



**Chaudhary v NCBA Bank Limited (Cause E050 of 2021)
[2024] KEELRC 1930 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1930 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E050 OF 2021**

**J RIKA, J
JULY 26, 2024**

BETWEEN
MOHAMMED RAMZAN CHAUDHARY CLAIMANT
AND
NCBA BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 21st January 2021.
2. He states that he was employed by the Respondent Bank, in the year 2000.
3. He held various positions, the last being Manager, Documentary Collections and Bills Discounting.
4. His contract was terminated by the Respondent, on 27th August 2020. He was said to have endorsed bills of lading for the sum of USD 44,995 and USD 149,283, in favour of a customer. United Aryan Limited, before receiving payment, or, free of cost [FOC] instructions. The Claimant was said to have acted in violation of the Respondent's Trade Services Unit Procedures, which demanded that sight of the bill of lading should be maintained, until release instructions or payment is received.
5. Preceding termination, the Claimant was issued a letter of suspension dated 27th April 2020. Suspension was extended to facilitate completion of investigations.
6. He was invited to disciplinary hearing through a letter dated 6th July 2020. Hearing was conducted virtually, taking into account the outbreak of Covid-19 contagion, on 8th July 2020.
7. The panellists were persuaded that the charges against the Claimant were unfounded. The hearing was therefore, postponed, and suspension once again, extended.



8. The Respondent constituted a different panel, which heard the Claimant on 28th July 2020. He was advised to wait for the outcome, which was communicated in the letter of termination, dated 27th August 2020.
9. The Claimant denies that he acted in violation of policy. The bill for the sum of USD 149,283 was received in November 2019. It was paid in January 2020. It was only faulted in April 2020. The other bill had also been honoured, months before the Claimant was hauled before the disciplinary panel. The Investigation Report held that the Claimant's signature had been forged with respect to 18 bills, yet the Respondent terminated his contract based on the same bills.
10. He was at the time of termination, earning a monthly salary of Kshs 293,309.
11. The Claimant endorsed the bill of lading in good faith. It was practice that prior to endorsing the bills, the Trade Services Assistant would store them, awaiting collection by customers. The documents were released once payment was confirmed by the Trade Services Assistant.
12. Other Managers such as Hannah Kariuki and Daniel Mutua, endorsed the documents the same way the Claimant did. Hannah, who had endorsed 6 bills as opposed to the Claimant who endorsed 2, was issued a warning and reinstated to work.
13. A total of 73 bills were endorsed. The Claimant endorsed only 2 of the bills. 18 of the bills had a forged signature of the Claimant, a matter the Respondent failed to investigate.
14. There was no reason for the Claimant to doubt the safety of documents locked in the cabinet, known also as the book-room. This was the safest place where banking documents such as guarantees, letters of credit, cheques, and other documents were stored. To access the book-room, staff required security clearance. The Respondent could not therefore, reasonably accuse the Claimant of negligence, in storing of the documents.
15. The Claimant states that he was victimized, to enable the Respondent avoid "redundancy costs which was inevitable." The Respondent was ruthless, and disregarded the Claimant's 20 years of service.
16. The matter was not reported to Banking Fraud Investigation Department [BFID]. The allegations against the Claimant were fictitious.
17. The Claimant prays for: -
 - a. Declaration that the Claimant's dismissal is unlawful and unfair.
 - b. Reinstatement without loss of salary.
 - c. 12 months' salary in compensation for unfair termination at Kshs 3,519,708.
 - d. 17 days of annual leave at Kshs 166,208.
 - e. Severance pay based on 20 years of service at Kshs 11,663,400.
 - f. General damages for pain and suffering at Kshs 2,200,000.
 - g. Compensation for damage to the Claimant's career and reputation at Kshs 2,000,000.
 - h. Discount offered to Employees declared redundant on loans as per Early Voluntary Plan at Kshs 966,404.
Total... Kshs 20,715,720.
 - i. Costs and Interest.



18. The Respondent filed its Statement of Response, dated 8th March 2021. It is conceded that the Claimant was employed by the Respondent. He was dismissed for lack of diligence. He was dismissed for endorsing and releasing 2 bills of lading, before receiving payment, or FOC [free of costs] instructions. He was not dismissed on account of 18 bills of lading which he disputed.
19. His acts and omissions constituted a violation of the Respondent's procedure on processing of bills of lading. There was documentary evidence that he followed up payment after he had released the bills. It was confirmed that this was not done in error, but deliberately.
20. He recorded statements dated 15th April 2020 and 11th May 2020, acknowledging that the cabinet was unsafe.
21. The Respondent had valid reason in dismissing the Claimant. It was not necessary to invoke the criminal justice regime, in taking action against the Claimant. He was not victimized, or discriminated against. The Respondent adhered to its internal procedure and the law, in disciplining the Claimant.
22. The Respondent risked loss of USD 4 million. There were several people implicated and investigations were carried out by the Respondent's security department. Each Employee who was implicated was invited to make a statement. The Claimant gave 2 statements. The process was fair. The Respondent denies that the Claimant sustained damage. He is not entitled to the prayers sought.
23. The Respondent urges the Court to dismiss the Claim with costs.
24. The Claimant gave evidence on 12th July 2023. His 2 witnesses, former Employees of the Respondent, Mohamed Salim [Manager Documentary Collections and Bills Discounting] and Stephen Mwangi [Operations Assistant, Trade Services Department], gave evidence on 22nd November 2023. Senior Legal Counsel, Christine Wahome, gave evidence for the Respondent on the same date, 22nd November 2023, closing the hearing.
25. The Claim was last mentioned on 26th January 2024, when Parties confirmed filing and exchange of their Submissions.
26. The Claimant relied on his witness statement, supplementary witness statement, documents [exhibit 1-13] and supplementary document [exhibit 14] in his evidence-in-chief. He restated that he endorsed 2 bills of lading. There was no procedure regulating when a bill of lading should be endorsed. His colleague Kariuki, had endorsed 6 bills. She was issued a warning, while the Claimant was dismissed. He was not given at least 24 hours, to give his explanation, in accordance with the Respondent's Human Resource Procedure. His record was clean, and his integrity beyond reproach. He could not find an alternative or comparable job. He was 50 years old, at the time of giving evidence. He applied for various, alternative jobs unsuccessfully.
27. On cross-examination, he told the Court that he was Manager, Trade Services. He had an Assistant who prepared documents. The Trade Assistant would forward the documents to the Importer. The Manager was the authorizer.
28. The Bank Procedure is exhibited at page 23 of the Respondent's bundle of documents. The Trade Assistant was to collect bank commission upfront. The Assistant would ensure the customer is debited and charges collected. After this, the Assistant forwarded the documents to the Manager for authorization.
29. Clause 7 required the Manager to compare input details, with the order. Clause 8 allowed the Manager to authorize, only if the input details were correct. The Manager would endorse the bill of lading, making it usable. Before endorsement, the customer could not rely on the bill.



30. The bill could be endorsed before payment. At page 16 of the Respondent's documents, the Claimant endorsed a bill of lading, in anticipation that payment would be made. Its release would be upon payment. He would keep the document in a fireproof cabinet, until payment was received.
31. He was interrogated by the Respondent's security team. He said that the cabinet is not lockable. He said that it had a combination lock, but no one knows the combination. He also stated that the cabinet was accessible to anyone. He found these security weaknesses when he joined the Respondent.
32. He was not aware that some bills he endorsed, were released before payment. He wrote e-mail to Sandeep requesting for advice on FOC. FOC was for bills within, not outside.
33. He was invited for the first and second disciplinary hearing. The panellist changed on the second occasion. He would not say that the second panel was compromised. He however alleged so, at paragraph 17 of his Statement of Claim. He attended the disciplinary hearing. He signed the minutes. He did not complain about changing of the panellists. He did not appeal against the decision to terminate his contract.
34. Redirected, the Claimant told the Court that a bill of lading could be endorsed, before payment. Release could be made, on the strength of payment instructions. He did not violate procedure. The fireproof cabinet was used by different departments for custody of their own documents. Access badge was issued by security department. The Claimant had not experienced loss of any document from the book-room. One bill was received in January 2020, and paid in April 2020. The other was received in November 2019, and paid in January 2020. The Claimant's e-mails on follow-up were made after the bills had been paid. Follow-up did not relate to the 2 bills. Panellist Zack was in the first hearing which did not fault the Claimant. The Claimant expected him to be part of the second panel. He was told that Zack resigned earlier, but he had an e-mail showing Zack left 1 ½ months after the Claimant was dismissed. He was not advised about his right of appeal.
35. Mohamed Salim relied on his witness statement dated 13th January 2021. He told the Court that he worked for the Claimant, at the Respondent, for 13 years. He worked for the Respondent for 29 years. He retired. He was familiar with bank operations.
36. The Manager releases the documents once received, to the Operating Assistant. The Assistant would process the documents in accordance with the module. The documents once complete are stored in a fireproof cabinet. They are released by the Operations Assistant to the customer. The procedure is silent on endorsement, before release. It does not say that the Manager must sign, before release.
37. There were access cards to the book-room, issued by security department to staff. In the room are fireproof cabinets, where documents are stored. There was no procedure for access to the book-room. The Claimant could not control access. There were other departments using the book-room. Cross-examined, Mohamed told the Court that the Respondent had an online procedure for handling of documents.
38. Stephen Mwangi relied on his witness statement, dated 13th January 2021. He was an Operations Assistant with the Respondent. He worked for 9 years. He released documents to customers. He would check compliance from the outset. He would hand over to his Manager for endorsement. The documents were then stored in the book-room. Mwangi would release them to the customer. The Manager had no role on their release. Mwangi told the Court that the Claimant was a man of integrity.
39. Cross-examined, he told the Court that he left employment in 2019, before the Respondent changed name to NCBA. The Manager could pre-endorse the documents. It was the relevant Manager in the department, not all Managers, who pre-endorsed. Redirected, he told the Court that he dealt with



specific Manager. He could refer the documents to another Manager, on rare occasions, when the relevant Manager was absent.

40. Counsel Christine Wahome, relied on her witness statement and documents [exhibits 1-11] filed by the Respondent, in her evidence-in-chief.
41. Cross-examined, she told the Court that she was not sure if any money was lost, through the Claimant's alleged acts and omissions. Termination letter states that he violated procedure regulating bills of lading. It states that he endorsed bills, without proof of payment. There was nothing in the procedure, barring him from pre-endorsement.
42. The documents were to be released, on payment, or proof of payment instructions. Wahome was not aware if the Claimant released the documents, before payment. It was the role of the Operations Assistant, not the Manager, to release the documents.
43. He was initially accused of endorsing 73 bills. Investigations came up with only 2 bills. Others were said to have had his forged signature. The Investigation Report states that 73 bills were released, and the Claimant only signed 2 bills. Some of the remaining 71 bills were paid.
44. Wahome conceded that Investigation found that, Hannah Kariuki pre-endorsed 6 bills. She was not dismissed. The Claimant endorsed 2 bills. He was dismissed, because his bills were released before payment was received.
45. He made a deliberate attempt to follow up payment. He wrote e-mails on follow-up to customers. Wahome was not aware if the Claimant was making follow up on other bills which were not in contention, through the e-mails. She was not aware if these follow-up e-mails, featured at the disciplinary hearing. It is normal for Managers to communicate with customers. Termination was based on violation of policy.
46. Zack was in the first disciplinary panel. There was a change in composition of the panel, at the second hearing. Zack had already left the Respondent, by the time of the second hearing. He left on 15th September 2020. Second hearing was on 28th July 2020. Zack had already expressed his wish, to leave the Respondent. He voluntarily stayed out of the panel.
47. Both bills of lading implicating the Claimant, were honoured in January 2020, and April 2020, before the disciplinary hearing.
48. The Disciplinary Procedure, under Section 6 Part 1, regulates Managers. It calls for an incident report, preceding hearing. None was generated. The Respondent started with investigation, resulting in a report. Investigation was by an independent team of the Bank. The Claimant was not advised about his right of appeal. Wahome confirmed that the documents were stored in a safe book-room.
49. The issues are whether-the Claimant's contract was terminated following a fair procedure under Sections 41 and 45 of the *Employment Act*; termination was founded on valid reason[s], under Sections 43 and 45 of the *Employment Act*; and whether the Claimant merits the prayers sought.

The Court Finds:

50. The Claimant joined the Respondent Bank in the year 2000, as a Cashier. He rose through the ranks. He was retained when the NIC Bank merged with CBA Bank, to become NCBA Bank, the Respondent herein. He last worked in the Trade Services Department, as a Manager, handling documentary collections and bills discounting.
51. He was suspended in April 2020, and dismissed in August 2020.



52. At the time of dismissal, he earned a monthly salary of Kshs 293,309.
53. The letter of termination, dated 27th August 2020 states the reason, justifying termination:
 - i. He endorsed a bill of lading of USD 44,995, and bill of lading of USD 149,283 in favour of a customer, Aryan EPZ Limited, before receiving payment instructions or FOC. The bills were paid on 20th January 2020 and 14th April 2020. This was in violation of the Respondent's Trade Services Unit Procedure.
54. Procedure: The allegations against the Claimant were investigated. The Claimant was interviewed at length, and gave his explanation on 16th April 2020, 11th May 2020 and 19th June 2020. A report of the investigation was generated.
55. He was suspended on 27th May 2020.
56. The procedure was not in fundamental departure, from the prescribed procedure under Clause 6.12.1.2 of the Respondent's Human Resource Policy. The details of the alleged violation of policy were placed before the Claimant; he was given the opportunity to explain himself; and gave written answers to all questions posed to him.
57. He was invited for disciplinary hearing. He received communication dated 7th July 2020 rescheduling hearing. The charges against him were restated. He was advised of his right to be accompanied by a colleague. He was advised that disciplinary hearing would be in accordance with the Respondent's disciplinary procedure and the [Employment Act](#), 2007. He was heard on 28th July 2020. He confirmed at the hearing that Charles Kyalo was his representative.
58. The record does not have any indication that the Claimant was prejudiced by the composition of the disciplinary panel. He is not recorded as having protested, that a panellist he named Zack, had been deliberately removed from the panel, to sabotage his cause. In the meeting of 28th July 2020, neither the Claimant nor his colleague Charles Kyalo, registered any protest on the composition of the panel.
59. The Claimant was in the end issued a letter of termination. The reason[s] justifying termination are stated. He stated that he was not advised on his right of appeal. The Court does not think that this was a significant procedural breach by the Respondent. He was aware of his right of appeal under the Human Resource Policy. He accepted in his contract, that the Human Resource Policy regulated his employment. He was a Manager who was familiar with the Human Resource Policy, and needed no reminding by the Respondent, that he had a right of appeal, upon termination. He did not appeal, and procedure cannot be faulted on the Respondent's failure to remind the Claimant, of his right of appeal.
60. Procedure satisfied the minimum standards of fairness, prescribed under Sections 41 and 45 of the [Employment Act](#), and the Respondent's Disciplinary Procedure.
61. Reason[s]: The Respondent's Trade Services Unit Procedures, regulated the transactions over which the Claimant was charged, and eventually dismissed from employment.
62. He served as the Trade Services Manager. His role was to compare input details to collection order, and confirm that input was correctly done. He was to countercheck collection details. If not correctly done, he would return the collection order to the Trade Services Assistant for correction.
63. In a capsule, the Claimant's role included verification of details, authorization if input was correct, and advise.



64. His Trade Services Assistant received documentary collection from receiving bank, and acknowledged receipt on the copy of the collection order. He would seek clarification in event there was inconsistency. He was to ensure that all the listed documents were in order, and review bills.
65. It was the role of the Trade Services Assistant to notify customers of arrival and collection of documents, and in event a customer rejected the documents, notify the remitting bank. The Trade Services Assistant released collection notice or schedule to the customer. The Trade Services Unit Procedure 3.1 states that it was the duty of the Trade Services Assistant to retain documents, until acceptance or payment is received.
66. Stephen Mwangi, who was a Trade Assistant expounded that it was his role to check details, and hand over documents to the Claimant for pre-endorsement. The documents were held in a fireproof cabinet. It was Mwangi's role to release the documents to the customer. "The Manager had no role on release," Mwangi testified.
67. Mwangi was corroborated not only by the Claimant, but by Mohamed Salim, a banker with 29 years of banking experience. He told the Court that once the documents were received, they were entrusted to the Assistant who processed them in accordance with the module. The documents were stored in a fireproof cabinet. They were released by the Assistant, not by the Manager. The Procedure did not mandate the Manager to sign before release. The Manager, did not control access to the book-room, where the fireproof cabinet resided.
68. The Court does not think, considering the Trade Services Unit Procedure, and the evidence adduced by the Claimant and his witnesses, that the Claimant could reasonably be held liable, for release of bills of lading, without proper release instructions or payment.
69. The Claimant's evidence was strongly supported by the Respondent's own witness Christine Wahome, who told the Court that Procedure, did not bar the Claimant from pre-endorsement. She was not sure if the Claimant released the documents. She was sure that the Assistant had the responsibility, to release the documents. There were a total of 73 bills of lading which were released. The Claimant only pre-endorsed 2 of them. Other Managers pre-endorsed bills. Hannah Kariuki pre-endorsed 6 of them.
70. So why did the Respondent raise all the hue and cry against the Claimant, for pre-endorsing 2 bills of lading which were released by an Assistant, and against which in any event payments were made in January and April 2020?
71. The Respondent did not establish fair and valid ground, to terminate the Claimant's long service, consistent with Sections 43 and 45 of the [Employment Act](#).
72. The allusion to redundancy as the hidden reason why the Claimant was dismissed, was made by the Claimant, without adequate support in evidence. The Claimant made this allusion at paragraph 16 [f] of his Statement of Claim. He exhibited a communication from the Respondent, addressed to 'dear colleagues,' stating that the Respondent intended to implement a Voluntary Exit Program [VEP] and Redundancy Program, latest 31st December 2020. The Claimant did not establish the relevance, between these proposed exercises, and his dismissal.
73. Termination was unfair for want of valid reason[s].
74. Remedies: The remedy of reinstatement does not commend itself to the Court. The Claimant was of advanced working years, at the time of termination. He told the Court, he was a long-time servant of the Bank, who had been awarded long-service award, years before termination. He was 50 years old at the time of giving evidence. It would be unreasonable to return him to work, at the sunset of his working



- years. The law bars the Court from granting the remedy of reinstatement, outside a 3- year period, from the date of termination. It is about 4 years since the Claimant departed from the Respondent.
75. He was not released on redundancy and his prayer for severance pay, at Kshs 11,663,400 is misplaced.
 76. The prayer for general damages for pain and suffering at Kshs 2,200,000 appears borrowed from personal injury claims and is completely out of place.
 77. He also prays for damages at Kshs 2,000,000 for loss of career. The Claimant did not establish loss of employability occasioned by the allegations that he violated the Respondent's Trade Services Unit Procedures. He pleads that had worked for over 20 years in the banking industry. He was at the tail end of his employable years, and the question of employability would not in the respectful view of the Court, arise.
 78. He did not leave under VEP or redundancy. He did not merit loan discount offered to Employees who exited under these programs.
 79. His letter of termination acknowledged that he had a balance of 17 days of annual leave. The Respondent advised that he was expected to utilize the leave entitlement, during the period of notice. This was ridiculous, because termination was effective the same day, 27th August 2020. There was no notice period during which, he would utilize his annual leave days. The prayer for annual leave pay at Kshs 166,208 is allowed.
 80. The Claimant worked for the Respondent for over 20 years. He was recognized for good performance, the latest recognition being on 29th May 2020. He was gifted Kshs 25,000 in the year 2010, for long service. He was told that his accomplishments would not go unnoticed or unappreciated. Until he was charged with breach of Trade Services Unit Procedures from mid-2020, his record with the Respondent, was as white as the Egyptian cotton. His accomplishments were no longer noticed or appreciated from mid-2020. He did not cause or contribute to the circumstances leading to termination of his contract. He told the Court that he was not able to secure alternative job, for the remainder of his employable years. He merits and is granted equivalent of 12 months' salary in compensation of unfair termination at Kshs 3,519,708.
 81. Costs to the Claimant.
 82. Interest allowed at court rate, from the date of Judgment till payment is made in full.

In Sum, it is Ordered:

- a. It is declared that termination of the Claimant's contract was unfair and unlawful.
- b. The Respondent shall pay to the Claimant annual leave at Kshs 166,208 and equivalent of 12 months' salary in compensation for unfair termination, at Kshs 3,519,708 – total Kshs 3,685,916.
- c. Costs to the Claimant.
- d. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 26TH DAY OF JULY 2024.

JAMES RIKA



JUDGE

