



**Yego v Kenya Post Office Savings Bank (Cause E500 of 2020)
[2025] KEELRC 2296 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2296 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E500 OF 2020**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

SARAH J YEGO CLAIMANT

AND

KENYA POST OFFICE SAVINGS BANK RESPONDENT

JUDGMENT

1. Sarah J. Yego, the Claimant in this case, was an employee of Kenya Post Office Savings Bank, having been employed in 2005, at the entry level of Cashier, and rising through the ranks to the position of Assistant Operations Officer, as at the time of separation.
2. The dispute falling for adjudication arose from the termination of the Claimants' employment on 25th September 2017.
3. The Claimant lays out her claim in Statement of Claim dated 2nd Sept 2020 and the Respondent defends itself by a Reply dated 23rd February 2021, to which the Claimant responded on 19th September 2022.
4. At the trial, the Claimant testified on her own behalf and the Respondent called Michael Oketch. Thereafter, the parties filed written submissions.

The Claimant's Case

5. The Claimant was employed by the Respondent on 15th February 2005. She served in several positions, culminating with Assistant Operations Officer at the Respondent's Card Services Department, which position she held from 2012 until her exit from the Respondent's employment.
6. The Claimant avers that all actions undertaken by her, in the course of her employment, were duly sanctioned and authorised by her superiors.



7. On 8th September 2016, the Claimant was interdicted on half pay, subsequent to which her employment was terminated. The Claimant terms the Respondent's actions as unjustifiable, unlawful and unfair. She therefore claims the following:
- a. 12 months' salary in compensation.....Kshs. 1,233,024.00
 - b. Half pay for the period of interdiction.....504,000.00
 - c. 2 months' salary in lieu of notice.....168,000.00
 - d. Accrued leave on prorata basis.....49,950.98
 - e. Costs plus interest

The Respondent's Case

8. In its Reply dated 23rd February 2021, the Respondent admits that the Claimant was its employee, holding the position of Assistant Operations Officer at the Card Services Department.
9. The Respondent avers that the actions of misconduct that led to the termination of the Claimant's employment were not sanctioned by it.
10. The Respondent maintains that the Claimant's interdiction and subsequent termination of employment were justifiable and procedural, on account of acts of gross misconduct.
11. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it.

Findings and Determination

12. There are two [2] issues for determination in this case:
- a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

13. The Claimant's employment was terminated by letter dated 25th September 2017 stating as follows:

"Sarah Yego

PF: 1982

Thro'

Manager/Credit & Card Services

Postbank

Re: Termination Of Service

Following your interdiction from duty on 19th September, 2016 for involvement in an act of operational irregularity, Management has reviewed your case and decided that your service be terminated with effect from 25th September, 2017.

You will recall that on diverse dates while serving as Assistant Operations Officer at Card Services Department, you failed to adhere to operational procedures. This act is contrary to the laid down policy and constitutes serious offence which amounts to gross misconduct.



These facts were well explained to you on 6th June, 2017 when you appeared before the disciplinary committee and 6th September, 2017 when the intention to terminate your service was communicated to you in the meeting held at the HRM's/Talent Management & Employee Relations Office. On termination you will be paid one [1] month basic salary in lieu of notice and any outstanding leave days.

Our records indicate that you have outstanding Bank liabilities as at 25th September 2017 which become payable immediately, and you are required to advise on how the same will be liquidated. [See attached schedule 1]. You are also requested to indicate the option you prefer for the payment of your pension benefits [attached schedule 2].

Please arrange to surrender your employment card to Human Resources Department and collect clearance forms for your formal discharge from service.

[signed]

Karanja

For: Head/hr & Admin”

14. This letter cites ‘an act of operational irregularity’ as the reason for termination of the Claimant’s employment; particulars being that she had, on diverse dates, failed to adhere to operational procedures, while serving as Assistant Operations Officer at the Respondent’s Card Services Department.
15. The Respondent’s witness, Michael Koech told the Court that the Claimant adjusted the credit system limits to allow persons who were not qualified to access funds. As a result, the Respondent is said to have lost over Kshs. 22 Million.
16. On her part, the Claimant denied any wrongdoing, asserting that she always worked under instructions from her superiors, and at no time did she operate outside those instructions. She complained that she was not supplied with any documents to support the allegations levelled against her. In particular, she pointed out that she was not availed any investigation report to enable her prepare a proper defence.
17. The Claimant further complained that she was allowed only forty-eight [48] hours to respond to the show cause notice, issued to her on 8th September 2016. In addition, the Claimant told the Court that she was placed on interdiction on half pay for a year and her appeal was not concluded until the lapse of two years.
18. In adjudicating a claim of unlawful and unfair termination of employment, the Court sets out to inquire into two related questions; first, whether the employer has established a valid reason for the termination and second, whether in effecting the termination, the employer followed due procedure.
19. The standard regarding what constitutes a valid reason for termination of employment is set by Section 43 of the *Employment Act*, which provides as follows:
 1. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair with the meaning of section 45.
 2. The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.



20. It is now well established that the foregoing threshold is on a balance of probability and reasonableness of the action taken by the employer. In its decision in *Evans Kamadi Misango v Barclays Bank of Kenya* [2015] eKLR this Court stated the following:

“The burden placed on the employer by Section 43 is to demonstrate a valid reason which would cause a reasonable employer to terminate the employment of an employee.”

21. This standard is achieved at the shop floor, by applying the mandatory procedural fairness requirements decreed by Section 41 of the *Employment Act*, which provides that:

1. Subject to section 42[1], an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44[3] or [4] hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection [1], make.

22. In considering the ingredients of procedural fairness as set out in the foregoing provision, in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] eKLR my brother, Radido J stated the following:

“The ingredients of procedural fairness...within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

23. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR this Court stated as follows:

“...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”

24. In the present case, the Claimant was subjected to a sham disciplinary process; firstly, the investigation report upon which she was found culpable was not availed to her and there is no evidence of her being given an opportunity to face her accusers. It seems to me therefore that the Respondent reached the conclusion of guilt as against the Claimant without affording her a proper opportunity to defend herself.



25. Secondly and more significantly, the Claimant was kept on interdiction for one year and her appeal took a record two years to be determined. The Respondent did not offer any credible explanation for this delay, which the Court considers inordinate.
26. For the foregoing reasons, I find and hold that the termination of the Claimant's employment was substantively and procedurally unfair.

Remedies

27. I therefore award the Claimant twelve [12] months' salary in compensation. In arriving at this award, I have considered the Claimant's long service and the finding that she did not contribute to the termination.
28. The Claimant did not adduce evidence to support the figures claimed for half salary during interdiction, notice shortfall and prorata leave pay. These claims therefore fail and are disallowed.
29. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 1,233,024 being 12 months' salary in compensation for unlawful and unfair termination of employment.
30. This amount will attract interest at court rates from the date of judgment until payment in full.
31. The Claimant will have the costs of the case.
32. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

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JUDGE

Appearance:

Mr. Ochieng for the Claimant

Mr. Kioko for the Respondent

