



REPUBLIC OF KENYA



Korir v Boresha Sacco Society Ltd (Employment and Labour Relations Cause E055 of 2023) [2024] KEELRC 1606 (KLR) (27 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1606 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E055 OF 2023**

HS WASILWA, J

JUNE 27, 2024

BETWEEN

JOHN KIPNGETICH KORIR CLAIMANT

AND

BORESHA SACCO SOCIETY LTD RESPONDENT

JUDGMENT

1. This suit was commenced by a memorandum of claim dated 23rd October, 2023, claiming that the claimant was unfairly terminated and seeking compensation for the unfair termination. The claimant sought for the following reliefs; -
 - a. One-month salary in lieu of notice of Kshs 143,500.
 - b. Compensatory damages for 12 months at monthly gross salary of Kshs 143,500 X 12 months, total sum awarded of Kshs 1,722,000.
 - c. Kshs 645,750 being unpaid half salary for the period starting from August, 2021 up to April, 2022.
 - d. Kshs. 574,000 being 4 months' unpaid salary from May, 2022 to 2/9/2022 when the claimant received the letter of dismissal.
 - e. Kshs 318,904 as payment for unused leave days.
 - f. Costs of the suit.
 - g. Interest at court rates.



Claimant's case

2. The summary of the claimant's case is that he was employed by the Respondent vide the employment contract dated 15th May, 2017 as branch manager in its chemolingot branch with effect from 1st April, 2017 on permanent and pensionable terms.
3. He stated that his gross pay was Kshs 119 ,000 per month and raised to Kshs 143,500, at the time of termination. That he was also entitled to annual and paternity leave among others. The contract provided for termination clause in terms that either party could terminate the employment by giving one-month notice, but that the Respondent could be allowed to terminate without notice in case of gross misconduct on the part of the Claimant.
4. He stated that he worked for the Respondent until 10th August, 2021, when he was suspended for 3 months to pave way for investigations into the alleged discrepancies noticed in the reconciliation reports carried out for transactions for the years 2018, 2019 and 2020, that indicated that members had lost their funds.
5. Prior to the suspension, the claimant was summoned by the Respondent on 30/6/2021 to explain bank reconciliation statements of Chemolingot Branch for the period between 2018,2019 and 2020, which the claimant responded by the letter of 15/8/2021 and 21/20/2021 stating that as a branch manager he was not tasked with preparing bank reconciliation but only to ensure the same was prepared, checked and submitted to the Respondent for approval, a duty that he discharged.
6. He stated that he appeared before the Human resource disciplinary committee on 15th November, 2021 and on 29th December, 2021. In the meantime, his suspension was extended from 11/11/2021 to 30/4/2022 and earned half salary with no allowances.
7. The claimant avers that his terminated was instigated by the Inua Jamii system by KCB which Chemolingot Branch was chosen as a pioneer to operate. He added that the system became problematic as the employees in the branch had not been trained on how to use the system prior to its use.
8. He stated that he raised the issue with the CEO of the Respondent and informed him that there were discrepancies in Inua Jamii and Kenya Commercial Bank Mtaani ledger accounts that needed to be reconciled and requested for a competent account vast knowledge on the system to assist in carrying put the reconciliation.
9. That instead of acting on his request, the Respondent posted internal Auditors to the branch to audit the accounts and identify the issue but that the results were never shared with him.
10. He maintained that he did all he could to reconcile the Inua Jamii accounts and even wrote to Marigat branch manager vide the letter of 21/12/2020, 6/5/2021 and 31/5/2021 and even carried out investigations into the loss and discovered two employees by the name Patrick Gakuko Lupan and Ezekiel Kipkoech Lobatan had embezzled the members' funds. A fact that Patrick Gakuko Lupan admitted to receiving money from the client and failing to post.
11. He avers that he further reported his finding to the CEO of the Respondent who found the said employees guilty of embezzling Kshs 7,732,110 and Kshs 1,520, 765 respectively and terminated their service accordingly. Nonetheless, that despite identifying the culprits, the Respondent summarily dismissed him from employment by the letter of 16/6/2022 and received on 2/9/2022 for omission and commission that caused the Respondent loss of Kshs 13,982,208.



12. That he appealed the summary dismissal by the letter of 27/9/2022 and was invited for appeal hearing on 6th April, 2023 but that the date was postponed indefinitely and only came to learn later that the Appeal board sat on 21st July, 2023 in his absence and upheld the decision of the disciplinary committee.
13. He contends that his dismissal was unfair and urged this Court to find as such and allow the claim as prayed.
14. The claimant stated that during the pendency of his employment, he applied for leave for the year 2021 which was granted but later cancelled. Also that he was not granted leave for the year 2022 and 2023, all adding up to 100 days, which he urged this court to compel the Respondent to pay him.

Respondent's Case

15. The Respondent entered appearance through its Union Federation of Kenya Employers and filed a response to claim dated 15th February, 2024 on 19th February, 2024. The Respondent admitted to employing the claimant but denied dismissing him unfairly.
16. It is averred that in the course of normal audit undertakings done by the Respondent's accountants, the Respondent discovered certain anomalies and gaps in transactions of its Chemolingot branch, which the claimant was the manager.
17. Among the discrepancies noted was with regard to breaches of standard operating procedures with respect to daily transactions and failure to make postings after transactions and reconciliation after daily transactions.
18. It is averred that due to these anomalies, the claimant was invited to shed light into these anomalies. That further probe led into apparent incidences of misappropriation of members deposits which could not be accounted for. That these misappropriation was carried out by various staff members including the claimant directly and vicariously.
19. It is averred that further investigations revealed that the tellers at Chemolingot branch took advantage of the failure to confirm daily point of sale (POS) transaction to commit acts of willful negligence and outright fraud to the loss of the Respondent.
20. He stated that the claimant was blamed for failing to evaluate the daily conduct of the staff under his leadership, causing the Respondent to loose Kshs 13,851,990. Further that as the person in charge of the branch, the claimant could not account for loss of two motorbikes valued at Kshs 400,138 and mobiles phones valued at Kshs 706,167 as well as the sum of Kshs 49,150, which he admitted loss, as such the claimant was personally liable for loss of Kshs 1,155,755
21. Arising out of this, the Claimant was issued with a show cause letter and heard by the disciplinary committee on the 15th November, 2021 and 29th December, 2021, Then the governing Board of the Respondent sat on 15/6/2022 and evaluated the hearing and resolved to terminate the claimant's services and issue him with terminated letter dated 16/6/2022.
22. That the Appeal filed by the claimant was heard, but the Respondent upheld its disciplinary committee decision, noting that the Appeal had been filed out of time as per the HR Manual.
23. Upon termination, the claimant's dues including the withheld half salary was calculated and certificate of service prepared but that the claimant did not collect the same.



24. In summary, the Respondent stated that the claimant was terminated for lawful cause and in accordance with procedure as such the claim is without merit and the same should be dismissed and costs awarded to the Respondent.
25. He stated that the claimant is not deserving of alleged salary not paid for the months of May to September, 2022 as the claimant was dismissed on 16th June, 2022.
26. On leave pay, the Respondent stated that the claimant utilized all his leave days, therefore he does not deserve any payment of leave.
27. In rejoinder, the claimant filed a response to defence on 12th March, 2024, reiterating his claim and in addition stating that on the sum of Kshs 49,150 credited to his account, he voluntarily lodged a complaint with Marigat KCB branch by the letter of 2/8/2021 and refunded the said money without any input of the Respondent.
28. On the alleged loss of motorbikes and phones, the claimant states that these allegations were not part of the reasons that he was suspended but that it formed part of the claims in the disciplinary hearing. Nonetheless, he denied responsibility on the loss of the said motorbikes and phones and also the loss caused by the other staff at Chemolingot branch as the said staff were identified and found liable for the loss.

Evidence

29. During hearing, the claimant testified as CW-1 and adopted his witness statement dated 23/10/2023 and produced the documents as his evidence. He testified that he is now a farmer in Baringo County. He testified that he attended both disciplinary hearing and that he was issued with Notice to show cause but that the offenses were not itemized in the NTSC.
30. He denied being responsible for loss of the money at the Respondent's branch and stated that his work entail general supervision and sitting as the secretary of the Board. He also stated that he was tasked with ensuring proper reconciliation was done by the branch accountant but that he was not an accountant by profession. He told this court that he complained to the CEO of the Respondent and requested for a competent account to be send to the branch to assist in reconciliation but none was send. He testified that he carried out his investigations and could tell the tellers that were involved in the embezzlement. He testified that upon receiving the letter of dismissal, he appealed within 30 days. He testified that he knew the employees that were involved in the fraudulent activities as they used to report to him. He also stated that he refunded the Kshs 49,150 that was erroneously deposited to his account.
31. On cross examination, he testified that he was the branch manager from May, 2017 and that he had 6 staff and one office assistant who used to report to him. He testified that he was served with NTSC only without any other documentation. He added that he did not request for any other documents. He testified that indeed there were discrepancies in the reconciliation report and that the branch accountant was in charge of reconciliation. He admitted that even the branch accountant was reporting to him.
32. The Respondent also called one witness, Ambrose Chepkwei, the Respondent's human resource and Administration manager who testified as RW-1 and stated that he has worked for the Respondent for 21 years. He adopted his witness statement of 15/2/2024 and produced the Respondent documents as their evidence.
33. Upon cross examination, he testified that he is the one in charge of disciplinary proceedings and that the claimant has been summoned to explain some discrepancies before he was issued with Notice to



Show cause/Suspension letter. He testified that after he was suspended, they received more allegations on the loss of motorbikes and mobile phones. He admitted that he did not write to the claimant on the new allegations but questioned him on the same in the disciplinary hearing as they all related to reconciliations.

34. He testified that he was part of the team that prepared the report and told this Court that the team observed that there was network issue and that the POS machine was not operated by one teller as is required. He also testified that the Inua Jamii System belonged to KCB and the same was being used in two of their branches; Chemolingot and Another. He told this Court that their officers were trained to use this system. He testified that there is an account in every branch but that the accountant for Chemolingot branch was transferred to another branch as the branch manager.
35. He testified that indeed the claimant was informed for the first time of the motorbikes and phones issue during disciplinary hearing but that the same touched on reconciliation as such it forms the same transaction. He admitted that the loss apportioned to the claimant related to the loss of the motorbikes and the mobile phones and not members' deposits.
36. He testified that the claimant did not receive his dismissal letter on time as it was posted to his last postal address.
37. On re-examination, the witness testified that the issue of mobile phones and motorbikes came up during hearing as these issues came up after stock taking. He testified that they had agreement with service providers and the money used was from members' deposits. He testified in conclusion that the claimant was found liable because he was found to be out of touch with branch activities when he was the one tasked to ensure daily reconciliations are done when it was discovered that reconciliation had not been done for several days.

Claimant's Submissions

38. The claimant submitted on the following issues; whether there were valid or lawful grounds for the Respondent to terminate the Claimant's employment, whether the procedural requirements set out in section 41 of the [Employment Act](#) were observed and whether the claimant is entitled to the reliefs sought.
39. It was submitted that the law on termination of contracts of service is governed sections 41, 43, 44, 45 and 47 of the [Employment Act](#), that provides that for termination to be justified it must be done for justified reason and following proper disciplinary procedure. He added that the burden of prove is provided for under section 47(5) of the [Employment Act](#) that stipulates that for any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
40. From the foregoing, it was submitted that, it is clear that the law obligates the employer to observe certain procedural structures to ensure the upholding of the broad principles of natural justice in processing the separation between it and the affected employee. While observing these principles, the employer is obliged to provide the employee with details of the accusations against the employee; allow the employee an opportunity to respond to the charges; allow the employee to be accompanied by a shop steward or co-employee of his choice during the process and finally provide the employee with a decision either terminating or saving the contract of service. So that if the employer fails to do the



foregoing, the resultant termination is deemed unlawful. To support this, the Claimant relied on the case of Josephine M. Ndungu & others v Plan International Inc [2019] eKLR, the court stated:

“Under section 47(5) of the *Employment Act*, the burden of proving unfair termination lies with the employee. The said burden is discharged once he establishes a prima facie case that, the termination did not fall within the four corners of the legal threshold set out by section 45 of the Act.”

41. He also relied on the Court of Appeal in Muthaiga Country Club v Kudheha Workers [2017] eKLR held thus:-

“The grievants having denied, through their witness, the reasons given for their dismissal, discharged their obligation under Section 47(5) of the Act by laying the basis for their claim that an unfair termination of employment had occurred. This brought into play Section 43(1) and 47(5) of the Act that places the burden upon the appellant to prove the alleged reasons for termination of the grievants’ employment, and justify the grounds for the termination of the employment.”

42. On whether there were valid grounds for termination, it was argued that the claimant was summarily dismissed vide a letter dated 16/6/2022, but received by the claimant on 2/9/2022 on grounds that the claimant’s commissions and/or omissions led to shortage in Treasury Cash amounting to Kshs. 13,982,208. On the other hand, the claimant denied the allegations against him and testified that the events that led to the loss or shortage of the money was due to a system called ‘Inua Jamii’ that was introduced by the Respondent at its Chemolingot Branch, which system was maintained by Kenya Commercial Bank. It was argued that the claimant was not the one in charge of reconciliation rather that it was the responsibility of the Branch Accountant, a fact that RW-1 admitted.

43. It was argued that the ‘Inua Jamii’ system being a third party-operated system, as admitted by the Respondent’s witness, presented challenges to the Respondent’s employees at Chemolingot Branch, leading to the Claimant several requests from Kenya Commercial Bank’s Marigat Branch Manager for statements so that reconciliations could be done. In addition that the Accountant posted at Chemolingot Branch by the Respondent was not a competent and/or a qualified accountant, a fact that the claimant noted and wrote a Memo dated 15/5/2019 requesting the Respondent’s CEO to post a competent accountant to do reconciliations, but that the plea was not actioned on. Nonetheless, that the perpetrators who embezzled the Respondent’s money were identified, surcharged and later dismissed.

44. The claimant submitted that he was not directly linked to the loss of the said money but that he was linked to a loss of Kshs. 1,155,755/=. Out of this, Kshs. 49,150, was erroneously credited to his account and he voluntarily repaid it back. Kshs. 400,138 was apparently for loss of two motorbikes and Kshs. 706,167/= for loss mobile phones, but that these allegations were raised for the first time during the hearing on 29/12/2021 and did not have any notice of the same as such, he could not mount any defence on them. Hence the allegation of loss of the 13 Million was not linked in any way to the claimant, as such the reason for termination was not justified. In support of this, the Claimant relied on the case of Paul Nyamai Kimanga & another v Pestlab Limited [2017] eKLR where the court defined a valid and justifiable reason as:

“A reason for termination is justified if it is valid and fair. Valid reason is one which is true and that which existed in the subjective construction of the employer at the time of dismissal.



On the other hand the reason of termination is fair if it relates to the employees conduct and operational requirements of the employee.”

45. Accordingly, that the reason for termination were not justified because; firstly, the claimant performed his duties as per his letter of appointment, secondly, that the culprits were identified, with the help of the claimant, and their services were terminated. Further that the alleged loss of funds was not supported by any evidence such as the Audit report remain as mere allegations and finally that the loss was not linked to the claimant. In support of this, he relied on a decision by this court in Ann Chepkorir *Turgut vs Nakuru Water & Sanitation Services Co. Limited Nakuru ELRC No. E062 of 2021* (unreported) where it was held that there ought to have been a direct link of the loss of Kshs. 3,219,256/= which the claimant in that case had been alleged to have lost. The court held that there was no direct link and thus her termination was held to be unfair.
46. It was also argued that the claimant was in fact diligent in his work by requesting for a competent accountant to carry our reconciliation and therefore that if any loss occurred it was at the behest of the Respondent as it failed to post a competent account as per the request of the claimant.
47. On whether proper procedure was followed, the Claimant cited the Court of Appeal in *National Bank of Kenya v Samuel Nguru Mutonya* [2019] eKLR where it was stated that in determining whether a decision by the employer to terminate is just and equitable, “the adjudicating authority is enjoined to scrutinize the procedure adopted by the employer in reaching the decision to dismiss the employee.
48. Similarly, in *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR the court held as follows with regard to procedural fairness:

“Just as is the case with proving the validity of the reason for termination, section 45 of the *Employment Act* also requires the employer to prove that “the employment was terminated in accordance with fair procedure”
49. Accordingly, it was submitted the claimant’s termination was procedurally flawed as he was ambushed with totally new charges on 29/12/2021. He was never given an opportunity to show cause, before suspension. He was never supplied with the audit report that formed the basis for his termination; in fact he was never served with any documents, the suspension was also prolonged and the decision delayed for about 8 months. In support of this, the claimant relied on the case of *Jacqueline M Mutiso v Kenya Revenue Authority* [2021] eKLR where it was held as follows:

“The said prolonged process, in my view, does not accord with fair procedure contemplated under section 45 of the *Employment Act*, Clause 8.4.7 of the respondent’s Code of Conduct and Article 41 and 47 of *the Constitution*. Article 41(1) provides that every worker has the right to fair labour practices while Article 47(1) provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”
50. On whether the claimant is entitled to the reliefs sought, it was submitted that having established that the claimant was unfairly dismissed, this court ought to grant the claim as prayed.

Respondent’s submissions.

51. The Respondent submitted on three issues, whether the reason for termination was justified, whether proper procedure was followed and whether the reliefs sought should be granted.
52. On reason for termination, it was submitted that the claimant failed to rebut the allegations levelled against him on misappropriation of funds leading up to his termination from employment. He argued



that if the Respondent submits that if the claimant did not sanction the misapplication of the funds, then he negligently permitted the loss by failing to discharge his supervisory mandate as the branch head. He argued the Bank Reconciliation report for the months between April to July 2021 on Point of Sale, KCB Mtaani and inua Jamii transactions held and operated by Chemolingot Branch which revealed discrepancies of significant amounts causing the Respondent inquire into the anomalies. That further probe into the trail of various transactions led to apparent incidences of misappropriation of members deposits which could not be accounted for. This scheme involved two other staff at the Branch, factoring the claimant's vicarious and direct involvement. That following an investigation conducted by the Respondent's Finance Manager, it was indicated that the tellers in Chemolingot Branch took advantage of the Claimant's failure to confirm dally Point of Sale Transactions in the Branch and evaluate the daily conduct and assess the duties of the staff under his charge. That the laxity of the claimant resulted to loss of close to Kshs. 13,921,240.00 in which, he was personally liable for Kshs.1,155,755.

53. It was submitted that by blaming his juniors, the claimant showed his incompetence and failure in performing his managerial roles. Therefore, to attempt to steer clear of mismanagement of the Respondent's finances at the branch by other employees allegedly on the ground that it was not in his job description to prepare bank reconciliation is to abdicate his role as head of the branch. In support of this, the Respondent relied on the case of Sammy Kipyego Barchok and another v Postal Corporation of Kenya [201 7] eKLR where the court held that;

“it is the duty of every employee to perform his duties with diligence, care and attention. It is an act of gross negligence and gross misconduct for an employee to undertake their duties carelessly and then give the defence that he was not the only one in the production chain and so all others should be put to account. Work performance & individual and where an employee is put to task to explain their non-performance or failure to undertake allocated duties carefully, the employee must individually give an account.”

54. Similarly, that for an employee who was in a position of trust between him and his employer, the trust became highly compromised following the claimant's gross misconduct and negligence in the performance of his duties.

55. To buttress on his arguments, the Respondent relied on the case of Agnes Kavata Mbit) v Housing Finance Corporation Limited [2017] eKLR in which the court stated that,

“An employee who is negligent, who is careless or who performs work improperly and as a result the employer suffers loss, injury or damage, the law allows the employer to summarily dismiss such an employee from her employment.”

56. Accordingly, it was argued that the weight of the evidence on record point to gross misconduct, dishonesty and lack of integrity on the part of the claimant which is not compatible with Respondent's business. Hence, the Respondent discharged the burden of proof under Section 43, 44(4) (g) and 45(2) of the Employment Act, 2007 by demonstrating by evidence and through its pleadings that the termination of the claimant's services was justified by valid and fair reasons.

57. On summary dismissal under section 44(4) (g) of the Employment Act, the Respondent relied on the case of Thomas Sila Nzivo v Bamburi Cement Limited [2014] eKLR, the court observed as follows: -

“The Respondent had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property, and was justified in summarily dismissing the Claimant under Section 44 [4] [g] of the Employment



Act 2007. The Employer was not required to have conclusive proof of the Claimant's Involvement; it was only expected to have reasonable and sufficient grounds. The physical audit, the discovery that no oil was available even as the Claimant protested he received such oil.....all gave the Respondent reasonable and sufficient grounds to act against the Claimant.”

58. On whether due procedure was followed, the Respondent relied on the case of Galgalo Jarso Jillo Vs Agricultural Finance Corporation [2021] Eklr, where the court stated that,
- “The law obligates the employer to observe certain procedural structures to ensure the upholding of the broad principles of natural justice in processing the separation between him/her and the affected employee. The employer has to: provide the employee with details of the accusations against the employee; allow the employee an opportunity to respond to the charges; allow the employee to be accompanied by a shop steward or co-employee of his choice during the process; and finally provide the employee with a decision either terminating or saving the contract of Service.”
59. Equally, that the Respondent conducted internal Audit in 2019 that revealed major discrepancies in transactions at Chemolingot Branch. Subsequently, the claimant was Invited for an inquiry on 27th July 2021. Further that an investigation report was produced by the Respondent's finance manager and her team that pointed to the claimant's willful negligence and outright acts of fraud that led to the loss of close to Kshs. 13, 921, 240.00. In addition, that he could not account for the loss of two motor bikes valued at Kshs. 400, 138, mobile phones valued at Kshs. 706, 167.00 and Kshs. 49, 150.00 that were not accounted for.
60. Consequently, that the claimant was issued with a show cause letter dated 10th August 2021 that doubled as a suspension letter for 3 months to pave way for further investigations. That the claimant responded to the show cause letter on 15th August 2021 and another one on 21st October 2021, admitting to failing to mitigate on time the loss and or failing to account for the monies that were misappropriated.
61. Having confirmed the loss, the Respondent constituted a disciplinary committee and a hearing scheduled for 15th November 2021 and another one on 29th December 2021 where the claimant acknowledged the variations in the transactions. A resolution was then passed by the Respondent's governing board to summarily dismiss the claimant effective 15th June 2022. That he appealed against the decision on 27th September 2022, which was adequately considered and response issued on 2nd August 2023 affirming its earlier decision.
62. It was argued that on the strength of the findings and the disciplinary proceedings, it was reasonable to conclude that the claimant was guilty of gross misconduct and therefore liable to be summarily dismissed. Therefore, that proper procedure and reason was established before the claimant was terminated.
63. On whether the claimant is entitled to the Reliefs sought. It was argued that the Claimant is not entitled to the reliefs sought. On notice pay, it was argued that this was a case of summary dismissal given the obtaining circumstances and thus notice pay is not payable.
64. On compensation, it was argued that the separation under the circumstances was both substantively and procedurally fair and compensation cannot therefore obtain.



65. On unpaid salary between May to September 2022, the Respondent submitted that the employer-employee relationship ceased on the 16th June 2022, therefore this claim is not warranted.
66. On annual leave pay, it was argued that the claimant took out his leave days and therefore deserves no payment under this head.
67. In conclusion, the Respondent urged this Court to find the claim unmeritorious and dismiss the same with costs
68. I have examined all the evidence and submissions of the parties herein. The Claimant's claim is on wrongful termination by the Respondents and failure by the Respondent to pay him his terminal dues.
69. In determining this case, I will consider 2 issues:-
 - (1) Whether the Claimant's dismissal was fair and justified.
 - (2) Whether the Claimant is entitled to the remedies sought.

ISSUE NO. 1

70. On issue No. 1 the Claimant was dismissed vide a letter dated 10/6/2023 which letter indicated that the Claimant was dismissed for failing to perform his duties as branch manager in a manner which safeguarded members funds which caused money to be lost from tellers tills.
71. Before this dismissal, the Claimant was suspended from work vide a letter dated 10th August 2021 informing him that investigation into the branch activities had revealed that:
 - “(1) Reconciliation reports for Chemolingot Branch carried out for transactions for the period 2018, 2019 and 2020 had revealed discrepancies of significant amounts that required investigations.
 - (2) That as an officer in charge of the branch and its guiding policy and Regulation he did not do proper reconciliation at end of day for each manager that led to the loss of member's funds.
 - (3) That as branch manager he did not ensure proper adherence of the Policy and Regulations in the members' funds safety and procedures being followed.”
72. He was thus suspended for 3 months with effect from 10th August 2021 to 10th November 2021 to pave way for investigations to be carried out. He was also informed to prepare to defend himself against the allegation and facts before the board in writing within 7 days. He was informed he would be on half salary during the said period.
73. The Claimant responded to this suspension letter seeking pardon vide a letter of 15th August 2021 and further indicated that his role as branch manager was not to prepare bank reconciliation but to ensure that they were prepared, checked and submitted to head office for approval which he did.
74. He also indicated that there were some variations in the bank reconciliation and the branch accountant explained that some items related to Innua Jamii.
75. He further stated that he didn't know that their tellers were not updating their cash book in the correct ledges and on realizing this he requested to be assisted in preparation of bank reconciliation from head office. He then continued with his investigations and discovered that the tellers were not auditing the cash book.



76. The Claimant also responded to the suspension by indicating that he summoned the concerned teller who accepted to have misappropriated members funds to over Kshs 1.1 million and the teller accepted to pay back which he indeed did to the tune of 900,000/= before suspension.
77. The Claimant remained on suspension for a longer period. The Respondents averred that they did audits on their accounts at Chemolingot Branch which the Claimant was heading as branch manager.
78. Based on the finding, the Claimant was invited for an inquiry into the anomalies at the Respondent's head office. From the investigations report by the Respondent's Finance Manager, the tellers in Chemolingot Branch took advantage of failure to confirm daily sales of sale transaction in the branch to commit acts of willful negligence and acts of fraud to the detriment of and loss to the Respondent.
79. The Respondents aver that the Claimant as custodian being branch manager failed to evaluate daily conduct of staff under his charge and their duties and got the SACCO to lose Kshs. 13,851,990.
80. The Claimant was invited for a disciplinary hearing scheduled for 15th November 2021. The Claimant appeared before the committee and minutes of the said hearing dated 18th December 2023 were produced as Respondent's Appendix G. During the hearing on 29/12/2021 at head office board room the Internal Audit Manager presented a report on a discrepancy on motorcycles as was handled in Chemolingot as a utility product. There was a difference after conciliation 2 motor cycles were also found missing.
81. Observations were that the Claimant over delegated the whole issue of utility advance especially in regard to motorcycles and mobile phones. The issue of motor cycles and phones was however an issue not part of the NTSC that led to the suspension of the Claimant and it was noted that this issue took Claimant by surprise.
82. The panel found that the Claimant failed in his mandate to secure member's funds and the Respondent lost 12,814,635. That he had lost touch of daily branch operations. It was recommended he be summarily dismissed.
83. Indeed the Claimant was thereafter dismissed from service vide a letter of 16/6/2022.
84. From the analogy above, it is clear that the Claimant was head of operations of the Respondent's branch.
85. He indicated that he didn't know that the staff under him were not filing daily returns. He attributed this inability to follow up on the fact that he is not an accountant and he had requested for an accountant from head office and one was posted to the branch.
86. This notwithstanding, the Claimant was branch manager. He had a duty to check on all branch operations. He stayed aloof and over delegated all the branch operations. A lot of cash got lost in the process. He was taken through the disciplinary process as per the minutes.
87. From the evidences on record, the Claimant indeed failed in his duties as branch manager. There were therefore valid reasons for his dismissal.
88. I find that he was also subjected to a fair disciplinary process as envisaged under Section 41 of the [Employment Act](#) 2007.
89. It is my finding that the Claimant was fairly and justifiably dismissed as per section 45 (2) of the [Employment Act](#) 2007 which states as follows:-

“



“45.

- (2) A termination of employment by an employer is unfair if the employer fails to prove—
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”

90. In view of this finding, it is my view that the Claimant is not entitled to the remedies he has sought save for his unused leave days, which I find for him and award at Kshs 318,904/= . Each party will bear its own costs.

Judgment delivered virtually this 27TH day of **JUNE, 2024.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of: -

Olili holding brief Langat for Claimant – Present

Obiayo holding brief Ouma for Respondent - present

Court Assistant - Fred

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