



**Nehondo v Bank of Africa Group Limited (Cause E1032 of 2021)  
[2024] KEELRC 82 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 82 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1032 OF 2021  
J RIKA, J  
JANUARY 31, 2024**

**BETWEEN**

**ROMANUS ANYONJE NEHONDO ..... CLAIMANT**

**AND**

**BANK OF AFRICA GROUP LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 9<sup>th</sup> December 2021.
2. He states that he was employed by the Respondent Bank, on 12<sup>th</sup> June 2009 as a Bank Assistant, Operations.
3. He was subsequently promoted to the position of Bank Customer Service Manager. He held this position as of 16<sup>th</sup> April 2021, when he states, the Respondent unfairly terminated his contract.
4. His last salary was Kshs 120,000 monthly.
5. Termination was malicious and contrary to rules of natural justice. He was condemned unheard. His representations and those of his colleague at the disciplinary hearing, were not considered.
6. He explained in detail, each and every allegation to the disciplinary committee, to the best of his knowledge. The committee however, prejudged him.
7. Termination was against the *Employment Act*, rules of natural justice, and the Respondent's Human Resource Manual. The Respondent did not follow a fair procedure and establish a valid reason to justify termination, as required under Sections 41 and 43 of the *Employment Act*.
8. The Claimant made an appeal against termination decision. The appeal was not heard on merit. He states that the Respondent did not avail to him a conducive work environment; he was not



compensated for excess hours worked; his reputation was tarnished; and the Respondent completely disregarded rules of natural justice, leading to termination.

9. He prays for: -
  - a. Declaration that termination was unfair.
  - b. Compensation for unfair termination, equivalent of 12 months' salary at Kshs 1,440,000.
  - c. Severance pay at 15 days' salary for each of the 12 years worked, at Kshs 720,000.
  - d. Damages for aspersed reputation, mental anguish, diminished employability, and loss of career equivalent of 60 months, at Kshs 7,200,000.
  - e. Remittance of all the Claimant's dues, under the Respondent Bank's Provident Fund.
  - f. Confirmation of remittance of any statutory deductions applicable.
  - g. Costs.
  - h. A proper certificate of service to issue.
10. The Respondent filed its Statement of Response dated 28<sup>th</sup> February 2022. It is conceded that the Claimant was employed by the Respondent as a Banking Assistant, Operations with effect from 15<sup>th</sup> June 2009. His promotion and confirmation into permanent and pensionable rank, is not disputed.
11. His contract was fairly and lawfully terminated on 16<sup>th</sup> April 2021. He neglected to follow the Respondent's operational procedures, exposing the Respondent to significant risks operationally and financially. He failed to follow the Respondent's KYC [Know Your Customer] and Accounts Opening Guidelines policy. He breached trust bestowed upon him by the Respondent.
12. He opened school accounts funded by NG-CDF without following due process, between February and December 2020 at the Respondent; he operated the accounts without proper KYC documentation; he failed to seek approval from compliance department for high risk accounts; he operated the accounts prior to conducting entity searches; he did not have supporting documents for purposes of funds, such as contracts between schools and contractors to be paid by BOAK; and was responsible for erratic documentation used in opening accounts.
13. The Respondent investigated, finding various due diligence gaps, on the part of the Claimant. He was issued a letter to show cause, dated 25<sup>th</sup> February 2021. He replied on 23<sup>rd</sup> March 2021. The reply was not satisfactory. He was invited for disciplinary hearing to take place on 31<sup>st</sup> March 2021. He was advised of his right to be accompanied by a colleague of his choice.
14. He attended hearing. He was accompanied by a colleague of his choice, James Ondere. He was questioned and gave his answers. He was accorded a fair hearing.
15. He admitted that he was in error, for not considering the schools in question as government institutions, when he opened the relevant accounts. He confirmed that he had the necessary training, and that it was against policy to keep clients' cheques unbanked for over 21 working days. He also conceded that there were no supporting documents with regard to transactions relating to Maitonya, Riamachama and Kiabiraa schools. He conceded that basic policy and procedure would have been followed, had he recognized the schools as government schools. He explained that he knew he was not expected to accept delayed cheques, but did so to assist a client. His colleague James Ondere conceded that lapses occurred.



16. The following issues were identified at the disciplinary forum- failure to request for enhanced due diligence and approval by compliance department prior to opening of 19 public schools accounts; failure to apply the Bank's KYC Guidelines in multiple instances; possession of 4 client cheques for over 21 working days; processing of payments over the counter, before determining the legitimacy of funds and transactions; and there was concern on request to conduct entity searches for public schools.
17. His contract was terminated with immediate effect after the hearing on 16<sup>th</sup> April 2021. He was advised of his right of appeal. He was offered terminal dues including salary for days worked, notice and annual leave of 20.25 days, totalling Kshs 264,123.
18. He appealed on 19<sup>th</sup> April 2021. His appeal was considered. He was given a written response dated 17<sup>th</sup> May 2021.
19. He was not diligent. He had several warnings. There was no malice at all, in terminating his contract. The Claimant is not entitled to the prayers sought. The Respondent urges the Court to dismiss the Claim, with costs.
20. The Claimant testified on 8<sup>th</sup> November 2022 and 18<sup>th</sup> April 2023, when he rested his case. Senior Human Resource Officer Eva Kipasha, testified for the Respondent on 18<sup>th</sup> April 2023, when the hearing closed. The Claim was last mentioned on 21<sup>st</sup> September 2023, when Parties confirmed filing and exchange of their submissions.
21. The Claimant adopted his witness statement and documents contained in a list dated 29<sup>th</sup> November 2021, in his evidence-in-chief. He restated the contents of his Statement of Claim, as summarized above.
22. Cross-examined, he told the Court that his letter of appointment provided that staff regulations were part of his terms and conditions of service. He accepted and signed the terms and conditions of service. There were investigations carried out by the Respondent. A report was generated. The Claimant did not file anything, challenging the report.
23. He was issued a letter to show cause. He responded. He was invited to disciplinary hearing. The charges were communicated. He was advised to attend the hearing in the company of a colleague of his choice and to present witnesses, if any. He attended the hearing. He confirmed that he was given an opportunity to defend himself. He was accompanied by his Branch Manager, James Ondere.
24. There were allegations of delayed banking of cheques. He conceded that banking policies and procedures were not followed. He was familiar with these policies and procedures. He explained that it was an oversight on his part. James Ondere agreed that lapses did occur. The disciplinary committee identified the lapses. The Claimant did not complain at any time, about the minutes. He signed the minutes, as did James Ondere.
25. He was issued the letter of summary dismissal. His terminal dues were tabulated at Kshs 264,123. He was issued a final pay slip. He was paid annual leave. He did not protest against what was paid. He wrote to the Provident Fund seeking payment of his pension. It was paid. He was offered his certificate of service.
26. Redirected, he told the Court that he was the Branch Customer Service Manager. Retail Officer received bank account opening forms and documents. The Claimant's role was to confirm that documents were available and authentic.
27. Senior Human Resource Officer Eva Kipasha, adopted her witness statement dated 12<sup>th</sup> January 2023, and 17 documents [1-17] filed by the Respondent, in her evidence-in-chief.



28. Cross-examined, she told the Court that she had worked for the Respondent, for 4 years, at the time of giving her evidence. The Claimant's contract was converted from fixed-term to permanent and pensionable. It was based on good performance appraisal. The Claimant was a Customer Service Manager, working at Kisii Branch. He had a supervisor. He was allowed to bring a colleague to the disciplinary hearing. There were no witnesses. His supervisor was not responsible for his actions or inactions. In opening the accounts, the documents were okay. There was an audit, and a report was generated. The Respondent did not exhibit the report before the Court.
29. Redirected, Kipesha told the Court that the audit report was exhibited from page 78 of the Respondent's bundle of documents. The letter to show cause referred to Claimant's failure to follow KYC guidelines. The Claimant responded. He and his representative James Ondere conceded that lapses occurred. The Claimant was supposed to confirm that KYC documents were in order. He was directly involved. He never disputed that this was his primary role. He was Customer Service Manager, with other staff working under him. He signed the disciplinary hearing minutes. Ondere too, signed.
30. Further cross-examined on the audit report, Kipesha told the Court that the report is dated 20<sup>th</sup> December 2020, while the disciplinary proceedings related to March 2021. The letter to show cause related to 2021. Redirected further, Kipesha told the Court that the audit report informed the decision.
31. The issues are whether the Claimant's contract was terminated fairly; whether the Respondent had valid reason to justify its decision; and whether the remedies sought by the Claimant are merited.

**The Court Finds: -**

32. Employment. There is no dispute concerning the employment history of the Claimant, and the terms and conditions of service, beginning 12<sup>th</sup> June 2009, and ending on 16<sup>th</sup> April 2021. He worked for 12 years. He last held the position of Branch Customer Service Manager, Kisii Branch. His last salary was Kshs 120,000 monthly.
33. Un-established prayers. There are prayers which from the outset, the Court finds, have not been established by the Claimant. Prayer 41 [ii] on severance pay, at 15 days' salary for each of the 12 years completed in service, has no foundation. Severance pay is governed by Section 40 of the [Employment Act](#). It applies where termination of employment is through redundancy. It is paid at a minimum of 15 days' salary for each year completed in service, as pleaded by the Claimant. He however did not leave employment on redundancy. If the Claimant meant to plead service, rather than severance pay, the prayer would still be without foundation. His pay slip for April 2021, shows that he was actively subscribed to the N.S.S.F. He was not eligible for service pay, under Section 35[6] of the [Employment Act](#). Prayer 41 [ii] is declined.
34. There is no evidence on record to establish prayer 41 [iii] of the Statement of Claim. The Claimant did not show that his reputation was aspersed; that he suffered mental anguish; and loss of employability. He did not supply the Court with evidence, of defamatory material concerning him, communicated to any person by the Respondent, that would result or resulted, in reputational aspersion. He did not place before the Court evidence of mental anguish. He did not avail to the Court any form of a medical report, to show that termination affected his mental health. The allegation that his employability suffered, was not supported by evidence. He did not bring evidence of job applications he made after termination, and establish that potential Employers declined applications, on account of any adverse reference made against him by the Respondent. The Claimant said nothing in his evidence, about loss of employability. The computation of damages under these heads, at "equivalent of 60 months multiplied by the gross salary at the time of termination, amounting to Kshs 7,200,000, " is not founded on any law or evidence. Prayer 41 [iii] is declined.



35. The Claimant confirmed that he applied for, and was paid his dues, under the Respondent's Provident Fund. Prayer 41 [iv] is declined.
36. Prayer 41 [v] seeks confirmation of remittance of any statutory deductions, as applicable. It is not specific. The Claimant did not make reference in his evidence, to any statutory deduction made by the Respondent on his salary, which was not remitted to the relevant statutory authority. What is the Court to confirm? The Claimant seeks to involve the Court in a wild goose chase through this prayer, which the Court declines.
37. Prayer 41 [viii] specifically states that "the Respondent does issue the Claimant a proper certificate of service and reference befitting his status." Section 51 of the *Employment Act* does not require an Employer to issue a certificate of reference. It only requires the Employer to issue a certificate of service. This provision of the law, does not require the Employer to issue a certificate of service or reference befitting the status of the Employee. This prayer is strange. The Claimant conceded he was offered a certificate of service. There is on record a copy of a certificate of service dated 19<sup>th</sup> May 2021, drawn in favour of the Claimant, in accordance with Section 51 of the *Employment Act*. The certificate is exhibited by both Parties. What proper certificate of service and reference, befitting his status, does the Claimant seek? Prayer 41 [viii] is declined.
38. Balance of prayers. The remaining prayers are: declaration that termination was unfair and unlawful; compensation for unfair termination; costs; and interest.
39. Procedure and reasons. The Respondent issued the Claimant with a letter to show cause why disciplinary action should not be taken against him, dated 23<sup>rd</sup> February 2021.
40. The allegations against the Claimant were clearly spelt out in this letter, to include: operation of accounts without proper and /or complete KYC documentation; failure to seek approval from compliance department for high risk accounts; operation of school accounts prior to conducting entity searches; lack of supporting documentation for the purpose of funds, such as contracts between schools and contractors to be paid by BAOK [Respondent]; conflicting and erratic documentation used to open accounts; and lack of supporting documentation prior to payments.
41. The Claimant replied, giving a blow by blow account, through his letter dated 23<sup>rd</sup> March 2021. While he contested some of the charges, he conceded others in his reply. On failure to seek approval from the compliance department, he replied that, " the failure has been acknowledged and is regrettable." On erratic documentation in opening of accounts, he again conceded, replying that, " failure acknowledged on the erratic documentation."
42. His response was found wanting. He was invited for disciplinary hearing, through a notification form, which he signed on 26<sup>th</sup> March 2021. The 6 charges were restated. He was advised of his right to be accompanied to the hearing by a colleague of his choice. He was told he could bring evidence and witnesses in his defence. The date of the hearing was given- 30<sup>th</sup> March 2021. The time was stated- 10.00 a.m. The forum would be the Respondent's Microsoft Teams.
43. The Claimant was heard as scheduled, in the company of his Branch Manager, Kisii Branch, James Ondere. The charges were again read out to the Claimant. He again made significant concessions concerning his failure to seek the approval of the compliance department, and his use of conflicting and erratic documentation, in opening of bank accounts. He conceded that delay in banking of clients' cheques, was contrary to the Respondent's policy. There were 4 unbanked cheques. The Claimant conceded that he accepted client cheques contrary to KYC guidelines, and that it was an oversight on his part. Notably, the Claimant's colleague, Branch Manager James Ondere, agreed that lapses did occur.



44. In his evidence before the Court, the Claimant confirmed that he acted contrary to the Respondent's banking policy and procedure. He told the Court that he was familiar with the policy and procedure, and that there was an oversight on his part. He agreed that his colleague, James Ondere confirmed to the disciplinary committee, that the Claimant disregarded banking policy and procedure.
45. The Respondent issued the Claimant with the letter of termination of employment dated 16<sup>th</sup> April 2021. The reasons justifying the decision were stated. The Claimant was offered terminal benefits at Kshs 264,123. He was advised on his right of appeal. He appealed through his letter dated 19<sup>th</sup> April 2021.
46. The Respondent acknowledged receipt of the appeal. The appeal was considered, and a decision upholding termination, communicated to the Claimant by the Respondent's Managing Director Ronald Marambii, through a letter dated 17<sup>th</sup> May 2021. The reasons justifying rejection of the appeal were communicated, among them being the Claimant's own admission that there were fundamental lapses in the discharge of his role.
47. The Court is satisfied that termination was in accordance with the procedural and substantive standards of fairness, prescribed under Sections 41 and 43 of the Employment Act. The Respondent clearly justified its decision to terminate the Claimant's contract, under Sections 43 and 47[5] of the Employment Act. Procedure was in conformity with Sections 41 and 45 of the Employment Act.
48. The remaining prayers – declaration that termination was unfair and unlawful; compensation for unfair termination at Kshs 1,440,000; costs; and interest- are similarly without merit. The Claim on the whole lacks evidential support. Procedure was in conformity with the Employment Act and the Respondent's Human Resource Manual. There were clearly established and admitted valid grounds, to justify termination.

It is ordered: -

- a. The Claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**James Rika**

**Judge**

