



Obasie v National Industrial Training Authority (NITA) (Cause E131 of 2021) [2025] KEELRC 1746 (KLR) (13 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1746 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E131 OF 2021**

SC RUTTO, J

JUNE 13, 2025

BETWEEN

GABRIEL AKIMWANARY OBASIE CLAIMANT

AND

NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA) ... RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 17th February 2021, the Claimant avers that he was employed by the Respondent on 8th January 2015 in the position of a Senior Accountant. He was later promoted to the position of acting Manager Finance and Levy Administration.
2. From the record, the employment relationship started to go downhill when the Claimant was sent on compulsory leave from 10th March 2017 to 10th May 2017 primarily on the basis that cheques totaling Kshs 12,003,863/= which had been received and receipted at the Respondent's revenue office, were fraudulently cleared at the Diamond Trust Bank (DTB) Kisii branch.
3. Seemingly, this triggered a disciplinary process which culminated in the Claimant's dismissal from employment on 19th February 2018. The Claimant now seeks an order of reinstatement and in the alternative, payment of damages for wrongful termination.
4. The Respondent opposed the Claim through its Reply dated 6th July 2022, in which it avers that the Claimant was dismissed from employment after investigations conducted by the Banking Fraud Investigation Unit (BFIU) found him liable for negligence and recommended that action be taken against him. According to the Respondent, the Claimant's dismissal from employment was fair and lawful and he is not entitled to reinstatement or compensation. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.
5. During the hearing which proceeded on 18th February 2025, both parties called oral evidence.



Claimant's Case

6. The Claimant testified in support of his case and at the outset, he sought to adopt his witness statement as well as the list and bundle of documents filed on his behalf to constitute his evidence in chief.
7. It was the Claimant's evidence that in the months of July, August, September and October 2016, the Respondent was the subject of fraudulent activities by an employee who sought in conspiracy with outsiders to defraud the Respondent by embezzling money and depositing it into an account they held at DTB, Kisii branch.
8. That in early October 2016, Ms. Rosemary Nabwire, a senior clerk in the revenue cash office who was also summarily dismissed, shared her suspicions and concerns regarding the activities in the cash office touching on the disappearance of cheques received from customers.
9. The Claimant averred that Ms. Nabwire had earlier brought these to the attention of the revenue section head (the employee involved in the fraud) severally but he ignored her and that is why she decided to present the complaints to him.
10. He (Claimant) requested Ms. Nabwire to identify one cheque that had been received but had gotten lost or misplaced. She identified cheque number 015732 for Kshs 144,000 paid in by the Kenya Institute of Highways and Building Technology (KIHBT).
11. He then instructed the Revenue Accountant to download the bank statements from the bank's online portal from 1st July, 2016 to date (10th October, 2016) and search for cheque number 015732 for Kshs.144,000 paid in by KIHBT to ascertain whether the cheque in question was inadvertently banked in the collection account held at KCB Industrial Area, Nairobi branch without proper processing. KIHBT confirmed that the cheque had been paid by its bank and so a replacement could not be drawn.
12. They requested from KIHBT the image of the paid cheque which revealed that the said cheque had been banked into account number 0259529001 called Nita Agencies held at DTB, Kisii branch.
13. On 3rd November 2016, while still following up on the KIHBT complaint, he received a similar complaint through the Director General's office from a Mombasa-based customer. He ascertained that the cheque in question had been paid into the same account number, 0259529001 at DTB Bank, Kisii branch.
14. He reported and presented images of the two cheques to the Director General and it was agreed that the BFIU be invited to conduct investigations.
15. The Claimant averred that he was suspended from duty and sent on compulsory leave on 10th March 2017 to pave way for the Board to conduct investigations into the operations of the finance department, despite the fact that he was the one who reported the matter and therefore, a "whistle blower" and the complainant. This leave was extended indefinitely on 11th May 2017.
16. He was issued with a Show Cause letter on a Saturday, 2nd September 2017, dated 31st August 2017, giving him three (3) days from the date of the letter to respond. The Claimant contended that this was against the Respondent's Human Resource Policy & Procedure Manual, which stipulates 21 days' notice.
17. The Claimant averred that the accusations in the show cause letter implied that he was involved in the registration and opening of the bank account at DTB, Kisii branch. He contended that it was not possible to prevent this fraud from occurring, as it was masterminded and perpetrated by people who are not the Respondent's employees.



18. The Claimant further contended that the registration of Nita Agency by Mr. Wanderah Bwirey during the period he was in charge of finance is a happenstance without any connection to his role as a manager.
19. That further, the management did not present to him any evidence that linked him to the registration of the said business name or to the persons who applied for and obtained its registration.
20. The Claimant further averred that it took the finance department only three (3) weeks to notice the suspicious activities of the Respondent's employee.
21. The Claimant further averred that although Kshs 12 million was cleared through the fraudulent account of Nita Agency, Kshs 1.8 million was the actual amount of cheques documented and received by the Respondent before they were stolen through the internal collaborator at the revenue office, Mr. Alfred Ochieng Jamal.
22. The amount of Kshs 10.2 million worth of cheques was directly or indirectly collected from unsuspecting Industrial Training Levy contributors (Employers) by the external collaborators of the scam.
23. In the Claimant's view, it was therefore a wrongful accusation to place him at the center of the fraud that was perpetrated outside the domain of the Respondent involving cheques which had not been officially received and banked in the normal process.
24. That it is also not right to claim a loss of funds whose receipt had not been acknowledged by the Respondent and for which official receipts had not been issued to the payers or contributors by the Respondent. The Claimant added that the Respondent did not report this loss in its annual financial statements for the year 2016/2017.
25. The Claimant further averred that the Revenue accountant was an appointed agent for the Respondent at the KCB bank. That the bank did not direct any complaint to him (Claimant).
26. He further averred that the Respondent has no correct bank reconciliation statement. That this has been a challenge to the finance department for years.
27. The Claimant averred that after reporting the fraud, he was charged with the responsibility of coordinating, at the Respondent's offices, police investigations and DTB responses. It was through his diligence, keen eye and hard work that he was able to discover the fraud and initiate the investigations in order to uncover the perpetrators.
28. There was no evidence of trickery or chicanery linking him to the alleged fraud.
29. That he was not provided with the audit report and the findings therein appear to be a duplication of the report of the finance department and his reports, which were shared with the Director General, Internal Audit and the police.
30. That further, the audit findings point to systemic capacity weaknesses that the Respondent was well aware of. That the staff capacity was very low, constituting about 20% permanent staff and 80% casual employees.
31. The Claimant further averred that the show cause letter introduced the roles of the Finance and Levy Administration Manager, whereas the roles were not reviewed following the split of the department to create a new department of Levy Administration. That a manager had been recruited to take over the Levy Administration Department in early January 2016.



32. The Claimant further contended that he was not accorded a chance to produce relevant documents, call and examine witnesses, and peruse any documents that were used to arrive at his condemnation.
33. That when he appeared before the disciplinary committee on 10th October, 2017, he was given 10 minutes to defend himself against the accusations. That the fraud issues were not mentioned and the Committee subjected him to a job evaluation, yet this was not the reason for his suspension.
34. According to the Claimant, the BFIU investigations exonerated him from criminal liability and thus the shift of accusations from fraud to job evaluation.
35. The Claimant averred that on 19th February 2018, he received a summary dismissal letter reasons for which were performance-related and not the bank fraud.
36. The Claimant was of the view that the disciplinary proceedings did not uphold his right to a fair administrative action.

Respondent's Case

37. The Respondent called oral evidence through its Director Corporate Services, Mr. Gerald Kirimi, who testified as RW1. Equally, RW1 adopted his witness statement to constitute his evidence in chief. He further produced the documents filed on behalf of the Respondent as exhibits before Court.
38. It was RW1's evidence that the Claimant's appointment letter stipulated his duties and responsibilities, which included coordinating periodic cash count to detect anomalies and ensuring timely monthly bank reconciliations.
39. That on or about November 2016, the Respondent received a complaint from one of its Clients, James Finlay, that a cheque addressed to the Respondent had been cleared in a DTB account in Kisii.
40. The Respondent commenced an internal audit review and also engaged the BFIU to investigate the allegations of fraudulent clearing of its cheques at the DTB, Kisii Branch.
41. That the internal audit review report found that;
 - a. A total of Kshs 12,003,863 had been fraudulently cleared from the Diamond Trust Bank Account-Kisii Branch;
 - b. The cheques that had cleared in the Diamond Trust Bank had been received in the Authority and receipted at the revenue office;
 - c. 110 miscellaneous receipt books for the period July 2016 - December 2016 were missing; and
 - d. Bank reconciliations for the period of July, August and September 2016 did not reflect cheques cleared at Diamond Trust Bank-Kisii Branch.
42. RW1 further stated that the Claimant was sent on compulsory leave to pave for investigations into the alleged anomalies on 10th March 2017.
43. That the BFIU completed its investigations and its findings revealed that a Bank account in the name of NITA Agency Account Number 0259529001 had been opened at Diamond Trust Bank-Kisii Branch which was used to fraudulently clear cheques amounting to Kshs 12,000,000/= belonging to the Respondent.
44. The BFIU report further recommended that action should be taken against the Claimant for being idle and negligent in the performance of his duties.



45. After due analysis and deliberation of the findings of the report by the BFIU and Internal Audit, the Human Resource and Governance Committee of the Board noted that the loss of funds was due to gross negligence on the part of the Claimant.
46. In line with Section 10.32 of the Respondent's Human Resource Policy and Procedures Manual, a Notice to Show Cause dated 31st August 2017 was issued to the Claimant.
47. The Claimant was accorded an appropriate opportunity to defend himself, including his response to the show cause letter dated 4th September 2017. The Claimant was also invited for the Board's disciplinary hearing in October 2017 and he made oral submissions in his defense.
48. According to RW1, the Claimant was unable to satisfactorily defend himself against his underperformance and neglect of his duties.
49. The Board properly guided by the evidence and the responses given by the Claimant, unanimously resolved to summarily dismiss him based on the allegations of negligence of duty.
50. The Claimant appealed against the decision vide a letter dated 26th February 2018 and after consideration, his appeal was dismissed.
51. The Claimant filed a further appeal to the Public Service Commission against unfair dismissal from service. The Public Service Commission dismissed his appeal vide a letter dated 9th December 2020.
52. The Respondent communicated the decision by the Public Service Commission to the Claimant vide letter dated 18th December 2020.
53. In RW1's view, the dismissal of the claimant was lawfully effected pursuant to the spirit and provisions of the law.

Submissions

54. It was submitted by the Claimant that he was neither directly nor indirectly involved in the fraudulent activities. That the key perpetrator, Alfred Jamal, a Levy Inspector based in Kisumu, exploited his privileged access to employer payments to orchestrate the fraudulent clearance of cheques at DTB Kisii. That the bulk of these cheques originated from Nyanza and Western regions, where he had jurisdiction.
55. The Claimant further submitted that the Respondent's witness failed to justify why he was subjected to a disciplinary process by the Respondent's Board, despite his terms of service as a Senior Accountant (Job Group NITA 10) indicating that disciplinary matters fell under the Executive Management and not the Board.
56. According to the Claimant, the Board unlawfully persecuted him by usurping the mandate of the Executive Management, therefore violating both his employment contract and due process.
57. The Claimant further posited that it is abundantly clear that the Respondent's witness misrepresented facts, engaged in deliberate distortions, and acted in bad faith.
58. The Respondent, on the other hand, submitted that the Claimant's dismissal was executed with exemplary procedural fairness, ticking every box required by law and its Human Resource Policy and Procedure Manual. In support of this position, reliance was placed on the case of Engoke v Maridadi Flowers Limited [2024] KEELRC 13603 (KLR) and Otieno v General Industries Limited [2024] KEELRC 2040 (KLR).



59. It was further submitted by the Respondent that the Claimant's inaction, poor oversight, and failure to put in place appropriate measures and systems and non-enforcement of the Board's directives allowed the fraud to persist, rendering him negligent and liable for the resultant loss.
60. The Respondent further submitted that the Claimant's failure to ensure timely bank reconciliations and oversee his team allowed a fraud of Kshs. 12 million to persist undetected for two (2) months.
61. That the subsequent detection of financial loss ties the Claimant's negligence to the Respondent's injury, as his inaction permitted the diversion of funds into an unauthorized DTB account. In support of the Respondent's arguments, reliance was placed on the case of *Kimbio & Another v Nyaribo t/a I.N. Nyaribo & Company Advocates* [2024] KEHC 6120 (KLR) and *The Board of Trustees Marie Stopes Clinics Kenya v FR N* [Civil Appeal No. 387 of 2013].

Analysis and Determination

62. Flowing from the pleadings filed by both parties, the evidentiary material before the Court and the opposing submissions, the issues falling for the Court's determination can be distilled as follows:
 - a. Whether the Respondent has proved that there was a valid and fair reason to terminate the employment of the Claimant;
 - b. Whether the Claimant was accorded procedural fairness prior to termination;
 - c. Is the Claimant entitled to the reliefs sought?

Valid and fair reason for termination?

63. As can be discerned from the letter of summary dismissal dated 19th February 2018, the Claimant was dismissed from employment on grounds of gross negligence of duty. As per the letter of summary dismissal, it was alleged that the Claimant did not;
 - i. Ensure proper safekeeping of cheques and receipts belonging to the authority;
 - ii. Ensure prompt accounting of all funds of the authority;
 - iii. Establish and maintain structures for strict supervision over all officers in the finance department entrusted with financial and accounting duties;
 - iv. Direct or make surprise inspections and maintain efficient checks for fraud, embezzlement or negligence; and
 - v. Produce for inspection all financial statements and accounting records required by the internal auditor.
64. From the record, the Claimant's woes stemmed from the fraudulent clearance of cheques belonging to the Respondent at the Diamond Trust Bank, Kisii branch.
65. Accordingly, the BFIU investigated the matter and in a report dated 30th May 2017, which was exhibited in Court by both parties, the BFIU found inter alia, that an account in the name of NITA Agency account number 0259529001 domiciled at DTB Kisii branch, was opened on 19th July 2016 by Wandera Bwirey where many cheques meant for the Respondent were deposited and cleared.
66. In the report, the BFIU further noted that the accounting systems at the accounts department were so wanting to the extent that the audit team could not establish the exact amount of money lost by the Respondent.



67. Indeed, it is pursuant to the foregoing findings that the BFIU recommended that action be taken against the Claimant and one Rosemary Nabwire for being idle and negligent in the performance of their duties.
68. It is common cause that at the material time, the Claimant was the acting Manager, Finance. Therefore, he was in charge of all functions at the Respondent's Finance department, including supervision of staff.
69. From the record, the fraudulent activities were linked to one Jamal Ochieng, who at the time was working at the Respondent's Revenue Section and was under the Claimant's supervision.
70. In his response to the Notice to Show Cause, the Claimant stated that in his role as Finance Manager, he was not involved at the transactional level as the Respondent had employed graduate accountants who were professionally qualified to handle duties as supervisors/section heads and to oversee operations at the operational level.
71. However, this did not take away the Claimant's role as supervisor of the staff within the Finance department, including the Revenue Officer, who was linked to the fraud. By the Claimant's own admission, he had no reason to doubt the reports generated by the supervisors who oversee activities at the operational level. Does this then mean that the Claimant trusted the officers under his supervision entirely and adopted their reports without counterchecking their accuracy?
72. Having been designated to act as the Manager Finance, the Claimant had a responsibility to ensure that all the functions within the Finance department were performed to the required standard. This could only be achieved through strict supervision of staff within his docket.
73. It is also notable that the Claimant admitted in his response to the Notice to Show Cause that the reconciliation was three (3) months behind the reporting date.
74. From the record, it took three (3) months to detect the fraud. What this therefore means is that failure to reconcile the bank accounts regularly, significantly contributed to the fraud going undetected for three (3) months.
75. Indeed, the BFIU report found that the discrepancies of missing cheques had been flagged by the staff at the KCB Industrial Area Branch who directly handled the Respondent's cheque transactions. It was further observed that the Respondent never raised any alarm during the reconciliation process in regard to their accounts not balancing.
76. In light of the foregoing, it is apparent that regular reconciliation of the Respondent's bank accounts would have mitigated the loss suffered by the Respondent.
77. With due respect, I must also say that the Claimant's defence that the failure to undertake regular reconciliation of accounts was due to shortage of staff, the volume of transactions and the manual system, is not convincing. I say so for the reason that the Claimant did not demonstrate to this Court that he had raised these issues with the Respondent before, but it had failed to address the same.
78. The Claimant's further contention that he is the one who detected and reported the bank fraud is at variance with the record. By the Claimant's own admission in the Notice to Show Cause, he was alerted of the fraud sometime in October 2016 by Mr. Nyangau, who was the Revenue Accountant. That subsequently, the Respondent's Director General shared with him another complaint from a Mombasa-based client. This therefore discounts the Claimant's version of events that he was the whistleblower.



79. From the circumstances of this case, it is evident that the Claimant was not diligent and prudent in the performance of his duties as the officer in charge of the Respondent's Finance Department. Therefore, he cannot claim to be blameless.
80. In as much as the Claimant was not found to be criminally culpable of the fraud, this did not absolve him from negligence, bearing in mind his level of responsibility as the officer in charge of the Respondent's Finance Department. Needless to say, the buck stopped with the Claimant.
81. Pursuant to Section 43(2) of the *Employment Act*, the reason or reasons for termination of an employee are matters that the employer at the time of termination genuinely believed to exist, and which caused the employer to terminate the services of the employee. In this respect, the standard of proof is on a balance of probabilities as opposed to beyond reasonable doubt.
82. In the case herein, it can very well be said that by his own actions and omissions, the Claimant had led the Respondent to genuinely believe that he was not diligent and was imprudent in the performance of his duties as the Manager Finance.
83. To this end, I am led to conclude that the Respondent has proved on a balance of probabilities that the Claimant was negligent in the performance of his duties. As such, there was a valid and fair reason for the Respondent to terminate the Claimant's employment within the meaning of Sections 43 and 45(2) (a) & (b) of the *Employment Act*.

Procedural fairness?

84. Over and above proving the reasons for termination of employment, an employer is required to further prove that it accorded an employee procedural fairness prior to the termination of the employee's employment.
85. This position is aptly captured under Section 45(2)(c) of the *Employment Act* which stipulates that for termination to be fair, it ought to be in line with fair procedure. Section 41(1) of the *Employment Act* provides for notification and hearing. In this regard, the employer is required to notify the employee of the reasons for which it is considering terminating the employment contract and to also grant the employee an opportunity to make representations in response to allegations levelled against him.
86. The record bears that the Claimant was sent on compulsory leave from 10th March 2017 up to 10th May 2017. He was subsequently issued with a Notice to Show Cause dated 31st August 2017. He tendered his response on 4th September 2017.
87. The Claimant contended that he was given three (3) days to respond to the Notice to Show Cause contrary to the 21 days stipulated in the Respondent's Human Resource Manual. Be that as it may, the said Human Resource Manual was not exhibited before Court (despite appearing on the Respondent's list of documents dated 24th August 2022). Therefore, this assertion was not proved before the Court.
88. Vide a letter dated 25th September 2017, the Claimant was invited for an oral disciplinary hearing scheduled for 6th October 2017. This was later rescheduled to 10th October 2017. The disciplinary hearing took place on 6th October 2017.
89. In light of the foregoing, I am persuaded that the procedure applied by the Respondent prior to terminating the Claimant's employment met the minimum requirements of a fair hearing as envisaged under Section 41 of the *Employment Act*. This is for the reason that the Claimant was made aware of the reasons for which the Respondent was contemplating terminating his employment and was



afforded an opportunity to appear before a disciplinary panel to render his oral explanation in answer to the allegations.

90. The total sum of my consideration is that the Respondent has proved to the requisite standard that it had a valid and fair reason to terminate the Claimant's employment and in so doing, observed the basic requirements of a fair hearing.
91. Overall, the Court finds that the Claimant's termination from employment was neither unfair nor unlawful.

Orders

92. In the final analysis, I find that the Claimant has failed to prove his case on a balance of probabilities hence the reliefs sought do not lie.
93. Accordingly, the Claimant's suit is dismissed in its entirety with no orders as to costs.

DATED, SIGNED and DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Ng'ang'a instructed by Mr. Olubayi

For the Respondent Ms. Karbolo instructed by Ms. Aluoch

Court Assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

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STELLA RUTTO

JUDGE

