



REPUBLIC OF KENYA



KENYA LAW
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**Njuki v Bank of Africa Kenya Limited (Cause E096 of 2021)
[2025] KEELRC 1694 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1694 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E096 OF 2021
CN BAARI, J
JUNE 12, 2025**

BETWEEN

IRENE WAMBURA NJUKI CLAIMANT

AND

BANK OF AFRICA KENYA LIMITED RESPONDENT

JUDGMENT

1. For determination is the Claimant's Memorandum of Claim dated 11th January, 2021 and filed on 8th February, 2021. Under the claim, the Claimant seeks the following reliefs:-
 - a. A declaration that her dismissal was unlawful, un-procedural, high-handed and unfair and is entitled to compensation;
 - b. Kshs.2,904,00.24 (being Kshs.242,000.02 x 12 months) as compensation for unfair termination; and
 - c. Cost of this suit and interest on (b) above at court rates from time of filing the suit until payment in full.
2. The Respondent filed a Memorandum of Reply to the Memorandum of Claim dated 16th March, 2021.
3. The Claimant's case was heard on 12th July, 2022 wherein, the Claimant Ms. Irene Wambura (CW1), testified in support of her case. She adopted her witness statement and produced her list and bundle of documents of even date as exhibits in the matter.
4. Subsequently, the Respondent's case was heard on 14th December, 2022 and 25th February, 2025 when the Respondent's Human Resource Manager Ms. Agnes Mwanzawa (RW1), testified on behalf of the Respondent, adopted her witness statement and produced documents filed in support of the Respondent's case as the Respondent's exhibits.



5. Submissions were received from both parties.

The Claimant's case.

6. The Claimant avers that she was employed by the Respondent vide a letter of contract dated 15th February, 2016 as a Manager, Treasury Back office and her job description was listed in the first schedule of the contract.
7. She avers that by virtue of her diligence, honesty and unflappable qualities, she was promoted to the position of Manager Global operations leading various other team leaders of the departments of TBO, Trade Finance, Swift Operations and Custodial Operations Officers within the Respondent's organization.
8. The Claimant states that during her employment, she never had any incident of misconduct nor was she subject to any disciplinary action by the Respondent.
9. It is her case that on 22nd May, 2020, the Respondent terminated her employment on the grounds of incompetence, consistent misconduct and loss of trust. She further avers that her termination was unfair as none of the reasons for termination related to the aforesaid grounds, and was only a mere ruse to kick her out of the organization.
10. It is the Claimant's case that the Respondent had never complained about her work performance and avers that the show cause letter dated 6th May, 2020, required her to attend a disciplinary hearing and respond to the allegations of validating two transactions to BOA Niger and BOA France exposing the Respondent to huge operational and financial loss of USD \$80,000 and USD\$ 8,000.00, failure to follow operational procedures in escalating of the error and failure to verify the errors made.
11. The Claimant further avers that it partly attributes the infractions to the Respondent who reduced the number of staff from eleven (11) to six (6) as a COVID-19 precautionary measure and it became difficult to complete the transactions without the normal human errors.
12. It is her case that the Respondent has a reconciliation unit that checks transactions after they are complete, but upon being made aware of the material issues, it failed to act upon the information. The Claimant further states that the Respondent failed to consider the swift actions taken by her to recover the complained amounts.
13. It is the Claimant's case that the Respondent's over-reliance on manual processes at the expense of automation exposed the Claimant to unfair blame and unintended human errors.
14. The Claimant further states that neither the Respondent's Operational risk management policy nor its Human Resource Management manual 2010 provided operational procedures to be followed in escalating any risk events/errors.
15. The Claimant's testimony during the hearing is that the Bank received instructions from a Client to pay USD \$ 119,000, but the amount keyed in was USD 199,000 dollars manually. The Claimant further told Court that she was the approver of the said amount. It is her evidence that there was a second incident where the instructed amount was USD \$ 21,300, but the amount sent was USD \$29,000.
16. The Claimant avers that upon discovery of the errors, she mitigated the errors by quickly contacting the recipient bank and customer about the excesses and the amounts were returned, and therefore, there was no actual loss incurred by the Respondent.



17. On cross-examination, the Claimant stated that a risk event was to be reported within 24 hours and in this case the first incident occurred on 30th March, 2020, but was reported on 9th April, 2020 and the second incident occurred on 1st April, 2020 and was reported on 9th April, 2020.
18. The Claimant further confirmed that the funds were recovered at different times and attributed the errors to under staffing by the Respondent.
19. The Claimant clarified that the first recovery of the sums was made on 8th May, 2020 thereafter, she was terminated on 22nd May, 2020. The Claimant further testified that it was not documented by the Respondent that a risk event ought to be raised within 24 hours.
20. The Claimant prays for Judgment to be entered against the Respondent as sought in her Statement of Claim.

The Respondent's case.

21. The Respondent admits that the Claimant was employed vide a letter of employment dated 15th February, 2016 as a Manager, Treasury Back office, as per the terms of contract attached to the contract.
22. The Respondent avers that upon completion of the six (6) months' probation period, the Claimant was confirmed to the service of the Respondent on 12th October, 2016 on permanent and pensionable terms.
23. It is the Respondent's case that the Claimant was subsequently promoted to the position of Manager-Global operations by a letter dated 2nd July, 2018, which position she held until termination.
24. The Respondent avers that on 30th March, 2020 and 1st April, 2020 the Claimant incorrectly settled the amounts of USD \$ 199,982.00 instead of USD \$ 119,882.00 and USD \$ 29,301.18 instead of USD \$ 21,301.08 respectively which amounts were later recalled thus exposing the Respondent to potential financial loss of USD \$ 88,000.00. that consequent to the said incidences.
25. It avers that the Claimant was issued a notice of disciplinary hearing scheduled for 8th May, 2020 to respond to the allegations of negligence in confirming transaction details as is required of the SWIFT procedure prior to giving a final authority/validation, and failure to initiate a risk event immediately the error was noted long after the discovery of transactions exceptions.
26. The Respondent avers that the Claimant never responded to the show cause letter, but she attended a disciplinary hearing on 8th May, 2020 accompanied by one Ms. Sylvia Mwangi, the acting head of Treasury of the Respondent Bank, where the Claimant confirmed that she erred when carrying out the said transactions and recalled the funds thereafter.
27. The Respondent states that the Claimant admitted in the disciplinary hearing that she discovered the 1st error on 1st April, 2020 which she reported on 9th April, 2020 - 9 days after discovery, and that subsequently, she discovered the 2nd error on 3rd April, 2020 which she reported on 9th April, 2020 -6 days after the discovery.
28. The Respondent states that upon considerations of the Claimant's responses at the disciplinary hearing, the Respondent summarily dismissed her from service on 22nd May, 2020. It states that pursuant to Clause 34.4 (d) 1 of the Respondent's Human Resource Policy, the Claimant had a right of appeal against the decision of the disciplinary committee, but which she failed to exercise.
29. The Respondent contends that it had a valid and fair reason for terminating the Claimant's employment and that it followed due process. The Respondent further states that the charges against



the Claimant were grievous and touching on the core business of the Respondent and its fundamental duty of care to its clients as custodian of their funds.

30. It avers that contrary to the Claimant's assertion, she had previously been served with a warning letter on 21st March, 2019 for failing to exercise due diligence while validating incoming funds which resulted in duplication of credit of Kshs.980,000.00 to a client's account.
31. On cross-examination, the Respondent's witness Ms. Agnes Mwanzawa (RW1) told Court that the Claimant breached the Bank's procedure on global swift on checking for corrections. It is her further evidence that the reporting time for the risk event was not specified in the Swift procedure code, but was a matter of practice which the Claimant confirmed that the reporting time usually was within 24 hours.
32. RW1 further confirmed to Court that transactions in the bank usually have more than one person, the team leader swift and the swift officer, and that the Claimant was in charge of validation and verification.
33. It is further averred that the Claimant's job entailed handling operational risks whose job was not done correctly resulting in errors which was the core reason why the Claimant was terminated from her employment.

The Claimant's Submissions.

34. The Claimant submitted that Section 43(2) of the *Employment Act* requires the reasons for termination to be based on matters the employer believed to genuinely exist at the time of termination of the contract. She placed reliance in the case of *Ogweno Vs Karanja & another* (cause 1136 of 2018) [2023] KEELRC 2683 (KLR) for the holding that the onus of proving that the reasons leading to the Claimant's termination were fair, valid and related to his conduct, capacity and compatibility lay with the employer.
35. It is the Claimant's submission that there were no policies and procedures at the Respondent Bank that indicated the expected time of initiating a risk event, and that she was the one who noticed the errors and initiated a risk event leading to the recovery of the amounts. It is her submission that in the absence of any form of device or method of detecting an error immediately, the Respondent had no justification in accusing the Claimant of negligence.
36. She submits that the risk event was an anticipated error that was defined by the Respondent as 'near miss' under Clause 2 of the Operational Risk Management Policy.
37. The Claimant submits that the Respondent's allegations of negligence was not proven, and that her employment was terminated on grounds that her actions amounted to consistent misconduct and loss of trust when the Respondent's witness told court that the incident never amounted to fraud, but was akin to misconduct meritorious of summary dismissal.
38. It is the Claimant's submission that she is entitled to Kshs. 2,904,000.24 as compensation in accordance with Section 49 (1)(c) of the *Employment Act*. The Claimant sought to rely in the case of *Julius Bii Kipyegon Bati & Another vs Kenya Commercial Bank Limited* [2020] eKLR and *Moses Koech Kibiwott Vs Kingdom Bank Limited* [2022] eKLR to submit that she has difficulty getting employed in a banking institution after her termination since she was considered negligent for occasioning the loss of USD \$88,000.
39. The Claimant urges the Court to grant her the orders sought.



The Respondent's Submissions.

40. The Respondent submits that the Claimant's termination was substantively fair per Section 43(2) of the *Employment Act*. It is the Respondent's submission that the reasons it terminated the Claimant's employment as stipulated in the termination letter were that she was negligent and failed to follow operational procedures in escalation of first and second errors, and her handling of said errors without the Respondent's knowledge.
41. The Respondent submits that the Claimant had previously worked under heavier workloads and leaner staffing structures without incident. It is the Respondent's further submission that it demonstrated sufficient, valid and justifiable reasons for terminating the Claimant's services.
42. On the issue of whether exposure to risk suffices even without actual loss, the Respondent submits that the standard of misconduct in banking does not require loss to materialize. That exposure to significant risk, regulatory, non-compliance or reputational harm is sufficient to justify dismissal.
43. It is the Respondent's submission that it faced exposure to loss of USD \$ 88,000, potential breach of Central Bank prudential regulations and audit irregularities and reputational damage.
44. On the issue of whether the Claimant's termination was procedurally fair, the Respondent submits that it followed the laid down procedure as set out under Section 41 of the *Employment Act*.
45. On the issue of whether the Claimant is entitled to reliefs, the Respondent submits that since the Claimant's termination was not unfair or wrongful, the Claimant is not entitled to the reliefs sought in the claim.
46. The Respondent finally urges the Court to dismiss the Claimant's claim with costs.

Analysis and Determination.

47. Upon careful appraisal of the pleadings, oral testimonies, and submissions by both parties, the issues that crystallize for determination are: -
 - i. Whether the Claimant's termination was unfair; and
 - ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's termination was unfair.

48. The Claimant in her pleadings contends that her termination from the Respondent's Bank was unfair and wrongful. Section 45 (1) and (2) of the *Employment Act*, 2007 provides the conditions for unfair termination as follows:

- "(1) No employer shall terminate the employment of an employee unfairly.
- (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 by fair procedure.”

49. From the foregoing provisions, it is clear that for a termination of employment or summary dismissal of an employee from the service of an employer to be considered fair, the employer must demonstrate that it adhered to the twin statutory requirements of procedural fairness and the substantive justification test.
50. Procedural fairness, speaks to the process leading to the decision to terminate or dismiss, while substantive fairness relates to the validity of the decision. (See *Pius Masafu Isundu v Lavington Security Guards Limited* [2017] eKLR.)
51. It is equally important to note that Section 47[5] of the *Employment Act* 2007 imposes an initial burden on the employee to prove that an unfair termination has occurred, and only then, shall the evidential burden shift to the employer to justify the termination or dismissal.
52. Section 41 of the *Employment Act*, 2007 demands that before terminating an employment contract on the grounds of misconduct, poor performance or physical incapacity, the employer must grant the employee an opportunity to make representations either in the presence of a colleague or representative of a trade union if he is a member of one.
53. It is not in dispute that the Claimant was employed by the Respondent in the position of Manager-Global operations. It is clear that during her termination, the Claimant was taken through the mandatory procedures envisaged under the *Employment Act* that included being issued with a notification of a disciplinary hearing being a ‘disciplinary hearing notification form’ dated 6th May, 2020. The notification form notified the Claimant of the venue and date of the disciplinary hearing that was set for 8th May, 2020 and further set out the Claimant’s alleged infractions that occurred between 30th March and 1st April, 2020.
54. Further, the Claimant was required to show cause in writing before the hearing date why disciplinary action should not be taken against her for the said infractions. The court notes that the letter further informed the Claimant of her right to be accompanied by an employee of her choice at the hearing. The Court further notes that the Claimant did not respond to the notice of disciplinary hearing in writing as required.
55. It is also not in dispute that the Claimant attended the hearing on 8th May, 2020 accompanied by one Sylvia Mwangi, the Acting head of Treasury.
56. A cursory perusal of the minutes of the disciplinary hearing reveals that the Respondent conducted a disciplinary hearing where the Claimant made various representations and responded to the accusations related to the incidents that had occurred on 30th March, 2020 and 1st April, 2020. It is also evident that after the hearing, the Claimant was issued a termination of employment letter to dated 22nd May, 2020.
57. It is also not disputed that the Claimant was informed of her right of appeal, but which she chose not to exercise.
59. The foregoing chronology of events leave not doubt that the Respondent adhered to the basic tenets of procedural fairness in terminating the Claimant’s employment. In the premise, I have no difficulty finding the Claimant’s termination procedurally fair and which I hereby do.



60. The second test in determining fairness or unfairness of a termination, is the question of whether the dismissal meets the substantive fair test envisaged under Sections 43, 45 and 47 (5) of the [Employment Act](#). These provisions of the Act behoves upon an employer the duty to prove the reasons for termination are valid and fair and justified.
61. It is not in dispute that on 30 March, 2020 the Claimant authorized the settlement of USD \$ 199,982 instead of USD \$ 119,982.00 resulting in an over payment of USD \$80,000.00 and that again on 1st April, 2020 she validated and settled USD \$29,301.18 instead of USD \$ 21,301.18 creating a second over payment of USD 8,000.00. It is also not in dispute that the Claimant discovered the first error on 1st April, 2020 and did not raise a risk event until 9th April, a delay of 9 days, and further confirmed to court that she discovered the second error on 3rd April, 2020, but raised the risk event 6 days later. These facts were all acceded to by the Claimant herself in the Claim and during cross-examination.
62. The reasons advanced by the Respondent in the termination letter were that the Claimant failed to follow operational procedures in escalation of errors, and her handling of such huge errors without the Bank's knowledge. The Bank argues that the Claimant's actions aforesaid, amounted to gross misconduct and exposed the Bank to huge operational and financial risks, and resulted in the lack of trust in the Claimant discharge of her duties as the Manager, Global Operations.
63. The Claimant on her part contends that the reasons for the procedural lapses leading up to the incidents complained of, were partly attributable to the Respondent who cut down the number of staff from eleven to six staff members as part of its COVID -19 precautionary measures, and which created immense pressure and strain on the workforce leading to an influx of human errors.
64. Further, it is the Claimants contention that there was no actual loss of the complained sums of the aggregate amount of USD \$ 88,000 as the said sums were duly recovered through the efforts of the Claimant who discovered the errors and raised a risk event.
65. Additionally, the Claimant argues that the process of reporting/escalating a risk event was never communicated to her nor were the timelines for raising a risk event documented by the Respondent in its Operational risk Management policy document or employment contract.
66. On the other hand, the Respondent contends that it had valid and fair reasons to terminate the Claimant's employment on the basis that she was well versed with the Banks procedures and what was required of her in her role as the Manager -Global operations was to be a 'maker checker' and timeous reporting of risk events. The Respondent argues that in the disciplinary hearing, the Claimant admitted that she erred while carrying out the aforesaid transactions and recalled the funds thereafter.
67. The Respondent contends that the Claimant confirmed that she was well trained in carrying out SWIFT instructions and demonstrated experience in raising risk events, and that despite the Claimant's knowledge and experience in her role, the Claimant breached the SWIFT procedures and raised a risk event nine (9) days after the first error and six (6) days after the second error which was a clear indication of her wilful ignorance and negligence of her duties.
68. It is the Respondent's position that the Claimant was involved in misconduct that was highly prejudicial to the Respondent's Bank operations and offended the provisions of the Respondent's Human Resource Policy and Section 44(3) of the [Employment Act](#), 2007.



69. In the case of *British Leyland v Swift* (1981) I R L R 91, Lord Denning described the test of what a reasonable employer could or could not do in the following words:-

“The correct test is was it reasonable for the employers to dismiss? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair.....”

71. In the instant case, from the facts and evidence presented, the Court is persuaded to find that the reasons advanced by the Respondent for terminating the Claimant’s employment were valid and fair as the Claimant in her role as the Director-Global Operations bore the responsibility for managing internal processes, operational risk management and operational excellence.

72. Further, it is admitted that the Claimant who was in charge of validating and approving critical financial transactions and on two separate incidents of 30th March, 2020 and 1st April, 2020, she erroneously validated and settled incorrect amounts in the aggregate amount of USD \$88,000.

73. The Claimant did not dispute that subsequent to the errors, she raised the first risk event on the 9th April, 2020 -9 days after discovering the error and the second risk event six (6) days upon discovery. The Claimant has not provided any plausible explanation on the week-long delay in raising the risk events after their discovery.

74. In the case of *Mwangi v ABSA Bank Kenya PLC (Cause E065 of 2023)* [2024] KEELRC 2399 (KLR) the Court held thus:-

“The banking sector was sensitive and highly regulated through its policies and the Central Bank of Kenya. Breach of fiduciary duty extended to third parties and the conduct of the claimant justified the sanction taken and termination of employment. Similarly, certain positions such as a branch manager of a bank, attracted a high calling of integrity and financial probity. Once held, great responsibility and accountability was called for. As the branch manager, of the Nkrumah Road Branch, Mombasa, the claimant had bigger accountability beyond what his junior staff held.”

75. Further, Section 44 (4) (c) of the *Employment Act* provides that careless and improper performance of duties under contract qualifies as a reason for summary dismissal.

76. The evidence herein, points to the Claimant’s negligence in the way she carried out her duties, first in the lapses in approving the incorrect amounts and secondly, the unexplained delays in raising risk events to mitigate the incidents. It is in my view immaterial that the money was recovered.

77. In the circumstances, this Court reaches the conclusion that the reasons for the Claimant’s termination have been proven on a balance of probability and are therefore justifiable, reasonable and fair.

78. I therefore, hold that the Claimant’s termination was substantively fair.

Whether the Claimant is entitled to the remedies sought.

79. The Claimant seeks a declaration that the dismissal was unlawful, un-procedural, high-handed and unfair and is entitled to compensation in the sum of Kshs. 2,904,00.24 (being Kshs. 242,000.02 x 12 months) as compensation for unfair termination, and cost of this suit and interest at court rates from time of filing the suit until payment in full.



80. The Court having found the Claimant's termination fair, renders the prayers for compensation for unfair termination moot.
81. The grounds for the Claimant's termination have equally been found to be justified and for this reason, the Claimants claim is without merit and is hereby dismissed in its entirety with no orders as to costs.
82. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 12TH DAY OF JUNE, 2025.

C. N. BAARI

JUDGE

Appearance:

N/A for the Claimant

Mr. Vincent Oloo present for the Respondent

Ms. Esther S- C/A

