



**Odek v UBA Bank Kenya Limited (Cause E072 of 2023)
[2025] KEELRC 1898 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1898 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E072 OF 2023
DKN MARETE, J
JUNE 25, 2025**

BETWEEN

JENIPHER WANJIKU ODEK CLAIMANT

AND

UBA BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. The matter was originated by way of a Memorandum of Claim dated 31st January, 2023. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent's statement of Response dated 12th April, 2023 denies the claim and pray that it be dismissed with costs.
3. The Claimant's case is that all material time as relevant to this suit, she was an employee of the Respondent and worked as a Relationship Manager. She was employed on 1st September, 2019 and earned Kshs.312,500.00.
4. The Claimant's other case is that she worked dedicatedly and was never subjected to any disciplinary proceedings whatsoever. On 27th May, 2020 she was thus appointed acting Branch Manager at the Upper Hill Branch with effect from 1st June, 2020 to 30th November, 2020. On 1st April, 2020 she was confirmed to the position of Relationship Manager after completing her probation.
5. The Claimant avers that she acted as such branch manager for 23 months and 11 days until she resigned on 11th May 2022 as her role was not equally compensated. This position attracted to gross salary of Kshs. 450,000.00 occasioning a difference of Kshs.137,000.00 in between. She was instructed to continue acting even in the absence of a substantive appointment. It is her further position that the Respondent's action of non-confirmation to manager amounted to discrimination.
6. She prays as follows;



- A. A declaration that the claimant is entitled to the lawful benefits by way of the accrued acting allowance in the sum of Kshs.3,212,917/=
 - B. Damages in respect of discrimination against the Claimant.
 - C. Costs of the suit and interest thereon.
 - D. Interest in the costs awarded at Court rates.
7. The Respondent's case is a denial of the claim. Her case is that like all other employees, the Claimant was answerable to other persons within the Respondent's management structure all of which she was aware.
 8. It is the Respondent further case that the Claimant was on several occasions cautioned on her dismal performance. This was vide Internal Memos dated 14th October, 2020, 3rd November, 2020 and 18th February, 2020. Moreover, it was clearly spelt out to the Claimant that despite acting as branch manager, her terms of employment would remain the same. She is therefore estopped from claiming anything to the contrary.
 9. In the penultimate, the Respondent avers that the instant claim is a sham and a blatant abuse of the process of court. It is untenable and arises no triable issues and should be dismissed in limine.
 10. The matter came to court variously until the 14th November, 2024 when it was heard inter partes.
 11. The issues in dispute therefore are;
 1. Whether the Claimant is entitled to the relief sought by way of accrued acting allowance.
 2. Whether the Claimant is entitled to general damages for discrimination.
 3. Who bears the costs of this cause?
 12. The 1st issue for determination is whether the Claimant is entitled to the relief sought by way of accrued acting allowance. The Claimant in her written submission dated 20th November, 2024 submits in reiteration of her case. She cites Articles 41(1)(2)(a) and 27(1) and (2) of *the constitution* to establish her cases for fair remuneration, equality before the law and the right to equal protection and equal benefit of the law. This includes the full equality and enjoyment of all rights and fundamental freedom.
 13. The Claimant further submits that she was appointed in acting capacity while still under probation and that her confirmation as Relationship Manager was pending despite her satisfactory performance at the end of the probation period. This is not disapproved in evidence and further, her warning letters were withdrawn for not being competent. Her case is that this amounted to unfair labour practices and wishes to rely on authority of *Edah Cherono Maiywa v university of Nairobi Enterprises & Services Ltd* [2020] eKLR where it was held that the Claimant's prolonged appointment to the position of Senior Human Resource Administration Officer in an acting capacity without being given the substantive position amounted to discrimination and unfair labour practice on the part of the Respondent.
 14. The Respondent on the other hand submits that the Claimant was engaged as an acting branch manager for a very limited period: 1st June, 2020 to 30th November, 2020. This was not extended as alleged by the Claimant. It was always her onus to satisfy the standard of proof by tendering evidence in support of this allegation in order to satiate the provision of section 107(1) of the *Evidence Act*, Chapter 80, Laws of Kenya. This is because she is the one seeking the court to believe in the subsistence of such claim.



15. The Respondent further submits that the Claimant is not a reliable witness owing to her contradictory testimony on a filing of CMEL Cause No. 1650 of 2022: *Jenipher Wanjiku Odek vs UBA Bank Kenya Ltd* where she simultaneously denies filing the matter but admits this on cross-examination.
16. From the onset the Respondent posits that the letter of 27th May, 2020 appointing the Claimant as acting branch manager for a limited period of five months expressly states that for this appointment, all the terms and conditions of employment remain the same. These are the terms spelt out in the letter of appointment dated 29th July, 2019. Her acceptance of the request to serve in an acting role by executing the letter dated 27th May, 2020 signified her acceptance to the terms of the said letter. This claim therefore becomes dishonest and an attempt at unjust enrichment.
17. I agree with the Respondent. All facts and evidence in this cause bring out a case of no entitlement to the relief sought. It is not substantiated or justified in evidence and law. The letter dated 27th May, 2020 is clear on the terms of deployment in the acting capacity. The Claimant loses out on this and I hold as such.
18. The 2nd issue for determination is whether the Claimant is entitled to general damages for discrimination. The letter of 27th May, 2020 as read with the letter of appointment point out at the terms of the Claimant's employment and acting capacity. No evidence to the contrary and in support of a case of discrimination has been adduced whatsoever. This prayer therefore also falls by the wayside.
19. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Odongo instructed by Ombeta Ogonya & Company Advocates for the Claimant.
2. Mr. Muchoki instructed by Ahmednasir Abdullahi Advocates LLP for the Respondent.

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