



**Timothy v Co-operative Bank of Kenya Ltd (Cause E448 of 2023)
[2025] KEELRC 2253 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2253 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E448 OF 2023
SC RUTTO, J
JULY 25, 2025**

BETWEEN

KIMATHI SAMSON TIMOTHY CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LTD RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondent as a casual employee in November 2012 and thereafter as a Graduate Clerk. That initially, he was posted to the Respondent's Kisumu East branch as a teller with effect from 5th June 2013. The Claimant further avers that during the employment, he worked in other branches, being Olkalau, Tom Mboya and Tala.
2. According to the Claimant, he was an exceptional performer for all the years he worked for the Respondent. That he did his work diligently and excelled in all the duties/tasks allocated to him.
3. The record bears that the termination of the Claimant's employment contract stemmed from allegations that he fraudulently processed USSD resets for certain M-Coop cash numbers linked to deceased persons' bank accounts.
4. It is the Claimant's case that his termination from employment was unfair, unlawful and unprocedural. In this regard, his claim against the Respondent is for the sum of Kshs 1,549,510.20 being compensation for unfair and unlawful loss of employment. The Claimant has further asked the Court to award him the costs of the suit.
5. The Claim was opposed through the Respondent's Statement of Response and Counterclaim dated 30th October 2023. In the Response, the Respondent has denied the Claimant's assertions that he was an exemplary performer. According to the Respondent, on various occasions, the Claimant was served with warning letters, both verbal and written, for breach of the Respondent's Staff Manual and Business Code of Conduct and Ethics.



6. The Respondent further avers that the termination of the Claimant's employment was lawful, fair and procedural. In the Respondent's view, the Claimant is not entitled to any of the reliefs provided under Section 49 of the *Employment Act*.
7. With respect to the Counterclaim, the Respondent avers that in the course of the Claimant's employment, the Respondent advanced to him various loan facilities. In this regard, the Respondent claims that the sum of Kshs 5,814,131.51 is due and owing as at 29th December 2021. On this basis, the Respondent seeks the sum of Kshs 5,814,131.51 with interest at the rate of 17% until payment in full. The Respondent further seeks to be awarded the costs of the Counterclaim.
8. In response to the Statement of Response and Counterclaim, the Claimant has contended that any insinuation that he received verbal and warning letters is not only baseless but also misleading, as he was not taken through any disciplinary process. The Claimant further avers that his performance consistently surpassed expectations during performance appraisals, a fact he contends was recognized by the Head of Human Resources in her correspondence regarding the Claimant's request to swap with Michael Oluoch.
9. As to the Counterclaim, the Claimant has refuted the balance of the outstanding loans. He avers that he has been paying the loan at the agreed staff rate of 6% and has never received any notification regarding a change in the interest rate applied to the loan facilities. That when he sent an offer to the bank to settle the entire loan, he was informed by John Mwangona that the loan had been charged a market interest rate of 20.5%. The Claimant contends that no notice or new payment schedule was issued to inform him of the updated monthly obligation. In his view, this is illegal and unlawful.
10. The matter proceeded for hearing on diverse dates during which both sides called oral evidence.

Claimant's Case

11. The Claimant testified in support of his case and at the outset, he sought to adopt his witness statement, as well as the documents filed on his behalf, to constitute his evidence in chief.
12. The Claimant started by recounting his employment history across various branches of the Respondent bank.
13. The Claimant averred that on 16th October 2020, while he was at the Respondent's Tom Mboya branch, he received a letter of transfer swapping him with Collins Obwari of Tala branch. The Claimant contended that he had not been previously consulted about the transfer-swap and he found it very unfair and discriminatory. His Branch Manager promised to appeal the transfer.
14. The Claimant avers that he appealed as his Branch Manager also tried to intervene. However, the Respondent's Human Resources department declined his appeal.
15. That when he reported to Tala branch, he was treated with so much contempt and hostility by the Branch Manager and he started having mental breakdowns.
16. The Claimant further averred that he was later contacted by another staff Michael Oluoch, who was being transferred from Nairobi CBD to Kawangware, and he requested whether he (Claimant) would be willing to move to Kawangware and him to Tala. The Claimant quickly consented. They both wrote emails but the swap request was declined without any reason. Instead, the Human Resources department discriminatively supported Michael by moving him within the Nairobi CBD City Hall branch.



17. The Claimant further averred that the Branch Manager threatened to get back at him for constantly applying for transfers. That from then onwards, he started receiving several intimidating show cause letters from the Branch Manager.
18. He further averred that the Branch Manager continued to frustrate him by sometimes denying him the user systems that were required to perform his duties.
19. The Claimant further averred that on 22nd June 2021, he realized the Branch Manager had fraudulently accessed his Loan user (tkimathi), created collaterals and approved for disbursement without his knowledge. That the Claimant was waiting for the client to execute all loan documents when he informed him that he had already received the funds. He was shocked and confronted the Manager, who chased him away from her office without any explanation. He (Claimant) shared the logs with the security department, questioning how another user would access his user, but he never got any response.
20. The Claimant further averred that on 21st October (sic), when he arrived in the branch after sick-off leave, the Branch Manager called him to her office and issued him with a suspension letter with no explanation. The Claimant contends that he was not allowed to pick or access his work area.
21. The Claimant stated that after one month, he was invited to the Security Department, where he was confronted with allegations not contained in the suspension letter. That since he had been suspended and had no access to the bank system to confirm the truthfulness of the allegations, he requested them to play the CCTV footage. They refused to do so and he was only shown the part displaying his back. He was not shown his computer screen. According to the Claimant, this was very odd because auditors show their screens in instances where they leave them unlocked.
22. The Claimant questioned this anomaly and he was rudely informed that it did not matter. According to the Claimant, it mattered because showing the screen and the user logged would have ruled out foul play by another user, as it was the norm by the Branch Manager to log with his user in her office.
23. The Claimant averred that he wrote an official email to the Security Department requesting the CCTV footage for his work station for the day he was accused of committing the offence but they refused.
24. It was the Claimant's testimony that the offences related to accounts which had been reported to the bank as deceased and flagged. That they agreed with the Security Department that for withdrawal from those accounts, a staff must have re-registered the mobile number and unflagged the accounts. The Claimant contended that the Respondent refused to reveal when and who re-registered the mobile numbers and unflagged the accounts.
25. The Claimant further contended that he was being accused of resetting USSD and activity which in itself cannot enable a customer to transact with the account, since a new PIN and unflagging the account is required.
26. According to the Claimant, the Bank was not willing to go after the real staff aiding the fraud and he was merely being used as a sacrificial lamb.
27. The Claimant added that since he was a clerk and only a maker, he only input USSD resets, and then the Manager would approve them in the system. That the bank argued that the Manager had not approved, which means his input had no effect, and therefore, he was being punished for an offence not committed.
28. The Claimant further averred that he was invited to a disciplinary meeting where he protested to the panel that he was being taken through a process with a predetermined outcome since they had



- accepted the Branch Manager to give him letters with no basis, hurriedly issued with suspension before establishing commission of any offence and removed from the bank directory even before issuing him with a show cause letter.
29. The panel assured the Claimant of their neutrality but he became apprehensive when they denied him a chance to record the proceedings and forced him to switch off his phone without giving any reason.
 30. The Claimant averred that he also informed the panel that he would have wished to postpone the disciplinary meeting since the union member who was supposed to accompany him had not shown up. The Panel informed him it was their decision that they continue, and with no choice, he obliged.
 31. The Claimant testified that he defended himself and raised several factual issues which the Panel promised to confirm and revert to him.
 32. The Claimant further stated that after receiving the minutes of the disciplinary meeting, he noted most parts were intentionally omitted and it became clear that while the Panel had refused him to record the proceedings, things that had not been discussed were included, with the content changed to suit another narrative. He edited them before signing, but discovered that it was enough. Barely one day after signing the minutes, he was informed he had been dismissed.
 33. It was the Claimant's testimony that he appealed the decision and requested to be heard by an Appeal Panel owing to the fact that the first panel was unfair, to the extent of falsifying minutes and refusing to postpone or delay the hearing, awaiting a union representative. The Claimant contended that to date, the Appeal has never been responded to.

Respondent's Case

34. The Respondent called oral evidence through Stacey Wahome and Leah Kerich who testified as RW1 and RW2, respectively. Ms. Wahome, who identified herself as a Fraud Analyst working at the Respondent's Security Department, was the first to go.
35. Similarly, RW1 adopted her witness statement and the documents filed on behalf of the Respondent to constitute her evidence in chief.
36. It was RW1's evidence that she holds a Bachelor of Arts Degree in Criminal Justice and a Master of Security and Strategic Studies from the USIU-Africa and Macquarie University, Australia, respectively. That she has also attended a course at the International Compliance Association and completed the ICA Specialist Certificate in Financial Crime Risk and New Technology.
37. It was RW1's evidence that sometimes in October 2021, the Security Department received a request from the Respondent's Tala Branch Manager to investigate suspicious USSD resets of three M-Coop Cash numbers: 254721xxx, 254724xxx and 254726xxx.
38. On receipt of the said request, she commenced investigations with the objective of determining the circumstances under which the said suspicious USSD resets were made and if they were fraudulent or otherwise and give the necessary recommendations.
39. Upon investigations, she found out that P. A. is the owner of account no. 0110xxx opened in the Eldoret Branch in September 2006 and was reported deceased at Kisumu Branch on 12th October, 2021 and whose account was flagged as "deceased, no-debit".
40. She also found out that on 18th October, 2021, at 01:32:47 PM, there was a USSD reset done on phone number 0721xxx linked to account No.0110xxx0900 of P.A and the reset was done by Timothy



Kimathi, the Claimant herein, at the Tala Branch. The reset was later flagged by the Transaction Monitoring Department as suspicious.

41. RW1 further averred that on reviewing the Service Request Form filled for the USSD reset, they noted that the form was not fully filled and there was no received stamp on it. She (RW1) compared the customer's signature on the form and that on the system, and they did not match.
42. That further, a review of the CCTV footage showed the Claimant herein serving a man who filled the forms.
43. She reviewed the M-Coop Cash transactions for the phone number and noted that there was a PIN reset done on 18th October, 2021 at 01:38:03 PM. According to RW1, the account was later blocked by Transaction Monitoring at 01:53 PM but no funds had been debited from the account at that time.
44. She further reviewed the audit trail for the M-Coop Cash account and noted that the Claimant had also viewed the account on 16th October 2021 at 10:40 AM and 12:39 PM respectively. On viewing the CCTV footage, she noted that there were no customers in his presence at the time in question.
45. Her further investigations led her to the discovery of two other suspicious USSD resets done by the Claimant on 17th September, 2021. The first reset was M-Coop cash account 0724xxx that is linked to bank accounts 0112xxx1300 of J.M.N, 0119xx0900 of J.C.L and 0119xxx4100 of J.C.
46. RW1 averred that the abovementioned accounts are domiciled at Nairobi Business Centre Branch and J.M is the sole signatory of both J.C.L and J.C. The phone number was linked to the M-Coop Cash on 18th July, 2019. The account 0112xxx1300 had been flagged as deceased on 6th September, 2021 and the account 0119xxx0900 was flagged on 22nd September, 2021 at Nairobi Business Centre Branch.
47. That the phone number was not delinked from the accounts when the account was flagged and the USSD reset was done at 10:00 AM on that day. According to RW1, the customer's signature on the Service Request form did not match the one on the bank's system.
48. RW1 further testified that on checking the CCTV footage, she noted that there was no customer present at the Claimant's desk at the time of the USSD reset.
49. That on reviewing the audit trail of the account, she noted that there was a PIN reset for the M-Coop Cash account on 17th September 2021 at 10:03 AM. This was followed by a self-transfer of Kshs1,000/- from account no. 0119xxx0900 of J.C.L to the M-wallet and debit of the same amount from the M-wallet account. Thereafter, at 12:13 PM, one Ms. Swuhellen Abuga of Contact Centre blocked the account.
50. On enquiring from Ms. Swuhellen Abuga on why she had blocked the M-Coop Cash account, she informed her (RW1) that she had received a call from the phone number stating that they were receiving an error while trying to transact. She further stated that on checking the account, she noted that it was flagged as 'deceased' and she thus realised that the caller was a fraudster and moved to block the account.
51. RW1 further averred that the second suspicious USSD reset was done on M-Coop cash account 0726xxx linked to account number 0111xxx3400 of M. A, at 06:13 PM.
52. That the account was opened on 14th January, 2010 and is domiciled at the Kimathi Branch and the phone number was linked to the account on 22nd May, 2014. RW1 added that the signature on the form did not match the signature found on the Bank's system.



53. That further, the CCTV footage at that time shows that there was no customer in front of the Claimant, and it was outside the branch operating hours. She also noted that the Claimant had viewed the account at 12:00 PM when there was no customer in front of him as per the CCTV footage.
54. Her further findings showed that the PIN reset was done at 06:29 PM and the debits of Kshs. 180,500/- were done through cardless withdrawals and MPESA B2C.
55. According to RW1, as per the CCTV footage, the cardless withdrawals were done at an ATM in Tala Branch by an unknown individual.
56. RW1 further averred that although her efforts to contact the account holder M.A, through phone were futile, she was able to reach the contact person, one Mr. Elijah Odhiambo Magongo, who claimed to be her son. Elijah visited their department and informed them that M.A had died on 22nd July 2021. He also stated that they had requested Safaricom to switch off her phone number from the beginning of September. He also stated that the deceased only used her card to transact and did not use mobile banking.
57. RW1 further averred that she also interviewed the Claimant and requested him to narrate the expected procedure of performing USSD resets. He stated that he received maker user rights on the M-Coop Cash Admin in 2014. That when a customer requests a USSD reset, he ideally should perform Know Your Customer (KYC) on the customer by having the customer present his/her ID card and debit card.
58. According to RW1, the Claimant further stated that he uses the Branch Power System to confirm the signature and photo of the customer. He added that he is less diligent when performing KYC procedures for a USSD reset, as the process does not give the customer new details on the account.
59. She (RW1) asked about the USSD reset for P.A done on 18th October, 2021 and the Claimant stated that he served a customer dressed in a suit at that time and who informed him that he had misplaced his mobile phone and could not access M-Coop Cash. He then asked the fraudster to fill out a form with the details and requested for his ID. That the Claimant thereafter allegedly requested the fraudster to wait so that he may receive a Branch Power user to confirm the customer's signatures. He further alleged that he could not remember whether he completed the USSD reset and that he had not met the customer before that day.
60. She (RW1) showed the Claimant the Service Request Form, which the customer had allegedly signed and he stated that he could not confirm if that was the customer's handwriting on the form.
61. When she (RW1) informed the Claimant that the customer was deceased at the time of the USSD reset, he was surprised, as, according to him, he knew he was dealing with the right customer.
62. That RW1 further drew the Claimant's attention to the fact that he had viewed the account on 16th October 2021 at 10:40 AM and 12:39 PM respectively as per the CCTV footage, whereas there was no customer before him at the time, and he was unable to give any reason as to why he was viewing the account.
63. She inquired from him about the other two USSD requests and he stated that he did not recall handling any of the customers and disputed the authenticity of the M-Coop Cash forms. On showing him the CCTV footage of both incidents where he did USSD resets without the customer being present, the Claimant stated that the customers might have left the forms for him to action.
64. RW1 further averred that in the course of her investigation, she obtained three written statements from the Claimant.



65. It was RW1's evidence that from her findings, she came to the conclusion that the Claimant fraudulently performed three USSD resets that led to a financial loss of Kshs.181,500/- for the Bank.
66. That the Claimant could not exonerate himself from blame because he did not follow the procedure on USSD resets as indicated in Section 18 of the M-Coop Cash Operating Manual.
67. It was RW1's view that if adequate KYC had been done, the Claimant would have noted that the fraudsters were not the account owners.
68. That from her investigations, the Claimant was guilty of the said fraudulent USSD resets and therefore the termination of his employment was lawful and for a valid reason.
69. Ms. Leah Kerich who testified as RW2, identified herself as the Head of Employee Relations & Welfare at the Respondent bank. Equally, RW2 adopted her witness statement to constitute her evidence in chief. She further produced the documents filed on behalf of the Respondent as exhibits before Court.
70. RW2 started by describing the Claimant's employment history with the Respondent Bank.
71. RW1 averred that vide a letter dated 19th October, 2021, the Claimant was suspended from duty to pave way for investigations on account of a suspected attempt to fraudulently activate the Respondent's deceased customer's account.
72. Subsequently, vide a letter dated 29th November, 2021, the Claimant was issued with a show cause letter on suspected fraudulent USSD Resets.
73. That vide a letter dated 2nd November, 2021, the Claimant requested for more time within which to respond to the said show cause. Subsequently, vide his undated letter received by the bank on 7th December, 2021, the Claimant responded to the show cause letter.
74. RW2 averred that the Claimant's response to the show cause letter was found unsatisfactory and as a result, vide a letter dated 8th December, 2021, he was invited to appear before the Bank's Disciplinary Hearing Panel on 14th December, 2021. In the said letter, the Claimant was informed of his right to be accompanied by a member of staff of a Central Staff Union official during the hearing.
75. The Claimant attended the disciplinary hearing on 14th December, 2021, although unaccompanied, and on being asked why he was not accompanied, he said that he was comfortable proceeding with the hearing without any representation, whereupon the charges were read out to him.
76. RW2 further averred that at the disciplinary hearing, the Claimant was found to have contravened provisions of the Bank's Operating Manual, Staff Manual, Code of Conduct & Ethics and his integrity as a Bank employee was questionable.
77. Subsequent to the said hearing, the Claimant's employment was terminated vide a letter dated 29th December, 2021, as he was unable to exonerate himself from the charges levelled against him. On termination, he was paid one month's salary in lieu of notice in accordance with the provisions of the CBA.
78. According to RW2, the Respondent adhered to the provisions of the Bank's Staff Manual, the [Employment Act](#), CBA, and the internal disciplinary procedure in reaching the decision to terminate the Claimant's employment.
79. RW2 further stated that vide a letter dated 19th January, 2021, the Claimant appealed against his dismissal. The appeal was responded to by the Respondent vide its letter of 27th January, 2021 and he was informed that his appeal did not raise any new evidence to warrant a review of his dismissal.



80. That upon the termination of the Claimant's employment, his terminal benefits were computed and a sum of Kshs 8,294.00 was credited into his internal settlement account.
81. The Claimant was issued with a Certificate of Service dated 3rd June, 2022, which he duly collected on the same day.
82. RW2 further averred that at the time the Claimant's employment was terminated, he owed the Bank a total sum of Kshs.5,814,121.51 made up as follows: -
 - a. House Loan Kshs 5,282,846.84
 - b. Education Loan Kshs 206,665.00
 - c. Personal Loan Kshs 324,609.67
83. In closing, RW2 urged the Court to enter judgment in favour of the Respondent for the sum of Kshs. 5,814,121.51.

Submissions

84. Upon close of the hearing, both parties filed closing submissions. On his part, the Claimant argued that it was proved that none of the deceased M-Coop Cash Wallets or accounts were closed or flagged, or blocked as deceased. To this end, the Claimant posited that he cannot be accused of USSD Reset of a deceased M-Coop cash wallet.
85. It was further submitted by the Claimant that the Respondent is not clear on the reasons advanced for his summary dismissal from employment.
86. According to the Claimant, the Respondent, having shifted the reason for dismissal from the USSD Reset allegation to Reset SIM Card Details, failed to comply with Sections 41, 43 and 45 of the *Employment Act*, rendering the termination substantively and procedurally unfair. To reinforce this argument, the Claimant placed reliance on the case *National Bank of Kenya v Samuel Nguru Mutonya* (2019) eKLR.
87. The Claimant further submitted that the Respondent's failure to provide him with the investigation report or documents related to the alleged misconduct prior to his dismissal and to produce the same before this Court constitutes a grave violation of procedural fairness and natural justice. In support of this position, the Claimant referenced the cases of *William v Bollore Africa Logistics Limited* (Cause 1494 of 2017) [2023] KEELRC 3030 (KLR) (16 November 2023) (Judgment), *Walter Anuro v Teachers Service Commission* [2013] eKLR and *Ayora v United International States University - Africa* (Cause E311 of 2020) [2025] KEELRC 1023 (KLR) (28 March 2025) (Judgment).
88. In further submission, the Claimant argued that the Respondent has not demonstrated to this Court how USSD resets directly enabled fraudsters to reset mobile PINs and subsequently withdraw funds. It was the Claimant's view that there is no clear connection established between a USSD reset and a PIN reset, and no evidence has been adduced to establish such a link.
89. Citing the case of *Moses Kibiego Yator v Eco Bank Kenya Limited* [2014] eKLR, the Claimant further submitted that the Respondent failed to properly consider or respond to his appeal, further demonstrating a lack of procedural fairness.
90. On the other hand, the Respondent posited that it has demonstrated that the reasons for the termination of the Claimant's employment were valid. On this issue, it was submitted that the Respondent has provided sufficient evidence on a balance of probabilities to demonstrate that the



Claimant was guilty of the fraudulent and irregular USSD M-Coop Cash resets resulting in fraudulent activities and financial losses to it (Respondent).

91. Referencing the case of Kenya Revenue Authority v Reuwel Waithaka Gitahi (2019) eKLR, the Respondent posited that it has proven that it had genuine reason to believe, on a balance of probability, that the Claimant fraudulently and/or irregularly caused USSD M-Coop Cash resets of its customers without following laid down bank procedures, thereby occasioning loss to the Respondent. To this end, the Court was urged to find as much.
92. Placing reliance on the case of Postal Corporation of Kenya v K. Tanui [2019] eKLR, it was the Respondent's further submission that the termination of the Claimant's employment was procedurally fair as he was accorded an opportunity to be heard. The Respondent further opined that it has demonstrated compliance with the four (4) elements set out in the aforementioned case.
93. The Respondent further posited that the Claimant admits to having been shown the audit trails of the accounts and the CCTV footage of the incidents and as a result, was fully aware and in a language, he understood, the charges levelled against him and was accorded three (3) separate occasions to respond to the overwhelming evidence against him prior to his disciplinary proceedings.

Analysis and Determination

94. The Court has considered the pleadings by both parties, the evidentiary material on record, as well as the rival submissions, and has isolated the following issues for determination: -
 - i. Whether the Respondent has proved that there was a valid and fair reason to terminate the employment of the Claimant;
 - ii. Whether the Claimant was taken through a fair process prior to termination from employment;
 - iii. Whether the Respondent has proved its Counterclaim; and
 - iv. Is the Claimant entitled to the reliefs sought?

Fair and valid reason for termination?

95. As can be discerned from the record, the Claimant was terminated from employment on grounds that on 17th September 2021 and 18th October 2021, he was negligent while performing his duties as a Service Desk Officer at Tala branch in that he failed to conduct proper KYC while processing USSD resets for three M-Coop Cash numbers which were linked to deceased customers' bank accounts.
96. It was further alleged in the letter of termination that the fraudsters were able to reset mobile banking PINs and access customer accounts, resulting in fraudulent withdrawals from the accounts totaling Kshs.180,500.00.
97. That further, the customers' instructions, which the Claimant acted on, were not authorized by his team leader as required and the signatures appended differed significantly from the customers' specimen signatures maintained in the Bank system. That further, no customers were seen at his workstation, confirming that he did not conduct KYC as required to confirm that he indeed was effecting instructions from genuine customers.
98. It is worth pointing out that the Claimant did not deny performing the USSD resets with respect to the three M-Coop Cash numbers affected. This can be discerned from the Claimant's response to the show



cause letter. In the said response, the Claimant's general defence was that he followed the procedure in resetting the USSD and that he did not issue any new PIN through the resets.

99. With respect to M-Coop Cash number +254724xxx, the Claimant stated in his response to the show cause that he ascertained that the mobile number corresponds with the bank static data for the client as captured in the BFUB system. That further, the signature impression on the customer instructions appeared proximate and the person who presented the instructions had near identical resemblance with the image captured in the bank system.
100. On the second M-Coop cash number +254726xxx, the Claimant stated that he confirmed that the ID the customer was carrying was genuine. That further, the customer's signature on the form at the branch appeared proximate to the best of his ability at the time and the person who presented the instructions had a near identical resemblance with the image captured in the bank system.
101. Finally, with regards to M-Coop cash number +254721xxx, the Claimant stated that he followed the procedure and that the customer had visited the branch on Saturday and had left his mobile number since the system had challenges.
102. In support of its case, the Respondent exhibited an audit trail on the M-Coop Cash Admin Portal, which indicates that the USSD reset was undertaken for M-Coop cash number +254724xxx by username tkimathi on 17th September 2021 at 10:00:35.
103. Further, during the hearing on 29th January 2025, the Respondent played the CCTV footage of its banking hall in Tala branch as captured on 17th September 2021. During cross-examination, the Claimant identified himself in the CCTV footage and confirmed that there was no customer before him at the time he performed the USSD reset as per the logs exhibited by the Respondent in Court.
104. Worthy to note is that the Claimant did not give a plausible explanation why he performed the USSD reset without the customer being present. This is more so noting that in his statement dated 22nd October 2021, to the Respondent's Security Department, the Claimant confirmed that before performing a reset, a customer presents the KYC documents, being the ID card and ATM (debit) card. It is therefore not clear how the Claimant performed the reset without the customer being present. How did he verify the KYC documents as being authentic? Besides, the Claimant did not indicate or suggest that the customers were persons known to him, hence the reason to do away with the need for verification of the KYC documents.
105. According to the Respondent's Branch User Guide Procedure with respect to its Retail Omni Channel Operations, exhibited in Court, it is a requirement that USSD customers who change their SIM cards need to visit the branch and have their old SIM card details deactivated. Connected to this, Clause 4.9 of the Guide provides that the registration of the new IMSI must be initiated at the branch where the Service Desk Officer is to ensure that the customer presenting him/herself is positively identified.
106. As I suppose, compliance with the aforementioned requirement ensures that proper KYC is done at the branch prior to any USSD reset being performed.
107. The audit trail exhibited by the Respondent further shows that the USSD reset with respect to M-Coop cash number +254726xxx was performed by username tkimathi on 17th September 2021 at 18:13:33.
108. With respect to this particular case, the Respondent exhibited a copy of a statement by the son of the deceased account holder, in which he indicated that the account holder passed away on 22nd July 2021. He further stated that he had made withdrawals from the account through the ATM, with the last one being made on 16th September 2021. However, it is notable that the withdrawals totaling Kshs



- 180,500/- made from the account after the USSD reset were cardless and in quick succession on the same day, being 17th September 2021.
109. Regarding M-Coop cash number +254721xxx, the audit trail on the M-Coop cash admin portal shows that the USSD reset was performed by username tkimathi on 18th October 2021 at 13:32:48.
 110. Concerning this particular M-Coop cash number, the Claimant stated in his statement dated 22nd October 2021, to the Respondent's Security Department, that he had come from marketing when a customer in a suit went to his desk informing him that he had changed his mobile handset and couldn't access his M-Coop cash.
 111. The Claimant confirmed that he had never seen the customer before that day. That he asked him for his debit card and ID card and asked him to fill out the form at the counter. He then opened the M-Coop Cash Admin Portal and did a UUID reset.
 112. According to the Claimant, he could not recall if he asked the customer to wait for him to get a Branch Power to confirm the signatures or whether he completed the reset.
 113. During the hearing, the Respondent exhibited a copy of a copy of a burial permit which indicated that Phelix Agurey, who was the holder of the bank account concerned, was deceased on 16th September 2021, while the USSD reset performed by the Claimant was on 18th October 2021. This therefore confirms that on 18th October 2021, when the Claimant performed the USSD reset, he served an impostor, masquerading as the holder of the account in question.
 114. In his defence, the Claimant stated that the system was not working on 16th October 2021 and that the "customer" had left his mobile phone number hence the reason he performed the USSD reset on 18th October 2021. Be that as it may, it is not clear why the Claimant did not wait to complete the transaction in the presence of the "customer" when the system was working so as to allow him to undertake a complete KYC verification. This is noting the Claimant's confirmation that he had never met the customer before that day.
 115. What can be deduced from the foregoing is that in all three instances in which the Claimant performed the three USSD resets, the genuine holders of the affected bank accounts were deceased.
 116. Further, in all the instances, the "customers" purporting to issue the instructions for the USSD resets were not physically present before the Claimant as he performed the USSD resets. In addition to the foregoing, it is discernible from the Notice to Show Cause that in two of the instances (+254724xxx and +254726xxx), the customers' signatures appearing in the service request form do not match the signatures maintained in the Bank's system.
 117. In view of the foregoing, it becomes apparent that the Claimant was not diligent in undertaking the KYC procedures with respect to the USSD resets. Needless to say, he was negligent in the performance of his duties.
 118. Although the Claimant has indicated that he did not perform PIN resets for the concerned M-Coop cash numbers, it is evident from the record that, as a result of the USSD resets, a process was set in motion that opened the door for fraudsters to reset the PINs. Needless to say, without the USSD reset for the deceased M-Coop cash numbers, it would not have been possible to reset the PINs.
 119. To this end, the Court finds that the Respondent has proved on a balance of probabilities that the Claimant was negligent in the performance of his duties. Therefore, by his own conduct, the Claimant availed the Respondent a fair and valid reason to terminate his employment.



Fair process?

120. Section 45 (2) (c) of the [Employment Act](#) places the burden on the employer to prove that termination of employment was in line with a process that is fair. In this regard, Section 41 makes specific requirements regarding the process to be complied with by an employer. This process entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the allegations in the presence of a fellow employee or a shop floor union representative of own choice.
121. In this case, the Claimant has impugned the process he was subjected to prior to his termination from employment on the basis that he was not given the investigation report or the documents related to his case prior to the termination of his employment.
122. The record bears that vide a letter dated 2nd November (sic) 2021, the Claimant wrote to the Respondent requesting for more time to respond to the Notice to Show Cause as he awaited documentation from the Branch and Security Departments. However, there is no evidence on record showing that the Claimant received the documentation he had requested prior to him tendering his response to the Notice to Show Cause.
123. Further, in his response to the Notice to Show Cause, the Claimant requested for documentation from the Respondent, specifically, logs, complete CCTV footage for his work station, the deceased's flagging checklist, and the users who reset the PIN.
124. From the record, there is no evidence that the Respondent acted on the Claimant's request, seeing that the Respondent made no mention of the said request in the letter inviting the Claimant for a disciplinary hearing. Indeed, there is no evidence at all that the Claimant was issued with the documentation/evidence he had requested ahead of the disciplinary hearing.
125. What's more, the Respondent did not provide any plausible reasons for its refusal to furnish the Claimant with the documentation/evidence requested and which he had consistently indicated was necessary for his defence.
126. To ensure a fair process, the Respondent was enjoined to furnish the Claimant with the documentation/evidence he had requested ahead of the disciplinary hearing.
127. On this issue, I agree with the finding of the Court (Ndolo J) in the case of *Rebecca Ann Maina & 2 others vs Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.
128. In this case, I do not doubt that failure by the Respondent to furnish the Claimant with the evidence he had requested to allow him mount his defence ahead of the disciplinary hearing, impaired his right to a fair hearing.
129. Accordingly, I cannot help but conclude that the process leading up to the termination of the Claimant from employment was not procedurally fair.

Counterclaim?

130. The Respondent has lodged a Counterclaim in the sum of Kshs 5,814,131.51 being outstanding loans (house loan, education loan and personal loan) advanced to him in the course of his employment. In support of its case, the Respondent exhibited copies of the relevant loan application forms and loan statements. However, upon tabulation, it is evident that the three (3) outstanding loans as per



the statements exhibited total Kshs 5,746,645.26 as opposed to Kshs. 5,814,131.51 claimed in the Counterclaim.

131. In his Reply to the Counterclaim, the Claimant only admitted the Counterclaim to the extent of Kshs. 4,000,000.00 with respect to the principal balance of the housing loan. As to the education loan, the Claimant contended that he only received the sum of Kshs. 206,665.00.
132. Despite the Claimant's assertions, he did not adduce evidence to confirm his position and discount the figures presented by the Respondent in the Counterclaim. As such, the Court has no reason to doubt the same.
133. The Claimant has further disputed the alteration of the loan repayment rates from staff rates to market rates. He contends that he was not issued with prior notice prior to the alteration of the change in the repayment rates.
134. The Claimant's position is at variance with the record, which bears that in the letter of termination, the Claimant was notified that the facilities accorded to him by virtue of his status as a staff member would attract interest rates at the prevailing commercial rate 30 days from the date of the letter of termination. As such, this confirms that the Claimant was given notice of the alteration of the rates with respect to the loan repayment.
135. In sum, the Court finds that the Respondent's Counterclaim is merited and proved in the sum of Kshs 5,746,645.26.

Reliefs?

136. As the Court has found that the termination of the Claimant's employment, although for a fair and valid reason, was not procedurally fair, he is awarded compensatory damages equivalent to three (3) months of his last gross salary.

Final Orders

137. In the final analysis, the Court makes the following orders:
 - a. A declaration that the termination of the Claimant's employment was procedurally unfair.
 - b. The Claimant's claim against the Respondent is allowed and he is awarded compensatory damages in the sum of Kshs 387,377.55, being equivalent to three (3) months of his gross salary.
 - c. Interest shall apply on the amount in (b) at court rates from the date of Judgment until payment in full.
 - d. The Respondent's Counterclaim against the Claimant is allowed in the sum of Kshs 5,746,645.26.
 - e. Interest in (d) shall apply at the prevailing market rates from the date of Judgment until payment in full.
 - f. As the Claim and Counterclaim have both succeeded, there will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

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STELLA RUTTO

JUDGE



In the presence of:

For the Claimant Mr. Munoru

For the Respondent Ms. Mwangi instructed by Mr. Kimondo Mubea

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.

STELLA RUTTO

JUDGE

