



Kimeu v Paramount Bank Limited (Employment and Labour Relations Cause E799 of 2021) [2025] KEELRC 2336 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2336 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E799 OF 2021**

**MN NDUMA, J
JULY 31, 2025**

BETWEEN

JACKSON KIMEU CLAIMANT

AND

PARAMOUNT BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed suit on 23rd September 2021 against the Respondent seeking the following reliefs: -
 - a. A declaration that the termination of the Claimant's employment by the Respondents was procedurally and substantively unlawful and unfair;
 - b. A declaration that the Claimant's fundamental rights under Articles 25, 27, 35, 41, 47 and 50 of *the Constitution* of Kenya 2010 have been infringed by the Respondent;
 - c. Twelve month's salary as compensation for unfair and/or unlawful dismissal from employment.
 - d. One month's salary in lieu of notice.
 - e. Compensation for infringing the Claimant's constitutional rights protected under Article 25(a), Article 41 (1), Article 25 and Article 47 (1) and (2) of *the Constitution* of Kenya, 2010;
 - f. Exemplary damages for malicious termination of employment in line with Section 12 of the *Employment and Labour Relations Court Act* No. 20 of 2011;
 - g. Damages for psychological torture and inhumane treatment;
 - h. Interest on the monetary orders from the date of the filing of the claim
 - i. Costs of the suit



- j. Any other relief that this honourable court may deem fit and just to grant.
2. The Claimant (CW1) testified under oath and adopted a witness statement dated 20th September 2021 as his evidence in chief.
3. That the Claimant was employed by the Respondent by a letter dated 9/11/2015 as Assistant Manager – IT, taking a net salary of Kshs. 136,500.00.
4. That Claimant worked diligently and continuously and had a good employment record with no disciplinary issue at all.
5. That on 11/8/2018, the Claimant was suspended from work pending formalization of ongoing investigation regarding allegations of fraud.
6. That on 12/8/2018, the Claimant handed over all bank's items including logins and passwords for servers.
7. That on 29/8/2018 the Claimant was arrested and was taken to court on 29th August 2018 upon being charged with fraud.
8. Later on, 4/9/2018, the Claimant received a notice to show cause letter to attend a meeting scheduled for 12/9/2018 to explain why further disciplinary action should not be taken against him.
9. The Claimant was charged with failure in his duties to maintain, secure and monitor network infrastructure of the bank hence causing a fraud to occur in the bank.
10. That upon conclusion of investigation, on 29/8/2018 the Claimant was arrested and charged in Criminal Case No. 1594 of 2018 for being one of the main suspects in the fraud charged with: -
 - a. Conspiracy to commit a felony contrary to section 393 of the *Penal Code*.
 - b. Unauthorized access to computer data contrary to section 83(4) of the Kenya Information and Communication *Act No. 1 of 2009*.
 - c. Electronic fraud contrary to section 84b (a) of the Kenya Information and Communication Act Cap 41 A.
 - d. Stealing by servant contrary to section 281 of the *Penal Code*.
11. The claimant was acquitted of all the charges by the Magistrate court.
12. The Claimant states that the notice to show cause violated Article 47 and 50 of the Constitution read with Section 4 of *Fair Administrative Action Act* and Section 42 of the *Employment Act*, in that it was vague and did not disclose the alleged offence with precision and clarity as to the manner of fraud; how Claimant carried it out; how much was stolen; when the fraud occurred and did not disclose any evidence against the Claimant.
13. That the Claimant attended the disciplinary hearing before a panel constituted by the
 - i. Human Resource Manager
 - ii. The Head of Legal Services
 - iii. Chief Finance Officer
 - iv. An accountant of the Respondent



14. That no evidence except the notice to show cause was adduced at the disciplinary hearing. That the Claimant explained himself but very few notes were recorded. That there was no complaint lodged against the Claimant and no evidence was furnished in that respect. That the Respondent only asked the Claimant pre-prepared questions and the meeting did not facilitate unearthing of the truth of the matter. That it was one with a pre-meditated conclusion. The Claimant states that he was therefore not accorded a fair hearing and no evidence was presented to substantiate the charges levelled against the Claimant.
15. The Claimant added that he received a letter of summary dismissal dated 25/9/2018. That the reasons given in the letter were different from what was in the notice to show cause. The letter read partly,
- “...at the hearing, the notice to show cause was read to you and you also requested that the terms of your job description be read out to you. As a result, the allegations were given as follows:
- a. Negligence of duty, specifically failure to maintain, secure and monitor network infrastructure which you were expected to have foreseen any major risks, remedy and report.
 - b. Virtualization project – failure to ensure implementation of the virtualization project despite consistent support by management
 - c. Server machine – failure to secure database server machines, the same were found not to have end-point antivirus and configuration was poor or missing and antivirus logs were not captured.
 - d. Checkpoint firewall project – despite having proposed the project and your involvement in its implementation, the firewall was not properly configured or implemented and this allowed unauthorized access leading to loss in bank.
 - e. The DMZ was not properly configured and considering that you are an expert in the field, you believed you did not see any reason to review it. This allowed the access to the database by unauthorized persons.
 - f. EPO (anti-virus server) mysteriously crashed just before the fraud was committed yet there was no report from you and this allowed the unauthorized person to access the banks system...”
16. The Claimant testified that all these matters had not been disclosed to him in the notice to show cause nor was he given any documentation to help him defend himself. That the letter of employment did not provide such responsibilities on the part of the Claimant. That on 7/8/2021, the Claimant sought to be furnished with minutes of the meeting but that was refused. The Respondent wrote on 8/4/2021.
- “The minutes of the Disciplinary meeting are the Bank’s internal confidential documents, which shall not be released to you.”
17. That this was a deliberate hindrance by the Respondent to the Claimant to obtain justice and was malicious in nature. The Claimant states that he has not been furnished with any document by the Respondent to date other than the notice to show cause and the letter of summary dismissal.
18. The Claimant prays the court to find that the Respondent violated Sections 41, 43, 44 and 45 of the [Employment Act, 2007](#).



19. That the threshold mandated under section 43(1) and (2) read with 47(5) and 45(1) and (2) were not met by the Respondent. That the court find in favour of the Claimant and award the reliefs sought.
20. The Claimant was subjected to very close cross-examination by Mr. Baabu, asdvocate for Respondent and he stated that he now worked for KMTC currently as ICT Officer. That he served the Respondent for a period of four (4) years as Deputy ICT, Manager and Acting ICT Manager. The Claimant insisted he was summarily dismissed for no valid reason and no fair procedure was followed to find him guilty.
21. Claimant said he made several applications to be re-employed upon dismissal to many banks and CBK and could not be called for interviews due to the tarnishing of his name by the Respondent vide the false accusation. That he was acquitted of the criminal charges levelled against him. Claimant said his gross salary was Kshs. I65,000 and not 136,500.00 per month as stated in the witness statement. Claimant said that was an error which he sought to be corrected.
22. Claimant admitted that his job description was before court and his main role was to secure the Bank's ICT Network. Claimant admitted that he was informed that an infiltration of the network had occurred and the matter had been reported to the police leading to being charged with criminal offence and subsequent summary dismissal.
23. That the disciplinary case started after the Claimant was charged in the criminal court. Claimant said he was dismissed for having been charged with criminal offence. That he was accused of failing to secure and monitor the ICT network of the bank. The Claimant denied the allegation. The Claimant denied that he was negligent also since no such evidence was presented by the Respondent.
24. Claimant insisted that he was not furnished with the minutes of the disciplinary hearing despite his request to the Respondent. Claimant said the issues raised in the notice to show cause did not tally with the reasons given for dismissal in the letter issued. Claimant said he did not seek more time during the disciplinary hearing even though he had requested to be furnished with evidence which was not available. Claimant said that he was not presented with any forensic report demonstrating the unlawful infiltration of the LTC system. That no such evidence was presented before court by the Respondent. That the allegations were without support at all.
25. The Respondent called RW1, Timothy Kimeu who testified that he was the Head of Legal Department of the Respondent. RW1 adopted a witness statement dated 17/1/2023 as his evidence in chief.
26. RW1 admitted the details of employment of the Claimant by the Respondent as Assistant ICT Manager whose primary roles were inter alia to maintain, secure and monitor network infrastructure of the Respondent.
27. That in the month of August 2018, the Respondent discovered a fraudulent transaction where some unknown persons had infiltrated the Respondent's network causing a loss of Kshs. 800,000.00 That it was during the tenure of the Claimant.
28. That the Respondent commenced investigation on the cause of the fraud. That the Claimant was meanwhile suspended pending conduct of investigation. That the matter was reported to the police who commenced their own investigation leading to the Claimant being charged with theft by servant contrary to section 281 of the *Penal Code* among other offences.
29. That after conclusion of investigation the Claimant was issued with a notice to show cause on reasonable suspicion of having failed in his duties to secure the network and having caused the fraud. That the Claimant was invited to a disciplinary hearing where charges were levelled against him. That he was informed of his right to be accompanied by a fellow employee.



30. That the Claimant attended the hearing and was accorded opportunity to make representation in response to the allegations. That the Claimant did not request for more time at the hearing. That the explanation by the Claimant was found to be unsatisfactory and he was summarily dismissed from employment by a letter dated 25/9/2018 for gross mis-conduct. That the Respondent believes there were reasonable grounds to charge the Claimant with criminal offence.
31. That the Claimant was paid all terminal dues upon dismissal as stated in the document dated 25/9/2018.
32. Under cross-examination by Mr. Nduku, advocate for the Claimant, RW1 said the alleged infiltration was electronic in nature. RW1 admitted that could not be proved by word of mouth but by presentation of electronic infiltration evidence. RW1 said he had no such evidence before court. That they had left that to police officers. That reports by investigators and the police are not before court.
33. RW1 admitted also that no documents were presented before court by the Respondent to prove theft of Kshs. 800,000.00 That no finance statements were produced before court. RW1 said no electronic evidence was adduced before court at all. That none was also produced at the disciplinary hearing nor were any reports adduced at the said disciplinary hearing. RW1 said the notice to show cause was sufficient to give the Claimant opportunity to explain at the hearing.
34. RW1 produced minutes of the hearing before court. RW1 admitted there were material differences between the allegations made against the Claimant in the notice to show cause and the reasons given for the summary dismissal in the letter. RW1 also admitted the loss of Kshs. 800,000.00 was not stated in the letter of dismissal. RW1 admitted that the Claimant requested for and was not given the minutes of the disciplinary hearing. RW1 said he had no personal records of the Claimant before court but insisted that the job description before court sufficed to show what the Claimant was supposed to do but did not do diligently to avoid infiltration. RW1 said he was not aware that the Claimant earned Kshs. 165,000.00 at the time of summary dismissal.
35. RW1 said investigations were by the Audit department and DCI but the reports were not given to the Claimant and were not before court.

DETERMINATION

36. The court has carefully considered the evidence adduced by CW1 and RW1. The court has also considered the submissions filed by both parties and the issues for determination are: -
 - a. Whether the Respondent had proved it had a valid reason(s) to summarily dismiss the Claimant from employment upon following a fair procedure.
 - b. Whether the Claimant is entitled to the reliefs sought.
37. Section 43(1) and (2) of the *Employment Act*, 2007 places the burden on the employer to prove that the employer had a valid reason(s) to dismiss an employee from employment. Section 41 mandates the employer to follow a fair procedure by first providing an opportunity to the accused employee to explain himself. The employee maybe accompanied by an employee of choice or a union official at the hearing.
38. Section 45(1) and (2) provide that no employer shall terminate the employment of an employee without a valid reason following a fair procedure and states that any such termination is unlawful and unfair.



39. The courts have in many decisions determined the minimum requirements that constitute a fair procedure in a disciplinary hearing and key to these are:-
- i. Notification of clear charges to the employee in a notice to show cause.
 - ii. Grant of sufficient time for the employee to respond in writing to the charges.
 - iii. Where the explanation in the written response is not sufficient, to provide a hearing to the employee to explain himself in the company of a person of choice.
 - iv. Provision of essential documents that disclose the offence including any investigation reports that support the charges.
 - v. Provision of sufficient time to appear for the hearing especially where such is requested by the employee.
 - vi. Presentation of the charges and evidence supporting the charges at the hearing
 - vii. Providing the employee opportunity to cross-examine the witness where they are called by the employer.
 - viii. Providing opportunity to tender his evidence and explanation to the charges made against him
 - ix. Providing reason(s) for the decision to terminate or dismiss the employee from employment.
40. See the case of *Walter Ogal Anuro versus Teachers Service Commission 2013 Eklr* where the court held that;
- ‘for termination to pass the fairness test, there must be both substantive justification and procedural fairness and that substantive fairness has got to do with the establishment of a valid reason for termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination’.
41. And the Court of Appeal decision in the case of *Ken freight (EA) Limited v Benson K. Nguti [2016] eKLR*, held that: -
- “It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair, that reason related to the employee’s conduct, capacity and compatibility or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure ...”
42. From the totality of evidence before court, the Respondent did not provide clear charges to the Claimant supported by investigation report by the Auditors on alleged infiltration of the Respondent’s network at the disciplinary hearing and no such report was presented before court. The Respondent in fact failed to adduce any tangible evidence to support the charges made against the Claimant at the disciplinary hearing and even before this court.
43. The Respondent failed to prove that it had sufficient, valid evidence to summary charge and dismiss the Claimant from employment.
44. The Respondent admitted that it produced no supporting documents to the Claimant including the report of investigation to help the Claimant explain himself. The said reports were also not availed before court.



45. In the final analysis the Respondent has not proved it had a valid reason to summarily dismiss the Claimant from employment. The failure to provide essential documents to the Claimant to prepare and present his case leads to the conclusion that the Respondent did not follow a fair procedure before finding the Claimant guilty of the charge levelled against him.
46. The Respondent also admitted that the reason(s) given in the letter of dismissal for the decision differed materially from the charges levelled against the Claimant in the notice to show cause. That the notice to show cause was the only document the Respondent relied upon at the disciplinary hearing.
47. The Respondent admitted that no evidence of loss of Kshs. 800,000.00 was presented at the disciplinary hearing or before court and that could only be proved vide electronic infiltration evidence and vide financial statements which were not placed before court by the Respondent.
48. In *Simon Rotich v Judicial Service Commission & Another* 2019 eKLR the Court held that;
-Article 47 of *the Constitution* entitles every person to reasons where an adverse administrative decision is made against the person. As submitted for the Petitioner, provision of all information in a disciplinary case would be necessary to satisfy the constitutional provisions on transparency, accountability, enforcement of rights and access to information.
49. In *Judith Nyagol and Judicial Service Commission and Another* (Petition E015 of 2024 (2024) KESC 69 (KLR) 22 November 2024(Judgment) the Supreme Court held that
- ‘This then brings us to the next limb of the aspect of fair trial, and that is whether it was prejudicial to fail to avail the witnesses. It would appear that the Respondents relied predominantly on the judgment of the Criminal Court which was also the basis of the ‘complaint’. They did not call any witnesses and did not adduce any evidence. While it was upon the Respondents to elect which witnesses to call, if any, it was upon them to prove their case and not leave it to conjecture or even worse, to shift the burden of proof to the Appellant. To that extent, we find that failure to avail witnesses was fatal to the Respondent’s case, trial and ultimate decision.
50. Accordingly, the Claimants suit has merit and the court enters that the summary dismissal of the Claimant was unlawful and unfair and in violation of Section 45 of the *Employment Act*. This is a pure employment claim which need not be elevated to constitutional claims sought here by the Claimant.
51. The remedies provided under section 49(1) (c) and 4 of the *Employment Act* are sufficient to vindicate the loss suffered by the Claimant as a result of the unlawful and unfair summary dismissal.
52. In this respect, the Claimant had served the Respondent for a period of four (4) years with a clean record. The court finds that no contribution to the dismissal was proved by the Respondent against the Claimant. The Claimant lost great prospects of career development with the Respondent and other banks as evidenced by the difficulty the Claimant experienced in obtaining alternative employment. The Claimant was falsely charged with a criminal offence and was acquitted. The Claimant worked with another organization as ICT officer as at the time of hearing this suit.
53. The Claimant was not paid notice pay by fact of being summarily dismissed and payment of full terminal benefits as a result.



54. The Claimant was not compensated for the loss. The court has considered comparable cases including *Kenfreight (E.A) Limited v Benson K. Nguti* [2019] eKLR where the Supreme Court held that;

‘What then should be the correct award on damages be based on’ Having keenly perused the provisions of Section 49 of the *Employment Act*, we have no doubt that once a trial court finds that a termination of employment as wrongful or unfair, it is only left with one question to determine, namely, what is the appropriate remedy” The Act does provide for a number of remedies for unlawful or wrongful termination under Section 49 and it is up to the judge to exercise his discretion to determine whether to allow any or all of the remedies provided thereunder. To us, it does not matter how the termination was done, provided the same was challenged in a Court of law, and where a Court found the same to be unfair or wrongful, Section 49 applies’.

55. The Court awards the Claimant the equivalent of eight (8) monthly salary in compensation for the unlawful and unfair dismissal.

56. The claim for award of damages for violation of constitutional rights lack merit and is dismissed.

57. The Claimant is awarded one month salary in lieu of notice in the sum of Kshs. 192,500.00 the figure discernable from exhibit 6 presented by the Respondent.

58. In final the analysis judgment is entered in favour of the Claimant against the Respondent as follows: -

- a. Kshs. 165,000.00 in lieu of one-month notice
- b. Kshs (165,000 x 8) being the equivalent of 8 months salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs. 1,320,000.00.
Total amount. Kshs. 1,485,000.00
- c. Interest at court rates from date of judgment till payment in full
- d. Costs of the suit

DATED AT NAIROBI THIS 31ST DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Dulu Advocate for Claimant

Mr. Baabu Advocate for the Respondent

Mr. Kemboi – Court Assistant

