



REPUBLIC OF KENYA



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**Ambasa v Equity Bank (K) Limited & another (Petition E060 of 2025)
[2025] KEELRC 2113 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2113 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E060 OF 2025**

B ONGAYA, J

JULY 17, 2025

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 22, 23, 27, 28, 35,
41, 47, 159 AND 162 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF UNLAWFUL TERMINATION

AND

**IN THE MATTER OF VIOLATION OF THE PETITIONER'S RIGHTS TO
FAIR HEARING, FAIR ADMINISTRATIVE PROCESS, PRINCIPLES OF
PUBLIC SERVICE, DIGNITY AND PROTECTION FROM DISCRIMINATION**

AND

**IN THE MATTER OF RULES 4 AND 10 OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

IN THE MATTER OF SECTION 47 OF THE FAIR ADMINISTRATIVE ACTION ACT 2012

AND

IN THE MATTER OF SECTION 41 OF THE EMPLOYMENT ACT 2007

AND

**IN THE MATTER OF SECTION 12 OF THE EMPLOYMENT
& LABOUR RELATIONS COURT ACT 2011**

AND

**IN THE MATTER OF SECTION 3.12 & 15 AND 21.5 OF EQUITY BANK
(K) LTD HUMAN RESOURCE AND PROCEDURE MANUAL 2025**

AND



**IN THE MATTER OF SECTION 30 OF THE HUMAN RESOURCE MANAGEMENT
PROFESSIONALS ACT 2012 AND SECTIONS 5, 6 AND 12 OF HUMAN
RESOURCE MANAGEMENT PROFESSIONALS CODE OF CONDUCT**

BETWEEN

BENARD OKOTH AMBASA PETITIONER

AND

EQUITY BANK (K) LIMITED 1ST RESPONDENT

DR. DORCAS KIAI 2ND RESPONDENT

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 08.04.2025 through Tonge Yoya & Associates Advocates. He prayed for the following reliefs:
 - i. A declaration that termination of the petitioner was irregular, unprocedural, illegal, malicious and unconstitutional hence null and void ab initio.
 - ii. An order directing the 1st respondent to unconditionally revoke the termination letter issued to the petitioner and expunge the termination letter from the employee's file and order for his immediate reinstatement.
 - iii. An order directing the 2nd respondent to disclose the nature of the unsatisfactory background screening results and to reveal the alleged information of concern to the Bank from the background checks.
 - iv. In the alternative, an order directing the respondents to duly pay and/or compensate the petitioner 12 months' salary for the unfair and unlawful termination.
 - v. An order directing the respondents to compensate the petitioner financially for causing him mental and psychological anguish and for subjecting him to professional disgrace by putting his professional integrity to disrepute.
 - vi. An order directing the respondents to pay the petitioner any pending salaries, allowances and benefits accrued to him.
 - vii. An order declaring Dr. Dorcas Kiai unfit to continue holding the title of a licensed Human Resource Practitioner for having breached the law, the Bank's HR Policy, the Human Resource Management Professionals Code of Conduct & Ethics and the *Human Resource Management Professionals Act* No. 52 of 2012.
 - viii. An order restraining the respondents either by themselves, employees, servants and/or agents from harassing, arresting, intimidating or terminating the employment of the petitioner on the basis of the illegal termination in the case of his reinstatement.
 - ix. Costs of this petition be borne by the respondents.
2. The petitioner's case was as follows:



- a. On 09.12.2024, the 2nd respondent, an Associate Director for Human Resource at the 1st respondent and a former colleague at Kenya Revenue Authority (KRA), reached out to the petitioner via WhatsApp text message as follows:

“ Good Evening BA (Short form for name Benard Ambasa) Pray you are well. Today, I was having a conversation with my group HR David Ssegawa. And I told him I have been searching for a General Manager in charge of Employee Relations..... he said you would be interested?”
 - b. Pursuant to the said conversation, the petitioner shared his profile with the respondents. In return, he was invited for the first interview on 19.12.2024 at 1:00 pm East Africa Time (EAT), through an email dated 17.12.2024 that was sent at 5:06 pm by the 1st respondent’s General Manager Business Partnering, to discuss the Head of HR Employee Relations role with the Bank.
 - c. At 11:05 am on 09.01.2025 via email, the respondents invited him for a second virtual interview for the same position of General Manager - Human Resource Employee Relations to be held on 15.01.2025 between 1:00 and 2:00 pm EAT.
 - d. The interviews were successfully conducted, after which the respondents communicated to him an offer via an email dated 22.01.2025. He responded through an email dated 23.01.2025, with a counter offer, which formed the subject of negotiations of terms between him and the respondents on 23rd and 24th January 2025. In the end, the respondents gave a further offer of Kshs. 950,000/= as a consolidated salary that he accepted vide an email of 24.01.2025 at 1:57 pm.
 - e. Thereafter, the respondents issued him an appointment letter dated 30.01.2025, which he accepted with effect from 10.02.2025.
 - f. However, immediately after his induction, the respondents openly violated Articles 35(1)(b) and (2), 41(1) and 47(1) of the Constitution of Kenya.
 - g. On 04.04.2025, the 2nd respondent summoned and verbally informed him that the background check conducted was not satisfactory, as there was an alleged whistle-blower from the Central Bank of Kenya (CBK) and the KRA and that the outcome of a further investigation had still been unsatisfactory. Whereas the 2nd respondent gave him the option of resigning so that they would not terminate his services, she declined to share with him either the supposed unsatisfactory screening report from CBK and KRA whistle-blower or the identity of the said whistle-blower.
 - h. After leaving the 2nd respondent’s office, he sent her an email at 2:59 pm on 04.04.2025 requesting a meeting with her to discuss the said unsatisfactory report from CBK and KRA. Unfortunately, the 2nd respondent summoned him on 08.04.2025 and issued him a premeditated termination letter dated 04.04.2025.
 - i. The respondents’ unilateral, unconstitutional and unprocedural decision has subjected him to the risk of staining an illustrious career in human resource management built over a long period spanning 16 years of service in both public and private sectors. The unlawful termination predisposes him to languish in extreme economic distress and untold suffering.
3. The petitioner particularised the violation of the Constitution of Kenya as follows:



- i. The respondents have violated his constitutional right to fair administrative action by terminating his services without fair process and by effecting external directions that are unlawful and contrary to the 1st respondent's Human Resource Policy and Procedure Manual.
 - ii. The respondents treated him in a discriminatory, malicious and undignified manner by singling him out for unprocedural and unlawful dismissal contrary to *the Constitution* and international best practices on employment and treatment of employees.
 - iii. The respondent employed the petitioner, who had to terminate his consultancy practice and decline several consulting assignments, only to terminate his employment and stain his sterling HR career with their unlawful and malicious action.
 - iv. The respondents adopted unfair labour practices by denying him an opportunity to be heard by an independent tribunal before the termination, which rendered the said termination a malicious administrative action meant to defeat justice and destroy his career and professional reputation.
 - v. It was also an unfair labour practice when the 2nd respondent blatantly disregarded the 1st respondent's Human Resource and Procedures Manual in terminating his employment. He had never had any pending or contemplated disciplinary proceedings with his former employers and had not committed any criminal offence to warrant such termination.
4. The respondents filed the replying affidavit sworn by the 2nd respondent on 26.05.2025 and through TRIPLEOKLAW LLP. They prayed for the petition dated 08.04.2025 to be dismissed for not disclosing any cause of action and urged as follows:
- i. Since the instant petition relates to the petitioner's employment with the 1st respondent, there is no basis for him to sue the 2nd respondent in her capacity. Furthermore, the allegations made against the 2nd respondent on her human resource practice are not within the jurisdiction of this Court and should be expunged from the record.
 - ii. The 2nd respondent reached out to the petitioner on 09.12.2024 as he had shown an interest in the position of General Manager – Human Resource Employee Relations with the 1st respondent. However, she did not guarantee him of being recruited since the said position was subject to various internal processes by the 1st respondent, including probation and successful background checks.
 - iii. It is a requirement for all potential employees, during the probation period and after confirmation of employment, to declare all business interests as per the 1st respondent's policy guidelines and that declaring false information, including leaving out information that is relevant to what the employee owns in terms of businesses, will lead to disciplinary action.
 - iv. Since the petitioner had been employed at the job level of general manager, he was subject to background screening and enhanced screening.
 - v. On the instruction of the 1st respondent, Spectrum Network International conducted a background check on the petitioner, which check revealed that the petitioner was a director at Yarrow Spa & Barber Shop, registration number BN_X2C8XBMY, Dokam Travels (BN_P6C2G57) and Roekam Executive Barbers & Spa (BN_GVCQYLY).
 - vi. The petitioner failed to disclose the said businesses and his directorship in the declaration form he signed on 10.02.2025. He only disclosed two businesses (Resourcing and People



Management Limited and Grand Dominion Ltd) in the said form and left out the high-risk businesses for money laundering that are mostly flagged by banks.

- vii. The petitioner had a fiduciary duty to disclose all information that could affect the mind of the decision-maker in whether or not to confirm him to full employment as per the contractual terms.
 - viii. The petitioner's non-disclosure and concealment of his directorship and/or partnership resulted in an unsatisfactory background check and was the basis for terminating his employment for being against the 1st respondent's policy on pre-employment and background screening. The non-disclosure was deemed to be gross misconduct, thus the summary dismissal of the petitioner.
 - ix. With the banking industry being a sensitive sector, all employees and potential employees are supposed to be above suspicion like Caesar's wife, and any suspicion of dishonesty and integrity issues leads to automatic separation.
 - x. The petitioner was still under a probationary period as time started running from 30.01.2025 and the provided six (6) months had yet to lapse as at the date of termination of his contract on 08.04.2025.
 - xi. The CBK's Banking Circular No. 3 of 2025 provides for the mandatory requirement of Section 9A(1) of the *Banking Act*, obliging commercial banks to ensure that no person is appointed as a director or senior officer unless the CBK has certified the person as fit. Therefore, the 1st respondent needed to terminate the petitioner's employment contract in compliance with the requirements of the CBK.
 - xii. The petitioner's consultancy was not terminated because of the promise of his being employed by the 1st respondent, as he solely decided to pursue the employment.
 - xiii. Nothing due and owing to the petitioner, as he was paid all his dues. In addition, there is no basis for his reinstatement as the 1st respondent acted within the law and noting that he was serving probation, there was no guarantee of confirmation of his employment at the end of the probation. The claim for 12 months' salary is also unjustified and unreasonable.
5. The petitioner filed his further affidavit sworn on 18.06.2025 through Tonge Yoya & Associates Advocates. He stated as follows:
- a. The 2nd respondent is sued in her professional capacity as Associate Director and Human Resource Manager of the 1st respondent, having signed both the petitioner's employment contract and dismissal letter.
 - b. The respondents failed to share with him the check report by Spectrum Network International. This is in addition to their failing to supply him with the complete background check report from CBK as directed by the Court.
 - c. The respondents have vacated the reason advanced for his termination when the 2nd respondent summoned him on 07.04.2025, which was an alleged unsatisfactory report by a whistle-blower from CBK and KRA, where he previously worked and left on his own volition.
 - d. The respondents have failed to adduce any evidence before the Court of the active operations of the said business entities and the petitioner's active involvement as a director to prove their allegations.



- e. Whereas he is currently actively associated with Resourcing & People Management Consulting Ltd and Grand Dominion Ltd, the said background check introduced Dokam Travel, which is a strange entity to the petitioner. Furthermore, Yarrow Spa & Barber Shop and Roekam Executive Barber & Spa, previously associated with him, ceased operations in 2022 when they were closed down, and are therefore inactive.
 - f. The said background check report appears to have been hastily compiled to comply with the court orders, as it contains discrepancies and/or irrelevant information.
 - g. The petitioner's start date of employment was 10.02.2025, and as per clause 3.4 of the 1st respondent's HR Policy, he was to be issued with a report of unfinished background screening in the first week of March 2025. Therefore, the respondents terminating his services and waiting to be compelled by the Court to produce a report for the background check is a violation of his constitutional right and their HR Policy.
 - h. Besides terminating his consultancy with Uganda Revenue Authority in favour of working for the 1st respondent, he forfeited a position as Performance Management Advisor (SDPM) role with GIZ Kenya by declining to attend an interview scheduled for 11.02.2025. He further declined another invitation for an interview with KPMG on 21.03.2025, as he was already settling in as the General Manager, Employee Relations at the 1st respondent.
 - i. Section 9A of the *Banking Act* requires directors, CEOs and significant shareholders of banking institutions to undergo a fit test, but not for his position as General Manager, Employee Relations. In any event, the respondents intentionally removed the background check from CBK that was among the petitioner's referees at the time of engagement because the same was equally positive.
 - j. The respondents have not paid the petitioner's terminal dues upon termination of services as alleged.
6. The respondent's further affidavit was sworn by Stephen Olieka on 08.07.2025 through TRIPLEOKLAW. It was urged as follows:
- i. The 2nd respondent ceased employment with the 1st respondent at the end of June 2025.
 - ii. The Spectrum Network International Report indicates that as at the date of the report, the petitioner was still a director of four companies – Yarrow Spa & Barbershop, Roekam Executive Barbers & Spa, Dokam Travels, and Resourcing & People Management Consulting Limited. A recent search dated 08.07.2025 confirms that the petitioner is still a director of Dokam Travels.
 - iii. The petitioner's allegations of the closure of three of these companies or his resignation as director are false and unsubstantiated, and the 1st respondent therefore acted properly in relying on the background check report.
 - iv. The petitioner neither requested for the background screening report at the time of termination of his services nor alleged at any time that completion of the same was delayed.
 - v. The petitioner has received his terminal dues as shown in his last payslip for the period ended 31.03.2025.
7. The parties filed their respective written submissions. The Court has considered the material on record and returns as follows.



8. There is no dispute that parties were in a contract of employment. The letter of appointment was dated 30.01.2025. The 1st respondent employed the petitioner to the position of General Manager – Employee Relations. The consolidated monthly salary was Kshs.950,000.00. The first 6 months were probationary period to be completed to the 1st respondent’s satisfaction. Clause 3.4 of the letter of appointment stated that during the probation period or any extension thereof, your employment may be terminated by either the petitioner or the respondent giving the other seven (7) calendar days’ notice or pay in lieu of notice.
9. The contract of service was terminated by the letter dated 04.04.2025. The letter signed by the 2nd respondent stated in part as follows:

“Reference is made to your letter of appointment dated 30th January 2025, and in particular Clause 1.0 on appointment & Reporting which states that “This is a permanent position tenable as soon as you take it up, subject to satisfactory background screening results, probationary and termination conditions stated herein.

We regret to inform you that the background checks conducted have revealed information of concern which has led to management’s decision to terminate your employment with immediate effect.

Accordingly, you will be paid terminal benefits as provided in your contract as follows:

- a. Pay in lieu of 7 days calendar days applicable during the probation period.
- b. Unpaid salary up to your last working day being 7th April 2025.
- c. Pay in lieu of any accrued leave days.
- d. Less any statutory and applicable deductions.”

The termination letter was signed by the 2nd respondent as the 1st respondent’s Associate Director – Human Resources.

10. The only main issue for determination is whether the termination was unfair. The Court finds that the petitioner’s case that she ought to have been given a notice or a hearing is unfounded. With or without a thing against him the respondent was entitled to terminate during the probation period by giving 7-days’ notice or pay in-lieu of notice thereof. The respondent has shown that indeed the employment was contractually subject to satisfactory background screening results. The alleged statutory breaches like want of a notice and a hearing with respect to the outcomes of the background checks and during the probation period (as envisaged in section 41 of the *Employment Act* in cases of poor performance, misconduct, or ill-health) is found untenable. The background checks were not a disciplinary process but was part of the recruitment, selection and appointment processes. It was not said that the termination was attributable to the petitioner’s poor performance, misconduct or ill-health as contemplated in section 41 of the Act. Accordingly, the Court finds that the petitioner was misconceived in urging and submitting that he was entitled to a fair hearing in that respect. The termination was substantially per the express contractual provisions on background checks and termination of the contract during the probation period and which was consistent with minimum terms in section 42 of the Act on termination of probationary service.
11. The submission for the respondents that the petitioner is not entitled as claimed and prayed for is upheld.



12. The Court has considered that the respondents belatedly disclosed in court the particulars of the outcome of the background checks showing in particular that the petitioner was a director at of Dokam Travels even during the subsistence of the petition. But for the belated disclosure, it could be that the petitioner might not have filed the petition. In that consideration and all circumstances of the case, each party to bear own costs of the petition.
13. In conclusion the petition is hereby dismissed with orders each party to bear own costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 17TH JULY, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

