satisfied that the Claimant was not provided with relevant documentation at the time he wrote a statement while on suspension and that documentation was not availed to him at the disciplinary hearing. The court therefore finds that the Respondent did not follow a fair procedure in arriving at the decision to terminate the employment of the Claimant in violation of section 41 of the *Employment Act, 2007* and Rules of natural justice.
50. The Claimant discharged the onus placed on him under section 47(5) of the *Employment Act*, in showing that the termination of his employment was wrongful, unlawful and unfair. The Respondent failed to rebut this evidence to justify the termination.
51. Accordingly, following the decision of the court in *Walter Ogal Anuro v Teachers Service Commission [2013] e KLR* where the court held that;
- ‘In light of the foregoing, I find that Respondent had a genuine reason for terminating the Claimant’s employment as required under Section 43 of the *Employment Act*. However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness’, the termination of employment of the Claimant violated section 45(1) and (2) of the Act, and was unlawful and unfair.
52. The Claimant is entitled to compensation in terms of section 49(1) (c) as read with (4) of the Act. In this regard, the Claimant lost his source of income and sustenance unlawfully. The Claimant had served the Respondent diligently for a period of six (6) years. The Claimant lost career progression and was unlikely to get another job in the banking industry following the serious allegations made against him.



53. The Claimant was not compensated for the loss and was made to carry the burden of a fraudster, who was his supervisor and had been proved to be the sole beneficiary of the fraud.
54. The Claimant lost significant terminal benefits as a result of the termination including service gratuity, payable in terms of the (CBA) applicable to the Claimant at the time.
55. The court finds that the Claimant is entitled to payment of the unpaid gratuity which had been forfeited by fact of termination in terms of the provisions of the CBA.
56. The court relies on the case of *Kenya Union of Sugarcane Plantation and Allied Workers versus others (Appeal E005 of 2023)* in finding that the Claimant had served a reasonable period of time and this is a factor to take into account in assessing the quantum of compensation including other factors set out under section 49(4) of the Act.
57. Accordingly, the court makes judgment in favour of the Claimant against the Respondent as follows:
  - a. An award of compensation equivalent to eight (8) months' salary in the sum of Kshs. 320,000.00.
  - b. Gratuity for the six years served in the sum of Kshs. 240,000.00.  
Total award Kshs. 560,000.00
  - c. Interest at court rates from date of judgment till payment in full.
  - d. Costs of the suit

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Wangila for Claimant

Mr. Bonya for Respondents

Mr. Kemboi – Court Assistant

