



Kisiara v Cooperative Bank of Kenya Limited (Employment and Labour Relations Cause E978 of 2021) [2025] KEELRC 1902 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1902 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E978 OF 2021**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

ANTHONY PARYSAYO KISIARA CLAIMANT

AND

COOPERATIVE BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of a Statement of Claim dated 26th November, 2021. It does not disclose any issue in dispute on its face.
2. The Respondent in a Statement of Response and Counter Claim dated 22nd January, 2022 denies the claim and prays that it be dismissed with costs.
3. The Claimant in a Reply to Statement of Response and Counter Claim dated 27th May, 2022 reiterates the claim and avers that the loan facility complained of in the Counter Claim is a performing loan and fully secured by a legal charge over a property known as LR NO. 12715/6063 and is serviced regularly. In any event, the Claimant avers that this court lacks jurisdiction to hear and determine the Counter Claim, the loan being a secured and civil debts. It is outside the purview of the *Employment Act, 2007*.
4. The Claimant's case is that at all material time to this cause, he was employed as a Branch Manager, Naivasha Branch by the Respondent. He earned Ksh.244,159.00 as the time of his termination from office.
5. The Claimant further avers that he was employed on 23rd March, 2004 and had a continuous stint for fifteen [15] years in which he won accolades and was promoted for his diligence and industry. However, on 20th March, 2019, vide a termination letter of even date his services were terminated on the guise of failing to comply with provision of the *Proceeds of Crime and Anti-Money Laundering Act, 2009* [POCAMLA].



6. The Claimant's other case is that he was falsely accused of failing to report suspicious cash transactions after review of high value reports for Kilgoris Branch and knowingly allowing Mara Agri Enterprises Limited to make high cash value deposits at Naivasha Branch without receiving adequate supporting document from the customer. His grounds of termination were unreasonable, invalid and did not meet the statutory threshold set out as section 45[2][a] and [b] and section 47[5] of the [Employment Act](#), 2007.
7. The Claimant seeks to demonstrate at the hearing that the Respondents conduct leading to the termination of his contract of service was highly irregular, motivated by sheer malice and out rightly unjustifiable for the following reasons,
 - a. The hearing panel ignored Claimant's submissions that the customer in question was to the effect a regular customer at the branch who engaged in farming activities and more importantly that the Claimant conducted due diligence by personally interviewing the customer to establish the source of funds which source the customer declared and described in the source of funds in declaration form.
 - b. The panel ignored the fact that the claimant obtained a cash declaration form from the customer and immediately forwarded the same to the service manager for onward transmission compliance department which department did question to the validity of the transactions. Not to the raise any question to the validity of the transaction.
 - c. The disciplinary panel further ignored claimant's defence which clearly demonstrated that the Claimant had only handled one transaction of Kes 15,000,000, which transaction had been duly approved by the compliance department.
 - d. The disciplinary committed failed to consider the fact that all questioned transactions involving Sool Enterprises Limited and Horizon And Beyond Limited questioned of Kes 11,000,000 20/01/2017 and 11,019,310 on 14/1/2017 respectively, were reviewed and completed at Narok Branch and the Claimant was never involved in the impugned transaction's.
8. He claims thus;
 - a. I month in lieu of notice.....Kes 244,159.00.
 - b. Twelve [12] months salary as compensation for unfair and unlawful termination.....Kes 2,929,908.00
 - c. Bonus 2018 at $13/100 \times 244,159 \times 1$Kes380,888.04
9. He prays as follows;
 - a. A declaration that the Claimant's employment was unfairly terminated.
 - b. I month salary in lies of Notice..... Kes 244,159.00
 - c. Twelve [12] months salary compensation for unfair termination..... Kes 2,929,908.00
 - d. Bonus 2018 @ $[13/100 \times 244,159 \times 1]$ Kes 350,888.04
 - e. Costs of the cause.
10. The Respondent at the onset avers that the Claimant's dismissal from employment was as result of his noted and admitted lapses in facilitating high value suspicious transactions and also deriving illegal



benefits through kickbacks from third parties. She denies that the employment of the Claimant was blemish free and that he was the subject of disciplinary issues and due to his consistence failure to abide by the Respondent's Business Code of Conduct and Ethics and Operating Manure. This is as follows; On 23rd February, 2016, the Claimant received a cautionary warning for exposing the bank to financial loss due to granting excess payments of Kshs.1,100,000.00 by paying cheques against the bank's ENC Guidelines without obtaining tangible securities on the Respondent's behalf. On 10th March, 2016, the Claimant received a warning for irregularly disbursing a Flexi Cash Facility to a bank customer for the sums of Kshs.115,000.00 and 105,000.00 without obtaining a approval from the Respondent's Retail and Business Banking Department. On 18th October, 2018 the Claimant received a further warning during the Respondent Naivasha Branch Audit which revealed several lapses in his duties as Branch Manager leading to an overall FAIR branch audit rating.

11. The Respondent further avers that following an internal audit carried out at its Kilgoris and Naivasha branches in 2018, it was discovered that the Claimant had on several occasions facilitated laundering of proceeds without supporting documentation. He also failed to report high value suspicious transactions and received kickbacks to the bank's disrepute.
12. Again, the Claimant failed to adhere to the Bank's internal policies to safeguard it against fraudulent activities, misappropriation of funds and other irregularities through;
 - a. Allowing the Respondent's customers who were in receipt of proceeds from alleged government projects to channel the suspicious funds through the Bank without supporting documentation.
 - b. Facilitating high value transactions to members of staff of the Narok County Government, well aware that the transactions in question arose from questionable contracts and were further subject to conflicts of interest.
 - c. Failing to report suspicious transactions despite knowledge that the recipients of such funds, M/s Mora Agri Enterprises Limited, Sool Enterprises Limited, Entalntal Limited and Horizone and Beyond Limited and not quality to receive such contracts from the Narok County Government in accordance to public procurement laws.
 - d. Incorporating a company, M/s Peak and Beyond limited, with an ex-Bank staff member Evans Abila Ong'anda, during the course of his employment which business vehicle was used in conflict with his employment duties and the Respondent's business; and
 - e. Using M/s Peak and Beyond Limited to receive Kickbacks in excess of Kshs.233,000.00 from the Narok County Government.
13. The Respondent therefore avers that it had substantive cause and followed due process in dismissing the Claimant from employment for reasons that;
 - a. On 15 October 2018, the Respondent issued the Claimant with a Notice to Show Cause [Disciplinary Charges"] on why disciplinary action should not be taken against him on account of lapses in the performance of his duties and fundamentally breaching the Respondent's Operating Manual.
 - b. On 23 October 2018, the Claimant responded to the Respondent's Notice to Show Cause justifying his noted lapses citing ignorance of the law as well as the Respondent's internal policies. This was despite the Claimant's written undertaking to always comply with the Respondent's policies, including the Anti-money Laundering Policy.



- c. Unsatisfied with the nature of the Claimant's response, on 28 February 2019, the Respondent invited the Claimant for a scheduled disciplinary hearing on 8 March 2019 while further notifying him of his right to have a fellow staff member present and adduce any evidence in support of his defence.
 - d. On 8 March 2019, in appearing before the Respondent's Disciplinary Committee, the Claimant had the subsisting Disciplinary Charges read out to him for a further response.
 - e. That in response, the Claimant made several admissions, including notable conflicts of interest, his failure to report high value suspicious transactions and admitted personal carelessness in processing high value transactions in the absence of supporting documentation.
 - f. Upon conclusion of the disciplinary hearing, the Respondents Disciplinary Committee retired to contemplate its decision on the understanding that the same would be communicated to the Claimant in due course.
 - g. On 20 March 2019, after consideration of the Claimant's defence, the Respondent's Disciplinary Committee arrived at the decision to summarily dismiss the Claimant from employment as his defence before the Panel was not sufficient to exonerate him from the charges preferred.
14. Further, the Respondent pursued disciplinary proceedings and considered the Claimant presentation and defend and dismissed him after undertaking the following internal processes;
- a. Undertaking thorough investigations against the Claimant's conduct during the Respondent's internal audit.
 - b. Preferring the relevant charges arising from the investigations against him.
 - c. Affording him an opportunity to show cause why disciplinary action should not be taken against him.
 - d. Affording him a fair hearing before the Respondent's Disciplinary Committee.
 - e. Documenting the disciplinary hearing minutes; and
 - f. Considering the evidence before it arriving at the decision to summarily dismiss him from employment.
15. The Respondent puts a claim to a counter claim as follows; That prior to the dismissal of the Claimant on 20th March 2019, he had taken a personal loan and house loan on staff interest rates which are no longer applicable due to his dismissal. These loans have been restructured and consolidated and now due and payable at prevailing commercial rates thirty days from the date of dismissal. The Claimant has refused to cooperate on a suitable payment plan for these loan. The Claimant's total indebtedness is now Kshs.8,220,080.54
16. The Respondent prevent the following as particulars of fraud and unjust enrichment on part of Claimant;
- a. failure to comply with the legal requirement and Respondent's internal ant money laundering policy to report suspicious transactions:
 - b. Facilitating a high value deposit by M/s Mara Agri Enterprises Limited under Account Number 01148479067700 solely on the basis of a cash declaration form and without any other supporting documents:



- c. Facilitating a high value transaction of Kshs 11,000,000.00 to M/s Sool Enterprises Limited on 20 January 2017 on the basis of an incomplete and undated Local Service Order.
 - d. Facilitating a high value transaction of Kshs.11,019,310.00 to M/s Harizone and Beyond Limited on 15th March, 2019 without reporting it as a suspicious transaction with a conflict of interest.
 - e. Incorporating M/s Peak and Beyond Limited and using it to receiving kickbacks of Kshs.233,000.00 through Account Number 01110002371400 on 28th and 29th December, 2017.
17. The Respondent therefore prays for judgment against the Claimant as follows;
- a. Kshs.8,220,080.54 being the outstanding and consolidated loan amount due to the Respondent as at 13th January 2022.
 - b. Interest on [a] above of the prevailing commercial rate of 12% until payment in full.
 - c. Exemplary Damages for breach of the Respondent's Business Code of Conduct and Ethics. Anti Money Laundering Policy and Operating Manual.
 - d. Costs of this suit: and
 - e. Interest on [a] and [c] above of court rates from the date of filing this Statement Response and Counter Claim until payment in full.
18. The matter came to court variously until the 30th April, 2024 when it was heard inter partes.
19. The issue for determination therefore are;
1. Whether this court has jurisdiction to handle the issue of the Counter Claim.
 2. Whether the Respondent is entitled to the Counter Claim.
 3. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 4. Whether the Claimant is entitled to the relief sought.
 5. Who bears the costs of this Claim?
20. The 1st issue for determination is whether this court has jurisdiction to handle the issue of the Counter Claim. The Claimant in his written submission posits that this court does not have jurisdiction to interrogate and determine this matter. He cites the provisions of Article 162[2] [a] and section 12[1] of the *Employment and Labour Relations Court Act* which bestow this court with jurisdiction. The Claimant avers that the amount of Ksh.8,220,080.54 is the product of a commercial loan advance to him on purely commercial terms and secured at all times. This was by way of a registered charge of a person No. LR12715/6063. This being the case, the applicable remedies available to the Respondent as brought out under the provisions of section 90[3] of the *Land Act*, Chapter 80, Laws of Kenya and therefore under the purview of the Environment and Land Court or other Commercial Court. This therefore becomes an abuse of the process of court. He relies on authority of *OUMA V FAULU MICROFINANCE BANK LTD [CAUSE E015 OF 2022]* [2023] KEELRC 940 [KLR] to buttress this position.
21. The Respondent opposes this position and submits that the loan facility and favourable interest rate was offered to the Claimant on the basis of his employment relationship with the Respondent. This



imbues this court the jurisdiction to hear and determine the Counter Claim and award any necessary relief. On this she wishes to rely on authority of Banking Insurance and Finance Union Kenya v Consolidated Bank of Kenya [2020] eKLR, where the court cited with authority the case of Abraham Nyambane Osiago v Barclays Bank of Kenya Limited [2013] eKLR where it was held thus:

“The employment relationship is a wide concept which cannot be restricted to a contract of service hence this Court has jurisdiction to hear matters pertaining to the interest rates applicable to former employees. As the respondent has submitted, the preferential rates of interest were given to employees because of their employment relationship with the bank. Thus, it was an employment benefit. It is thus within jurisdiction of this court.”

22. Jurisdiction therefore is non-issue in the circumstances.
23. *The Constitution* of Kenya, 2010 at Article 162 [2] [a] provides that parliament shall establish courts with the status of High Court to hear and determine disputes relating to employment and labour relations. The dispute on the loan awarded to the Claimant and any issues of interest accrued thereof belong to the category of disputes relating to employment and labour relations. There cannot be any other understanding of the term. This is because the facility was issued in the course of employment and relating to the employment of the Claimant. It was part and parcel of facilities accruing to him by virtue of his employment. He cannot therefore be heard to come out and argue to the contrary.
24. It is not expected that in all these circumstances, courts would be expected to dissect the nitty gritty of the issues of employment and send them to various other jurisdictions for acceptance. This is why the phrase disputes relating to employment and labour relations was employed to facilitate wholesale action in employment matters. This court therefore has jurisdiction to hear and determine issues relating to the loan facility the subject of the Counter Claim.
25. The 2nd issued for jurisdiction is whether the Respondent is entitled to the Counter Claim. The Claimant does not submit on the non-validity of the Counter Claim. He only disputes the jurisdiction of this court to hear and make a determination on the same. The Respondent on the other hand submits that the Claimant was awarded these personal and house loans on 13th January, 2022 and they still remain unpaid. These remain due to date. On this, the Respondent seek to rely on authority of Jim Kennedy Kiriro Njeru v Equity Bank [K] limited [2019] eKLR where the court held that loan facilities issued to employees in the course of employment and upon the employees departure from employment. The loan facility remains due and owing to the issuing institution and employer. I therefore find that the Respondent is entitled to the relief sought in the Counter Claim.
26. The 3rd issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in his written submission dated 2nd September, 2024 reiterates his case for unlawful termination of employment. It is his case that his dismissal was invalid, grossly unfair and unjustifiable and was based on extraneous facts and matters that the Respondent could not testify or demonstrate.
27. The Claimant further submits that from a scrutiny of the disciplinary proceedings, he was dismissed on grounds 1 and 2 and exonerated on the other 2. These were as follows;
 - a. Failing to comply with the *Proceeds Of Crime and Anti-Money Laundering Act* 2009 [POCAMLA]. Failing to report high value report for Kilgoris Branch.
 - b. Knowingly allowed Mara Agri Enterprises Limited A/C No. 0114847906770 to make high value deposits at Naivasha Branch without adequate supporting documents from the customer, deposit of Kes55,687,000/= in cash.



28. The Claimant in denial of these charges submits that for bank branches, all incoming funds from the County were flagged at head office to allow branches to receive supporting documentation from customers. This supporting documents were then delivered by the customers to allow them access to the funds. Here, he testified that he had received the cash declaration form and allowed the transaction to take place. This was forwarded to the service manager for onwards transmission to Compliance Department as was required of him. It was the onus of the Compliance Department to review and authorized any payment since accounts were automatically blocking from receiving amount in excess of Kshs.1,000,000.00. Again, the transaction was not suspicious since the customer was engaged in the business indicated on the source of funds and the Compliance Department was immediately notified of the transaction as required of Clause 29:9[iv] of POCAMLA.
29. The Claimant submits that the banks conducts after the impugned customer deposits was one of total silence. It never flagged the transaction nor requested the client for any further supporting document in support of his narration that he was involved in cattle and wheats farming as required of clause 29[6]. The bank did not file a report with FRC about this transaction nor flag it suspicious and client was allowed access to his account by the Compliance Department. The decision to label the account suspicious was a mere afterthought aimed at terminating employment unprocedurally. Moreover, this was never imported to the relevant investigative authorities like the DCI, EACC or DPP and no charges were preferred against any person or persons in this regard.
30. In answer to ground No. 2 of the charges, the Claimant testified that the alleged sum Kshs. 55,687.00 was transacted in different branches and by different bank managers at different levels and that in never interacted with the alleged transaction to allow him ask for documentation from the depositors. It was therefore irrational, unfair and unreasonable for the bank to expect him to investigate and interrogate the source of funds for transactions he never handled. He had only handled the one for Kshs.15,000,000.00 for which he had had satisfactory proof.
31. The Claimant in toto submits that his termination of employment was not based on any evidence and fell short of the requirement of valid and fair reason for such termination as required of section 45[2] [a] and [b] as read with section 47[5] of the *Employment Act*, 2007. No evidence was tendered to show that the Claimant handled all the transactions totaling Kshs.55,687,000.00 were even that he colluded with his clients. There was also no evidence of collusion and in any event, these monies were released to the client despite the bank insisting that there were proceeds of corrupts scheme.
32. The Claimant sought to buttress his case on the authority of the court of appeal decision in Pius Machafuisindu Valavingion Security Guards Limited [2012] EKLIR where the court restated the burden placed on the employer under Section 40 and 45 of the *Employment Act*, 2007 by stating 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.”



33. Again, the burden and standard of proof in employment matters has long been settled in *Muthaiga.country Club v Peter Ngau Nzioka* [2019] ECLR the court of Appeal quoted with approval the decision *Cec Standic Bank Limited v Danson Mwashako Mwakuwoma* [2015] ECLR thus;

It is not for the Court to substitute its own "reasonable grounds" for those of the employer. The standard of proof was further considered in the case of *Bamburi Cement Limited v William Kilonzi* [2016] ECLR wherein this Court rendered itself ne follows "The questions that must be answered is whether the appellant's suspicion was based on reasonable and sufficient grounds. According to section 47[5] the burden of proving that the dismissal was wrongful rests on the employee, while the burden of justifying the grounds of wrongful dismissal rests on the employer. It is a shared burden, which strictly speaking amounts to the same thing.

34. The Respondent on the other hand submits a case of lawful termination of employment. It is her submission that her journey with the Claimant started on high note but with time, his conduct deteriorated leading to a total of five formal warnings. Despite all this, his behaviour and conduct failed to meet the standard required of his roles as branch manager when he began engaging in conflict of interest and lapses in high value transactions.
35. The Respondent in further support of their case submits that this this matter went through examination of the Claimant's and Respondent testimony and in doing so, it is evident that the Claimant's cross-examination confirmed the following undisputed facts;
- a. Soon after the Claimant was confirmed into the Bank's terms of employment, the Respondent began noticing loses in the Claimant performance of his duties.
 - b. On account of noted lapses the Respondent sued the Claimant with warning and cautionary letters in 2016 for his failure to exercise due diligence and care in processing disputed coin withdrawals to purported bank customers in accordance with the Bank's Operating Manual.
 - c. In an effort to curtail the Claimant's notable lapses and continuously expose him to the Respondent's internal workings and operations the Respondent transferred the Claimant to its Naivasha Branch in 2017 to serve in the position of a Branch Manager.
 - d. However, despite these efforts the Claimant lapses continued On 18 October 2018 the Respondent issued the Claimant with a further warning noting that his lapses in duty contributed to a detrimental and overall "FAIR" Branch auditing of the Naivasha Branch in the year 2018.
 - e. It is the Respondent's collective branch audits in 2018 that the Respondent learnt of the Claimant's mismanagement at the Naivasha Branch where the Claimant had persistently failed to comply with the Bank internal policies trading to the breach of the Respondent internal safeguards against fraud, and misappropriation of funds.
 - f. On 15th October 2018 the Respondent issued the Claimant with a notice to show Cause why disciplinary action should not be taken against him, which the Claimant unsatisfactorily responded to on 23rd October 2018.
 - g. Vide a letter dated 28th February 2017 the Respondent invited the Claimant for a disciplinary hearing and on 8th March 2018 the Claimant attended the disciplinary hearing and given an opportunity to respond to the disciplinary charges against him.
 - h. During the said disciplinary hearing, the Claimant admitted to inter alia that;



- i. Despite executing an Anti-Money Laundering Form, he was not fully aware of the provisions of the Proceeds of Crime and Anti Money Laundering Act
 - ii. Not having been keen to look at documents submitted to support high value transactions of the Branch.
 - iii. that the Bank's customer [Wilson] should not have engaged in business transactions with the same county which has employed him, and he was not keen to look of the activities carried out by the company.
 - iv. He did not report high value transactions. He allowed high value transactions without raising the transactions as suspicious yet he was aware that he should have flagged the transaction because there were no sufficient documents provided and where he did not know the source of the funds, he failed to query the same.
36. The Respondent submits that the Claimant's dismissal from employment was for fair and valid reasons that the grounds of termination were justified and in tandem with the authority of Pius Machafu Ishidu v Lavington Security Guards Limited [2015] eKLR. The Claimant admitted a breach of the Proceeds of Crime and Anti Money Laundering Act and bank policies during the disciplinary hearing and cross examination thereof of which are sufficient grounds for dismissal.
37. The Respondent further avers the claimant failure and breaches by submitting that in the course of the claimant's employment he was treated to the following disciplinary measures due to his failures and breaches of the bank operational guidelines;
- i. 3 warning letters dated 14th January 2005, 10th March, 2016 and 18th October, 2018, and; Refer to "Page 5, 17 and 19 the Bank's Bundles of Documents.
 - ii. a cautionary letter dated 23rd February, 2016 from different branches of the Respondent all with similar warnings against the Claimant for breach of the Banks policies and a kind reminder to him to acquaint himself with the Bank's operating manual and policies.
38. The Respondent's further submissions come out thus;
- On 20th March 2019 the Claimant was summarily dismissed from employment on grounds inter alia that the Claimant failed to ensure that policies and procedures were followed when;
- a. When serving as a Branch Manager Kilgoris Branch, the Claimant failed to comply with the Proceeds of Crime and Anti Money Laundering Act [POCAMLA] by facilitating Narok County public officials to deposit funds from Narok County in companies they were directors and in breach of POCAMLA and Public Procurement and Disposal Act.
 - b. Particularly while of the Kilgoris Branch, serving as the Branch Manager the Claimant allowed Wilson Ledama, an employee of Narok County Government to deposit funds in companies in which he was a director or was affiliated with the Total sum of Kenya shillings 77,704.310 which is as stated hereunder;
 - I. Horizonte and Beyond Limited for the sum of Kenya Shillings 11,019.310 Refer to Page 57 the Bank's bundles of documents.
 - II. S00L enterprises, the sum of Kenya Shillings 11.000.000 Refer to Page 57" the Bank's bundles of documents



III. Mara Agri Enterprises, the sum of Kenya Shillings 55.687.000
"Page 58" the Bank's bundles of documents.

- c. That all these funds, totaling Kenya shillings 77,706.310, were coming from Narok County and for the benefit of Wilson Ledama's Company and his affiliate companies yet Wilson Ledama at the time was an employee of the said County.
- d. The Claimant Did Not Report the receipt any of these transactions to the Bank as suspicious despite the nature of these transactions being apparently suspicious on the face of it.
- e. Further, the Claimant admitted on page 60 of the Bank's bundles of documents and thing the disciplinary hearing and cross-examination that he knew that Wilson Tadano was an employee of Narok County and he stated that it was "irregular for an employee of the county to financially benefit from the some county through". The Claimant was admitted to having read the law which prohibits a County employee and a County Government from transacting in business because it contravenes the *Public Procurement and Asset Disposal Act*.
- f. The Claimant in his cross examination admitted that he facilitated these transactions knowing very well that these were public funds, the transactions were unlawful, there was latent conflict of interest and the same was not lawful.
- g. Further from the documents on record the Claimant received a kick back of Kenya Shillings 233.000 from Narok County Government through his company Peak and Beyond Limited weeks after facilitating the above reference high value transactions. Refer to Page 24. 37 and 62 of the Bank's Bundle of documents
- h. Finally when the Clamant was transferred from Kilgoris Branch to Naivasha Branch he admitted in testimony that he facilitated the cash deposit of Kshs.15.000.000 by Mara Agril Enterprises Limited it is important to note that he had previously facilitated a transaction of Kshs.55.407.000 ty Mara Agri while in Kilgoris.
- i. That when the Clamant was questioned in cross as to why Mara Agri, a company affiliated to William Ledama's associates, whose domicile branch was in Kigoris. would choose to dive hundreds of Kilometers with 15 Million in cash to deposit it in a Bank he is a branch manager in, he failed to give any cogent answer.
- j. Further when the Claimant was asked why he did not ask Mara Agri for source and proof of funds, he slated that they had stated that the Kshs.15 million was from sale of cows and wheat in Suswa Market in Narok, that, for him, was proof of funds. Refer to page 61 of the Bank's bundles of documents.

39. A look at the respective cases of the parties brings this out in favour of the Respondent. She has outstandingly brought out a case of a careless and recalcitrant employee who would not heed instructions and guidelines for optimal performance of his duties. The Respondent cites several instances of neglect and poor performance of his work even in the presence of clear guidelines on



performance. No amount of warnings or other cautionary and interventionary overtures by the Respondent would work well or raise any alarm on the part of the Claimant. He continued to fail, and disasterably so.

40. The Claimant was taken through disciplinary proceedings whereby he was given an opportunity to explain himself but failed to satisfactorily exonerate himself from misdeeds and various malpractices. A case of lawful termination of employment therefore ensues in the circumstances. The Claimant has failed to substantiate a case of unlawful termination to the dictates of section 47[5] of the [Employment Act](#), 2007. I therefore find a case of lawful termination of employment and hold as such.
41. The 4th issue for determination is whether the Claimant is entitled to the relief sought. He is not. Having failed on a case of unlawful termination of employment, he becomes disentitled to the relief sought.
42. The last issued for determination is who bears the costs of this cause. In the circumstances, this should be borne by the Claimant. Whereas we are urged to pursue the cliché of costs follow the event, this becomes a pivotal and discretionary power of the court. It is exercised according to the circumstances of the case. Here, the Claimant was aware or ought to have been aware of his conduct at the work place thus enabling him to gauge his chances of failure and success. Instead of utilizing this facility, he choose to keep us busy for tending to four years. This was not a worthwhile gamble. He must therefore meet the costs of the claim.
43. I am therefore inclined to dismiss the claim, allow the counter claim and award relief as follows;
 - i. The Claimant is ordered to meet and pay Kshs.8,220,080.54 being loans owing to the Respondent employer.
 - ii. Interest on [i] above at commercial rate from the date of departure or dismissal from employment todate.
 - iii. Interest at court rates from the date of this judgment till payment in full.
 - iv. The costs of the claim shall be borne by the Claimant.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances

Mr. Masaviru instructed by Masaviru & Ketoo Advocate for the Claimant.

Miss. Muraguri instructed by MMW Advocates LLP for the Respondent.

