



Njue v KCB Bank Kenya Limited (Employment and Labour Relations Cause E782 of 2021) [2025] KEELRC 2018 (KLR) (30 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 2018 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E782 OF 2021**

**HS WASILWA, J
JUNE 30, 2025**

BETWEEN

JUSTUS WANJAU NJUE CLAIMANT

AND

KCB BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 19th July 2021 and prays for judgment against the Respondent for: -
 - a. A declaration that the termination was unfair termination.
 - b. An order for twelve months salary compensation for unfair termination plus interest.
 - c. An order that the Respondent issues the Claimant with a Certificate of service.
 - d. Costs of the suit plus interest until payment in full.

Claimant's Case

2. The Claimant avers that he was employed by the Respondent on 21st January, 2008 as a Graduate Clerk and stationed at Nakuru Branch. Subsequently, he held various positions namely Assistant Manager, Personal Banking and transferred to the Narok Branch, Credit Administration Manager, Service, Quality and Compliance Manager, Acting Branch Manager and Cash Manager.
3. The Claimant avers that he hurt his right hand small finger with the vault door on 1st September 2017 and reported the injury to the Kitale Branch Manager, Service Quality Compliance, Mr. Raymond Tuitoek, who determined that the injury was not grievous. However, a few days after the injury, the he experienced constant excruciating pain and numbness on his whole right arm leading him to seek medical attention at Cherangany Nursing Home on 21st December, 2017. He was prescribed



physiotherapy and pain killers plus planned clinic reviews; ultimately, on 20th February, 2018 the finger was operated on and he supplied all medical records to the Respondent.

4. The Claimant avers he worked diligently, faithfully and without incidence until 7th September, 2018 when the Respondent commenced disciplinary proceedings against him without giving him an opportunity to respond to the allegations. He was then subjected to a disciplinary hearing without any employee or advocate representative on 12th September 2018.
5. The Claimant avers that the Respondent terminated his employment without proof of the alleged offence and without compensating him for the injury at work that deformed by finger on 18th September 2018.
6. He subsequently appealed this decision on 21st September 2018, however, the Respondent denied him an opportunity to be heard and fair employment relations by refusing to hear and or determine his appeal
7. It is the Claimant's case that the termination was procedurally unfair and therefore violated his rights to fair labour relations and fair administrative action and the right to due process.
8. The Claimant avers that the Respondent neither compensated him for wrongful dismissal nor issued him with a certificate of service.

Respondent's Case

9. In opposition to the Claim, the Respondent filed a Memorandum of Reply dated 5th November 2024.
10. The Respondent avers that the Claimant was employed vide a letter of employment dated 10th January 2008 effective on 21st January 2008 and was deployed as a Graduate Trainee, Nakuru Branch later promoted to Advance Clerk. On 1st November 2011, he was promoted to an Assistant Manager, Personal Banking and transferred to Narok Branch where he was promoted to Manager Service Quality & Compliance. He was later transferred to Maralal, Olkalau then Kitale Branch; all these transfers were pursuant to the employment contract.
11. The Respondent avers that due to business reasons, the Claimant took up the position of Cash Manager, Kitale Branch in early 2016 which change was informed by his 3 year experience in cash management by virtue of his role as an MSQC. At no point was the Claimant appointed as the Branch Manager, Maralal Branch.
12. The Respondent denies that the Claimant fulfilled his duties diligently and avers that while at Maralal Branch, the Claimant had a toxic relationship with the branch managers who were moved out due to negative feedback by the community which the Respondent later found out emanated from the Claimant with a view of becoming the Branch Manager, which did not happen.
13. The Respondent avers that contrary to the terms of his contract, the Claimant resisted the transfer to Kitale branch and change in his role leading to issuance of a reprimand letter dated 11th April 2016.
14. The Respondent avers that while at Kitale Branch, the Claimant made a Health and Safety Report dated 21st September 2017 to the Branch Manager claiming that his right small finger had been crushed by the vault on 1st September 2018. The report was then submitted to the Human Resource Employee Relations & Wellness Department on 21st December 2017 and forwarded to the Incident's Department on 22nd December 2017. However, on 12th January 2018, the MSQC Kitale, Mr. Raymond Tuitoek (retired) recalled the incident report and cited discrepancies by the Claimant. This prompted a forensic investigation and upon conclusion, the report found that the Claimant was not



- injured at the workplace and he generated a fictitious Health and Safety Incident Report amounting to attempted fraud.
15. Additionally, the Claimant lied to the Branch Manager that he was not the designated Cash Manager and Vault custodian between 29th January 2018 and 4th February 2018 yet he had taken over the vault cash on 29th January and appended his signature on the Branch Cash Summary Register until 4th February 2018 as the cash custodian.
 16. The Respondent avers that its Great Rift regional office received a report from Kitale Branch Manager on 6th February 2018, stating that the Claimant abdicated his role as the branch cash manager without justifiable cause. The branch manager while conducting cash surprise checks noted: the branch vault cash had not been balanced; the vault cash register had not been updated; the cash cross entries had not been signed despite tellers being given cash from the vault; and the cash movement was not controlled by the branch vault custodians.
 17. The Respondent avers that the Claimant unilaterally decided not to do his duties without a medical letter between 22nd May 2018 to 11th June 2018 despite being present at the workplace.
 18. Further, the Claimant's code had been used to irregularly change the sales codes on the loans sold by Winfred Wambua S/No 11373 and Jamrice Mwanika S/No 8630 (deceased) to benefit Nancy Jepchumba Kiptisia S/No 112111 through payment of fraudulently earned commissions for the loans she did not sell and further misrepresenting her true productivity at work. The Claimant also allowed Jamrice (deceased) to work on a credit quest (CQ) using his log in credential contrary to the KCB Group Plc IT Security Policy; and between January-August 2018, the Claimant accessed the Respondent's customers' and staff personal data on CQ without authority or justifiable cause.
 19. It is the Respondent's case that before commencing disciplinary proceedings, the Claimant had been issued internal memos setting out the allegations and informing him to state why disciplinary action should not be taken against him; the Claimant responded and adduced evidence in support of his case.
 20. The Respondent avers that vide a letter dated 7th September 2018, the Claimant was invited for a disciplinary committee hearing on 12th September 2018. He was advised of his entitlement to representation by another employee and he was to inform the Respondent to have the said employee released from work on the hearing date.
 21. The Claimant attended the hearing and he agreed to proceed without representation. That upon conclusion of the hearing, the Claimant was found guilty of abdicating his duty as Kitale branch cash manager and breaching the IT Security Policy, thus, the committee unanimously agreed to terminate his employment effective 18th September 2018.
 22. Additionally, from the investigations carried out and the report issued on 30th May 2018, it was concluded that the Claimant sustained the injuries outside work premises and was therefore ineligible for compensation.
 23. The Respondent avers that it received the Claimant's letter of appeal dated 21st September 2018 and the appeal was heard and vide a letter dated 21st April 2019, the Claimant was informed that his appeal was found to lack merit.
 24. It is the Respondent's case that the termination of the Claimant's employment was lawful therefore, he is not entitled to any compensation for wrongful termination.



Evidence in Court

25. The Claimant (CW1) adopted his three witness statements as his evidence in chief and produced his filed bundle of documents dated 19th July 2021, 17th February 2025 and 26th September 2025 as his exhibits.
26. During cross examination, CW1 testified that he was served with Notice to Show Cause on 6th February 2018 and 5th August 2018 which he responded to and in some he asked for more information.
27. CW1 testified that during the disciplinary hearing he admitted to some allegations e.g. breach of the I.T Policy which stated they do not share codes with anyone. That one Jamlick was the one changing codes in favour of other colleagues, but the Claimant did not report this.
28. CW1 testified that he appealed the decision to terminate his employment and he received a response five months later.
29. CW1 testified that he hurt his finger while closing the vault on 1st September 2017, however, he went to the hospital on 21st December 2017.
30. The Respondent's witness (RW1) Stephen Mosong adopted his witness statement dated 5th November 2024 as his evidence in chief and produced the Respondent's bundle of documents dated 5th November 2024 and supplementary list of documents dated 10th December 2024 as his exhibits.
31. During cross examination, RW1 testified that he is the Respondent's Senior HRM Employee Relations and he handles disciplinary processes, employee complaints and others. In respect to the Claimant, he was at that time the Regional Manager Operations and the Claimant did not report to him or deal with him directly.
32. RW1 testified that no witness was called during the disciplinary hearing and the employer did not provide any witnesses. The Committee relied on the independent forensic report and recorded statement from the branch staff which were not provided to the Claimant.

Claimant's Submissions

33. The Claimant submitted on four issues: - Whether the termination of employment was procedurally fair; whether the termination of employment was justified; whether the Claimant is entitled to any reliefs; and whether the Claimant is entitled to costs.
34. On the first issue, the Claimant submitted that it is not disputed that: the Respondent did not avail any witnesses for purposes of cross examination by the Claimant during the disciplinary hearing; the Respondent terminated the Claimant's employment; the Claimant appealed against the termination of his employment; the Respondent did not constitute a Disciplinary Appeal Committee as required under Clause 4.16 of the KCB Bank Group Disciplinary and Grievance handling Policy dated 28th December, 2012; and the Respondent did not hear the Claimant's appeal against the termination of his employment.
35. The Claimant submitted that Clause 6.9 of the KCB Bank Group Disciplinary and Grievance handling Policy dated 28th December, 2012 establishes Disciplinary Appeals Committee whose mandate is to fully consider the facts and information regarding the case, prior to the disciplinary appeal hearing and hear disciplinary appeal cases and make decisions or appropriate recommendations thereof. Therefore, there was a monumental procedural lapse in the disciplinary process involving the Claimant which resulted in a wrongful dismissal.



36. It is the Claimant's submission that the impugned summary dismissal was procedurally unfair and it therefore amounted to wrongful dismissal.
37. On the second issue, the Claimant submitted that the Respondent's witness produced no evidence to prove that the stated reasons for termination of the Claimant's contract existed nor did he produce any evidence to justify the grounds for the termination of the Claimant's employment contrary to Section 43 of the *Employment Act*.
38. The Claimant submitted that under Section 47(5) of the *Employment Act* the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer. Additionally, the Court of Appeal case of Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR held that:
- “There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47(5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”
39. The Claimant submitted that without satisfying the foregoing legal provisions, the Respondent failed to discharge its burden of proof and consequently, the summary dismissal was a wrongful and unjustified.
40. On the reliefs sought, the Claimant submitted that having demonstrated that the Respondent wrongfully dismissed the Claimant, he is entitled to the reliefs provided for under Section 12(3) of the Employment and *Labour Relations Act* and Section 49 and 50 of the *Employment Act*.
41. The Claimant submitted that Section 49 of the *Employment Act* as read with Section 12(3)(v)&(vi) of the Employment and *Labour Relations Act* provides for reinstatement or re-engagement and or compensation for wrongful dismissal. In the instant suit, the Claimant intended to work for the Respondent until his retirement age. He was a senior employee and earned a high salary and of an advanced age. Therefore, it is not possible for the Claimant to secure a comparable position with same terms especially given that the allegations leading to the dismissal are yet to be resolved.
42. On costs, the Claimant submitted that Section 12(4) of the Employment and *Labour Relations Act* and Rule 70(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 empower the honourable court to make such orders as to costs.
43. The Claimant submitted that the Respondent violated the Claimant's rights to inter alia fair employment and labour relations which forced him to seek the honourable court's intervention at immense costs and he ought to be reimbursed.

Respondents' Submissions

44. The Respondents submitted on four issues: - whether the Respondent had valid and justifiable reasons for terminating the Claimant from employment; whether the Respondent followed due procedure required under the law prior to the termination of the Claimant from employment; whether the Claimant is entitled to the reliefs as sought in the Memorandum of Claim; and who bears the costs of the proceedings.



45. On the first issue, the Respondent submitted that for termination of an employee's employment to pass the fairness test, it must be demonstrated that the same was for cause, premised on a valid and fair reasons and arrived with regard to procedural fairness as held in *Walter Ogal Anuro v Teachers Service Commission* (2013) eKLR.
46. The Respondent submitted that the termination was necessitated by the Claimant's conduct as enshrined in Section 43 of the *Employment Act* that provides that the employer shall be required to prove the reason for the termination which are matters which the employer at the time genuinely believed to exist.
47. Additionally, Section 44 (a) and (c) of the *Employment Act* provides that an employer may summarily dismiss an employee from employment if without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work and an employee wilfully neglects to perform any work which it was his duty to perform.
48. The Respondent submitted that the Claimant absconded his duties as the Kitale Branch Cash Manager on 5th February 2018. On this date, he failed to perform essential duties including balancing the vault cash, updating the vault register, signing cross entries and controlling cash movement. Additionally, between 22nd May 2018 and 11th June 2018, he unilaterally decided not to perform his duties without any medical justification despite being present at the workplace.
49. The Respondent submitted that despite the Claimant's allegations of being incapacitated from writing and signing documents due to an injury sustained on 1st September 2018, he sat for a written interview on 3rd April 2018. Further, he claimed inability to respond internal memo dated 6th February 2018, he was able to sign documents before the issuance of the said memo. The Claimant relied in the case of *Evans Ochieng Oluoch v Njimia Pharmaceuticals Limited* (2016) Eklr where the court stated:

“Desertion amounts to gross misconduct and renders an employee liable to summary dismissal.”
50. The Respondent submitted that the Claimant knowingly gave misleading information to the Respondent claiming he was not the cash manager and vault custodian between 29th January 2018 to 4th February 2018 despite taking over the vault cash on 29th January 2018 and signing the cash summary register until 4th February 2018.
51. Additionally, the Claimant submitted a false and fictitious injury claim as the forensic investigation report dated 30th May 2018 revealed that he was not injured at the workplace and the Health and Safety Incident Report was fabricated in an attempt to receive reimbursement amounting to fraud.
52. The Respondent submitted that the Claimant unlawfully altered sales codes in a targeted scheme to favour Nancy Kiptisia; this was a calculated act intended to distort performance metrics, fraudulently reassign credit and sabotage fair and transparent appraisal mechanisms of the Respondent.
53. The Respondent submitted that although the Claimant alleges the actions were not done by him, he admits that his CQ code was used and that he shared his login credentials with other employees contrary to the Respondent's Rik Policy and its Ethical Business Conduct and was in breach of confidentiality which is grievous in the banking sector, where trust, client privacy and system integrity is paramount.
54. It is the Respondent's submission that the Claimant's cumulative actions of: manipulating data; falsifying sales credit ; and generating false claims among others reflect a patter of deceit and abuse of position that cannot be excused as an isolated error or lapse in judgment.



55. On the second issue, the Respondent submitted that the Claimant was issued internal memos to show cause why disciplinary action should not be taken against him with attached evidence, which the Claimant responded to. Furthermore, vide a letter dated 7th September 2018, he was informed of the allegations against him and given an opportunity to be heard in accordance with Section 41 of the *Employment Act*.
56. The Respondent submitted that the Claimant was informed of his right to be accompanied by a colleague or union representative during the hearing and was give adequate time to arrange for representation should he wish to exercise this right as stipulated under Section 41(2) of the Act. However, during the disciplinary hearing, the Claimant agreed to proceed without representation.
57. The Respondent submitted that after the hearing, it considered all factors and in compliance with Section 35 of the *Employment Act*, it issued the Claimant a formal written notice of termination on 18th September 2018.
58. The Respondent submitted that the Claimant appealed its decision vide a letter dated 21st September 2018. The appeal was properly reviewed on its merits and the Respondent dismissed it on grounds of lacking substantive justification or new evidence. This is consistent with Section 45(5)(a) of the Act that directs the court to consider the procedure adopted by the employer and handling of appeals against the decision in determining whether termination was fair.
59. On the third issue, the Respondent submitted that there was no guarantee of employment until the Claimant's retirement at the time of his termination. Additionally, the termination of his employment was substantively fair and carried in accordance with due process. Consequently, his prayers for relief should fail.
60. On costs, the Respondent submitted that the Claimant ought to bear the costs of the proceedings since he was lawfully summarily dismissed. In the alternative, it is trite law that costs follow the event.
61. I have examined all the evidence and submissions of the parties herein. The claimant was dismissed vide a termination letter dated 1st September 2018 which stated various reasons for dismissal including lying that he had been injured on 1st September, 2017 and also generating and presenting fictitious health and safety incident report to the bank which amounted to attempted fraud. He was also accused of being dishonest when he refused to sign documents and abdicated his responsibilities as a cash manager by claiming he was incapacitated to write and sign documents due to an injury he allegedly sustained on 1st September 2017 yet evidence available indicated that he sat an interview on 3/4/2018 and signed several documents between 2nd December 2017 and 7th February 2018.
62. Various other reasons are stated in their termination letter. Prior to this termination, the claimant had been served with a show cause letter which he responded to. He was thereafter invited for a disciplinary hearing. I have looked at the minutes of the disciplinary hearing held on 12/9/2018. The charges against the claimant were read to him and to which he denied in totality.
63. The claimant has averred that the hearing process was flawed because the respondents never called any witness to produce evidence against him and for him to cross examine them.
64. The respondents have indicated that the process was proper. They have alleged that the documents from the hospital were forged but no witness from the hospital testified. They also aver that he falsified sales credit and manipulated data but no witness was called to produce the said evidence against him. Section 41 of the *Employment Act* 2007 provides as follows:



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.
65. Under the law the disciplinary process envisaged is a hearing where witnesses are called and the employee has a chance to cross examine them. In the claimant's case no such witness was called and therefore there was actually no proof of the allegations against the claimant.
66. The claimant also submitted that he appealed the termination by the respondent but the respondent did not constitute a disciplinary appeals committee as required vide clause 4.16 of the KCB bank Group disciplinary and grievance handling policy dated 25th December 2012.
67. The claimant further submitted that clause 6.9 of the said manual dated 28/12/2012 establishes the committee with its mandate. He contends that due to the fact that such a committee was never established the disciplinary process was flawed and therefore his dismissal was wrongful.
68. Section 45(2) of the Employment Act 2007 states as follows:
- (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 employees 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.
69. Indeed, without establishment of the existence of valid reason and without demonstrating that due process was followed the termination becomes unfair and unjustified and for which I find.
70. In terms of remedies, I therefore find for the claimant and I award him accordingly as follows:
- 1. In view of the failure by the respondent to follow due process and cutting short the claimant's career, I find 10 months salary as compensation for the unfair termination is appropriate and which I award = $10 \times 157,993 =$ Kshs 1,579,930 less statutory deductions.
71. The claimant should also be issued with a certificate of service. The respondent should pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

