



**Mule v Credit Bank Limited (Cause E516 of 2023)
[2024] KEELRC 2392 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2392 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E516 OF 2023
JK GAKERI, J
SEPTEMBER 30, 2024**

BETWEEN

ZACHEUS KIMEU MULE CLAIMANT

AND

CREDIT BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant commenced the instant suit by a Memorandum of Claim dated 3rd July, 2023 which was subsequently amended on 4th March, 2024 to introduce inter alia, the Claimant's suspension and the plea of constructive dismissal.
2. The Claimant's case against the Respondent is that the Respondent terminated his employment unfairly or unlawfully or in the alternative constructively dismissed the Claimant.
3. The Claimant prays for;
 - i. A declaration that the termination of employment by the Respondent was unlawful, wrongful and unfair.
 - ii. In the alternative, termination of employment amounted to constructive dismissal.
 - iii. Two months salary in lieu of notice Kshs.408,200/=.
 - iv. Maximum compensation Kshs.2,449,200/=.
 - v. Certificate of service.
 - vi. Costs of this suit and interest from date of filing.
 - vii. Any other better and further relief that the Court may deem appropriate in the circumstances.



4. The Claimant avers that he was employed by the Respondent vide letter dated 15th May, 2018 at a monthly salary of Kshs.204,100.00.
5. That when reported to work on 15th December, 2021, he noticed that his credentials had been disabled and on inquiry was notified that the Head of IT Department had sanctioned the disablement.
6. That on the same day he was issued with a letter of suspension by the Head of Legal and Human Resource Department, one Mr. Francis Ngaruiya.
7. It is the Claimant's case that on the same day, he was arrested by the Bank Fraud Investigation Unit (BFIU) and recorded a statement at the police station and read malice in the suspension.
8. That he was released on a police bond after the police confiscated his mobile phone and was not charged.
9. That he received a notice to show cause dated 5th January, 2022, responded and suspension was extended to 14th January, 2022.
10. That his request for information was rebuffed but he was invited for a disciplinary hearing and summarily dismissed vide letter dated 17th February, 2022.
11. As regards the resignation, the Claimant avers that it was involuntary as it was procured by threats, intimidation and coercion and was occasioned by frustration.

Respondent's case

12. Vide an amended response to the Memorandum of Claim, the Respondent admits that the Claimant was its employee as averred and was suspended on 15th December, 2021 for 21 days pending further investigations.
13. The Respondent avers that as a licensee of the Central Bank of Kenya (CBK), it was required to report suspicious conduct to the BFIU of the DCI at the CBK.
14. It is the Respondent's case that the Claimant's duties did not include viewing the customer images and photographs and was furnished with the information he requested for except details on information about persons arrested by the police.
15. That hearing took place on 2nd February, 2022.
16. The Respondent avers that it had received several reports of identity fraud from various branches and investigated the matter and the Claimant was identified as a person of interest in the identity fraud and he was notified of the outcome of the investigations and was suspended on 15th December, 2021 for 21 days for further investigations which revealed that the Claimant had conducted specific searches in the Respondent's core banking system not part of his tasks as a treasury relationship officer sales.
17. That the searches involved viewing of customer images, accounts using titles and account numbers and viewing the General Ledger.
18. That the fraud occurred within 24 hours of the viewing of the accounts of affected customers and the sum of Kshs.300,000/= was lost.
19. That the Claimant had been implicated in facilitating fraud previously.



20. Finally, it is the Respondent's case that the Claimant was issued with a notice to show cause, responded, invited for a disciplinary hearing, attended alone and the Disciplinary Committee found him guilty of gross misconduct and was summarily dismissed on 17th February, 2022.
21. That after receipt of the letter, the Claimant requested that the letter of termination of employment be withdrawn and his resignation from employment accepted and the Respondent agreed and did so on 3rd March, 2022 and equally waived the 3 months' notice period as requested by the Claimant.
22. The Respondent denies that the termination was unlawful as the Claimant resigned voluntarily and prays for dismissal of the Claimant's suit with costs.

Claimant's evidence

23. On cross-examination, the Claimant confirmed that he was summarily dismissed and asked to resign and did both and completed the exit interview form and confirmed having resigned and confirmed during the hearing that the document was accurate.
24. According to the Claimant, he wrote as directed by Human Resource Manager but could not recall the date and requested the bank to rescind the summary dismissal as directed.
25. That it was not his practice to act on other people's instructions having served the bank for 10 years.
26. The witness admitted that he was suspended on 15th December, 2021 to facilitate investigations as per the Respondent's Human Resource Manual, but was unaware of any internal investigations or having been mentioned in July 2021.
27. The Claimant admitted having received the notice to show cause which contained the allegations and he did not deny having viewed the accounts in question.
28. The Claimant testified that he could not view the general ledger and was unaware of how it worked.
29. The witness confirmed that he did not indicate that he viewed the account details in the course of his employment though he had the right to do so as often as he could.
30. That the notice to show cause had the dates and time when the details were viewed.
31. The Claimant confirmed that his password had not been used by another person including in viewing the General Ledger.
32. That he was invited for the hearing, attended, presented his case and was summarily dismissed and accepted the letter when it was presented.
33. That he did not write the resignation letter and request on record and voluntarily signed the discharge voucher.
34. The Claimant admitted that while the demand letter refers to unlawful termination, the claim was on constructive dismissal.
35. On re-examination, the Claimant testified that the two claims were alternatives.
36. That the suspension process violated the Respondent's Human Resource Manual.
37. That he was not given any logs or footprints and they were not attached by the Respondent.
38. That he did not admit having viewed the General Ledger.



39. That he was called to collect the summary dismissal letter and the same was handed over by the Head of Human Resource and Legal Affairs.
40. The Claimant testified that after he took the dismissal letter, he went home but was called back after a few days and discussed the letters with Mr. Ngaruiya.

Respondent's evidence

41. RWI, Mr. Francis Ngaruiya confirmed on cross-examination that he was the Respondent's Head of Legal and Human Resource.
42. That under the Respondent's Manual, there were two types of suspension disciplinary and for purposes of investigation as exemplified by paragraph 11.8.3.1 and paragraph 11.8.3.5 of the Manual.
43. That the Claimant was suspended from employment on account of suspected fraud which was a gross misconduct and was being investigated for misuse of confidential information.
44. That the notice to show cause identified out specific allegations and the searches made by the Claimant on the core banking system and logs were identified and the Claimant had requested for them but his letter was not responded to.
45. That a copy of the investigation report was provided at the hearing, an 11 page document dated 22nd December, 2021 and it predated the notice to show cause and had not been availed to the Claimant.
46. That the Claimant confirmed that the footprints were accurately captured on the show cause letter.
47. That the Respondent lost money through withdrawals as per the investigation report.
48. The witness admitted that he was unaware of whether the Claimant was charged or not or the status of the investigation as the Investigating Officer reports to the Risk Department as the matter was reported to the police.
49. That the notice to compel attendance was a police document requiring the Claimant to appear before Mr. Harrison Muendo for purposes of an on-going investigation.
50. That the investigation team forwarded the Systems Print outs to the witness.
51. That the Claimant could not recall why he accessed the accounts and was the only one who viewed those accounts, though during the withdrawal, the cashier would view the accounts.
52. The witness admitted that he recorded a statement with the police and signed the notice to show cause but was yet to be called upon to testify in Court.
53. The witness confirmed that the Respondent was not malicious as it reported the attempted withdrawals to the police.
54. That members of the disciplinary committee were appointed by the Chief Executive Officer of the Respondent but no letter of appointment was filed.
55. That all attendees of the disciplinary committee meeting signed the minutes.
56. The witness confirmed that the Claimant resigned voluntarily and he was not present when the Claimant drafted the resignation letter.



57. That the witness indicated by hand that the Claimant had declined to acknowledge receipt of the dismissal letter as evidence that the Claimant did not signify acceptance of the letter of dismissal and only two persons were in the office at the time.
58. The witness denied that the Claimant wrote the resignation letter in his office but admitted that he presented the two letters at the same time but the Claimant could have taken the letters to customer service if he so wished.
59. That the Claimant did not avail copies of his own letters.
60. On re-examination, the witness testified that the Claimant was not entitled to notice as it was a summary dismissal or resignation.
61. That the Claimant did not contest the composition of the disciplinary committee.
62. The witness denied having orchestrated termination of the Claimant's employment. Otherwise, other persons would not have been involved.
63. That the investigation found that the Claimant had accessed customer accounts, images and the General Ledger account and the accounts were targeted by fraudsters hence the correlation of the two which led to the summary dismissal.
64. The witness testified that the disciplinary process was in compliance with the law and the Respondent's Human Resource Manual.
65. That RWI was not the complainant in the case and the accusations against the Claimant amounted to gross misconduct and he remained on suspension until he resigned after his request was accepted.

Claimant's submissions

66. As to whether the Claimant was unlawfully or unfairly dismissed from employment, counsel submits that the Claimant was not given an opportunity to be heard as he was not given a copy of the investigation report even after requesting for logs/footprints and logs for the General Ledger.
67. That the dismissal letter did not indicate reasons for dismissal.
68. Counsel cited the sentiments of the Court in *Greggory Magare V University of Nairobi & another* (2017) eKLR on exhaustion of internal mechanisms.
69. On constructive dismissal, counsel relies on the Claimant's further witnesses statement on what transpired in RWI's office on 22nd February, 2022, not captured in the original statement recorded barely 5 months after the alleged termination or resignation.
70. Reliance was also made on the decisions in *Herbert Wafula Waswa V Kenya Wildlife Service* (2020) eKLR, *Geoffrey Mworira V Water Resource Management Authority* (2015) eKLR and *John Moogi Omare V Kenya National Commission for UNESCO* (2020) eKLR to urge that the Claimant was not taken through a fair process as per the Respondent's Human Resource Manual.
71. Strangely, counsel submits that RWI forced the Claimant to write a resignation letter dated 22nd February, 2022 and was thus constructively dismissed.
72. Reliance was made on the Court of Appeal decision in *Coca Cola East & Central Africa Ltd V Maria Kagai Ligaga* (2015) eKLR to urge that the Claimant was constructively dismissed.



73. The decision in *Nathan Ogada Atiagaga V David Engineering Ltd* (2015) eKLR was also cited to urge the Court to find that the Claimant was constructively dismissed.
74. On the reliefs sought, counsel submits that the Claimant is entitled to the reliefs sought and costs.

Respondent's submissions

75. On 13th May, 2024, the Court accorded the parties 14 days a piece to file and exchange submissions and by 29th July, 2024, the Respondent had not and counsel sought 14 days which the Court did not grant and by 6th August, 2024, the Respondent had not filed submissions.

Analysis and determination

76. It is common ground that the Claimant was an employee of the Respondent effective 21st May, 2018 as the Relationship Manager-Treasury at Kshs.204,100.00 per month and served until dismissal/resigned in 17th February, 2022.
77. It is also not in contest that the Respondent experienced incidences of identity theft, fraud and money was withdrawn over the counter by fraudsters.
78. It is also not in dispute that the Claimant was implicated in the fraud.
79. Equally not in dispute is the fact that the Claimant's employment was terminated vide letter dated 17th February, 2022 which he received from the Respondent without acknowledging receipt.
80. Relatedly, it is not contested that the Claimant wrote two letters dated 22nd February, 2022 addressed to the Respondent bank.
81. A cursory reading of the two letters, it is discernible that they were written in different circumstances as they differ in various respects.
82. The issues that commend themselves for determination are;
 - i. Whether termination of the Claimant's employment was unfair or unlawful.
 - ii. Whether the Claimant was constructively dismissed.
 - iii. Whether the Claimant waived his right to pursue further claims against the Respondent.
 - iv. Whether the Claimant is entitled to the reliefs sought.
83. On termination, parties have adopted opposing positions with the Claimant maintaining that the termination was unfair. The Respondent testified and submitted that the termination of the Claimant's employment was conducted in accordance with the law.
84. Needless to gainsay, the provisions of the *Employment Act*, 2007 are unambiguous that for a termination of employment to pass muster, it must be proved that the Respondent had a valid and fair reason to do so and followed a fair procedure.
85. There must have been a substantive justification for the termination and procedural fairness in the termination of the employee's employment.
86. In *Naima Khamis V Oxford University Press (EA) Ltd* (2017) eKLR, the Court of Appeal was emphatic that a termination of employment may be substantively or procedurally unfair or both depending on the circumstances of the case.



87. Whereas substantive justification or fairness implicates the reason(s) for termination of employment, procedural fairness is concerned with the process employed in effecting the termination.

Reason for termination

88. It is common ground that the Claimant was suspended for 21 days vide letter dated 15th December, 2021 effective 16th December, 2021 pending further investigation, on the ground that preliminary investigation showed that the Claimant had interacted with the customer accounts targeted by the fraudsters.

89. The suspension was later extended and the Claimant remained on suspension until termination of employment/dismissal.

90. The Claimant's counsel faulted the suspension on the premise that it was not in compliance with the Respondent's Human Resource Manual.

91. The Respondent's witness testified on cross-examination that the manual had two types of suspension, namely; for purposes of investigation and as a disciplinary sanction.

92. Paragraph 11.8.1 of the Manual provides for suspension as a sanction after an employee has responded to the notice to show cause which the employer deems not acceptable.

93. Paragraph 11.8.3.1 of the Respondent's Manual provides for suspension in cases of major disciplinary offences where investigation is required and the suspension to facilitate investigation.

94. Similarly, paragraph 11.8.3.5 of the Manual provides for suspension in cases of gross misconduct pending the outcome of an investigation.

95. Although neither paragraph identifies fraud as a form of gross misconduct, neither the provisions of the *Employment Act* nor the Respondent's Human Resource Manual can be or is exhaustive.

96. Paragraph 11.8.3.5 of the Respondent's Manual recognizes;

“conduct which brings the Bank or the individual into dispute e.t.c”

97. Construed ejusdem generis, paragraph 11.8.3.5 in the Court's view, encompasses all shades of fraud.

98. In the Court's view, the Claimant's suspension from employment was procedurally justifiable as further investigation was necessary.

99. The notice to show cause accused the Claimant of conducting specific searches on the core banking system not ordinarily required in the execution of his duties as a Treasury Front Officer, viewing of customer images, searching customer accounts using account numbers and viewing the General Ledger (GL) accounts and the specific 6 account names, numbers, activities performed and date were clearly stated.

100. The allegedly viewed GL accounts were also tabulated, a total of 5 account numbers.

101. The notice to show cause stated that around the same time, attempts were made to withdraw funds from those accounts by persons masquerading as the account holders who had almost accurate information about the customer and some attempts materialised.

102. The letter accorded the Claimant 9 days to respond.



103. In his response, the Claimant admitted that the name of one Anne Cherop Bengwa sounded familiar and could not recall viewing the GL accounts.
104. The Claimant requested for the investigation report, logs/footprints to confirm access, images of the customers.
105. He denied having shared confidential customer details.
106. The Claimant did not deny having accessed details of the six (6) bank customers identified.
107. The summary dismissal letter dated 17th February, 2022 accused the Claimant of having interacted with accounts on the core banking system not required in the ordinary execution of his duties coupled with corresponding attempts to withdraw funds from the same customers by fraudsters who appeared to have near accurate information about the customers, analogous to the notice to show cause.
108. Minutes of the disciplinary hearing reveal that the Claimant was furnished with footprints/information of all transactions in the form of screen shots of the banking system with dates and time of the attempted fraud/irregular attempts to access the customer accounts and the Claimant's viewing of the accounts as per the notice to show cause.
109. The minutes are explicit that the Claimant did not deny or remember viewing the accounts of the six (6) customers.
110. Significantly, the Claimant confirmed that he had not shared his password with anyone in the bank and it expired every 30 days.
111. The committee was persuaded that the correlation between the viewing of the customer account details and the attempted fraud by persons who had near accurate information about the customers and only the Claimant had interacted with the accounts, made the Claimant a suspect in the facilitation of fraud which constituted gross misconduct and recommended separation.
112. Section 43(2) of the *Employment Act* provides that;

The reason or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.
113. In *Galgalo Jarso Jillo V Agricultural Finance Corporation (2021) eKLR*, Manani J. stated as follows as regards Section 43(2) of the Act;

“ . . . All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists”.
114. In *Kenya Revenue Authority V Reuvel Waithaka Gitahi & 2 others (2019) eKLR*, the Court of Appeal held that;

“The standard of proof is on a balance of probability not beyond reasonable doubt and all the employer is required to prove are the reasons that it genuinely believed to exist causing it to terminate the employee's services.

That is a partly subjective test”.



115. The foregoing sentiments are consistent with the range or band of reasonable responses test popularised by the sentiments of Lord Denning in *British Leyland (UK) Ltd V Swift (1981) I.R.L.R. 91* as follows;
- “The correct test is this; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair; but if a reasonable employer would have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness within which an employer might reasonably take one view”.
116. The court is guided accordingly.
117. The fact that it was demonstrable that the Claimant viewed customer details in the six (6) cases and at least two (2) times in every case, in some cases as many as ten (10) times in a span of 4 days and the attempted or actual fraud took place either on the date the Claimant viewed the details in all the cases except one, where the attempt occurred between the dates the viewing took place and as evidence showed and the fraudsters had near accurate information about the accounts. In the Court’s view, the occurrences could not have been coincidental, bearing in mind that the Claimant never claimed or testified that his password may have been used by another person or had shared his password with any other person.
118. Finally, the investigator found that only the Claimant had been viewing images of customers in the department which was not 9 common and necessary requirement for the ordinary discharge of his duties and his credentials were also used to view GL accounts in five (5) instances and could not provide credible exculpatory explanation.
119. For the foregoing reasons, it is the finding of the Court that the Respondent has proved on a preponderance of probabilities that it had a substantive justification to terminate the Claimant’s employment.

Procedure

120. As regards the procedure employed by the Respondent, it is decipherable that the Claimant responded to the notice to show cause which contained the allegations made against him, was invited for a disciplinary hearing, notified of the right to be accompanied by a colleague of his choice but chose to attend alone, participated at the disciplinary hearing, received the summary dismissal letter, completed the Exit Interview Questionnaire on 25th March, 2022 and signed the discharge voucher in May 2022.
121. The Claimant faulted the dismissal on the premises that he was not furnished with the investigation report as well as the logs requested in his response to the notice to show cause, a fact RWI admitted but testified that the same were provided during the hearing.
122. For unexplained reason(s), the Respondent opted not to furnish the Claimant with a copy of the investigation report dated 22nd December, 2022 yet it was readily available when the notice to show cause was issued and RWI confirmed as much. Its availment at the hearing could not in, the Court’s view avail the Respondent as it was a 12 page document which the Claimant was interacting with for the 1st time.
123. As correctly submitted by the Claimant’s counsel, the right to be heard is a basic principle in the administration of justice at all levels and the accused person is entitled to the evidence the accuser intends to rely on.



124. Availment of such evidence is an integral part of the right to be heard as observed by the Court of Appeal in *Regent Management Ltd V Wilberforce Ojiambo Oundo* (2018) eKLR as follows;
- “We are at a loss as to why the appellant refused to grant the Respondent certified copies of the documents requested even at his expense. In our view, these documents were integral to the Respondent in preparing his defence. By only availing the documents for his perusal at its premises for a number of hours was not adequate . . .”
125. In the instant case, the Claimant saw the investigation report at the hearing, which in the Court’s view was not adequate.
126. The Court of Appeal expressed similar sentiments in *Postal Corporation of Kenya V Andrew K. Tanui* (2019) eKLR where documents had not been availed.
127. The Court was categorical that such a hearing is irregular.
128. The totality of the foregoing is that it is the finding of the Court that the Claimant, was not accorded a fair opportunity to be heard, thus the procedure employed by the Respondent was flawed rendering the termination of the Claimant’s employment procedurally unfair.
129. As to whether the Claimant was constructively dismissed, counsel for the Claimant submits that he was as when he reported to work on 15th December, 2021, he found that his credentials had been disabled and was later that day issued with a suspension letter, was arrested by the BFIU and interrogated on the same day and his mobile phone confiscated but was not charged.
130. Counsel submits that the Claimant was forced to write a resignation letter on 22nd February, 2022 and was thus constructively dismissed.
131. Strangely, in his original witness statement dated 3rd July, 2023, the Claimant neither mentioned nor alleged that he was forced to write a resignation letter. In fact, the issue of resignation did not arise at all.
132. This is confirmed by the advocate’s demand letters dated 19th October, 2022 and 13th February, 2023 addressed to the Respondent bank. The 1st letter faulted the termination of the Claimant’s employment for want of reason(s) and non-availment of the investigation report. The second letter under the reference unlawful and unfair termination of the Claimant’s employment refers to the earlier letter dated 19th October, 2023.
133. From the contents of the letter, the termination of employment is faulted on for non-compliance with the provisions of Section 41 of the *Employment Act*, 2007.
134. Clearly, none of the letters refer to any resignation or constructive dismissal of the Claimant.
135. In his Further Witness statement dated 4th March, 2024 after the Respondent filed its amended response and list and bundle of documents, the Claimant introduced an account on the occurrences on 21st and 22nd February, 2022 with such great detail as though the events occurred in 2024, facts he could not remember or disclose to his advocate in October 2023 and February 2022 or July 2023 when the suit was filed.
136. It is unclear to the Court why the Claimant refused to disclose the fact that he had written two letters to the Respondent after the summary dismissal and the Respondent responded until the evidence was availed by the Respondent.
137. The Claimant introduced the issue of constructive dismissal as an alternative in March 2024.



138. The 1st letter dated 22nd February, 2022 confirms receipt of the dismissal letter and request for its withdrawal and acceptance of a resignation which is undoubtedly a safer method of separation.
139. The resignation letter is dated on the same date.
140. A cursory reading of the letter reveals that it was well thought out.
141. Whether the issue of resignation was discussed between the Claimant and Mr. Ngaruiya (RWI) on 22nd February, 2022 is difficult to decipher for want of credible evidence.
142. By letter dated 3rd March, 2022, the Respondent accepted the Claimant's request and the summary dismissal letter was withdrawn and the resignation letter accepted.
143. The Claimant's request for waiver of 3 months' notice was also accepted and accrued leave days would be offset against the remainder of the notice period and the Claimant was instructed to clear with the bank, which explains the clearance form dated 25th March, 2022 and the discharge voucher dated 6th May, 2022.
144. The upshot of the foregoing is that the Claimant and the Respondent separated on account of resignation vide letter dated 22nd February, 2022.
145. A plain reading of the letter leaves no doubt that the Claimant acknowledges and appreciates the opportunity he was given to work at the Respondent bank and the support he had received.
146. That he enjoyed his stay and grew professionally and was ready to assist during the transition.
147. The letter makes no reference to any adverse conduct of the Respondent or frustration as the sine qua non for the resignation.
148. Although the Claimant alleged that the two letters were dictated to him by RWI and only the two of them were in the office, he adduced no evidence of any threat of violence or actual violence or other manifestation of duress or coercion.
149. Even assuming that there was coercion, the Claimant could not demonstrate why he refused to acknowledge receipt of the summary dismissal letter and was not forced to do so, yet he was forced to write two letters which took him a considerable length of time.
150. Puzzlingly, the Claimant further alleged that he was also forced to tick the boxes and sign the Exit Interview Questionnaire yet he signed it on 25th March, 2022, more than one month after the letters were written.
151. The Claimant's allegations that he was forced to write two letters or fill in the exit questionnaire, an allegation he could not recall until the copies were filed in Court overstretches imagination and the Court finds the allegations not credible.
152. Needless to belabour, the locus classicus rendition of the concept of constructive dismissal are the sentiments of Lord Denning in *Western Excavating ECC Ltd V Sharp*.
153. The concept of constructive dismissal was domesticated in Kenya by the Court of Appeal in its decision in *Coca Cola East & Central Africa Ltd V Maria Kagai Ligaga (2016) eKLR* where the Court adopted the contractual test approach and articulated the guiding principles.
154. Under the contractual test approach, the party alleging constructive dismissal must prove a repudiatory breach of the contract of employment by the employer.



155. In this case, the Claimant has neither demonstrated that the respondent committed a fundamental breach of the contract of employment or that the other guiding principles applied to his case.
156. The totality of the foregoing is that the Claimant has failed to prove that he was constructively dismissed by the Respondent.
157. As to whether the Claimant waived his right to pursue further claims against the Respondent, counsel for the Claimant did not address the issue though it arose during cross-examination.
158. The Claimant admitted on cross-examination that he signed the discharge voucher on record.
159. The principles that govern discharge vouchers or settlement agreements are well settled by the Court of Appeal in several decisions including *Thomas De La Rue (K) Ltd V David Opondo Omutelema (2013) eKLR* where the Court stated as follows;

The Court has, in each case to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed when the employee was seized of all the relevant information and knowledge.”

160. The Court expressed similar sentiments in *Coastal Bottlers Ltd V Kimathi Mithika (2018) eKLR* as follows;

“Whether or not, a settlement agreement or a discharge voucher bars a party thereto from making further claims depends on the circumstances of each case. A court faced with such an issue, in our view, should address its mind firstly, on the import of such a discharge/agreement; and secondly, whether the same was voluntarily executed by the concerned parties.

. . . In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the Respondent’s termination . . .

Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the Respondent’s part at the time he executed the same. It does not matter that the amount thereunder would be deemed inadequate. As it stood, the agreement was a binding contract between the parties”.

161. Similarly, in *Trinity Prime Investment Ltd V Lion of Kenya Insurance Co. Ltd (2015) eKLR*, the Court of Appeal was unambiguous that execution of discharge voucher constitutes a contract between the parties and the same can only be avoided on prove of a misrepresentation, duress or other vitiating elements of a contract, failing which the parties discharge each other from further claims and liability.
162. In this case, under the discharge voucher dated 6th May, 2022, the Claimant accepted the sum of Kshs.164,086.45 as all his terminal benefits.
163. The discharge voucher read in part;
 1. The Employer shall pay the Employee and the Employee agrees to the net payment of Kenya Shillings One Sixty-Four Thousand and Eighty-Six and Forty Five Cents (Kshs.164,086.45) in full and final settlement of all his terminal dues as stated herein above which said amount has been paid vide transfer into the Employee’s Account No. 0026003000351 which the Employee hereby acknowledges receipt of.



2. The Employee confirms and declares that he has no further and/or other claim whatsoever against the Employer.
 3. The Employee further confirms and declares that he hereby releases the Employer from any liability, claim or responsibility whatsoever.
164. The Claimant signed the discharge voucher in the presence of Mr. Tony Waiyaki and did not allege that he did so under coercion, duress, misrepresentation, undue influence, or was labouring under any incapacity.
165. In sum, the Claimant entered into a legally binding agreement discharging the Respondent from any further liability.
166. Significantly, the Claimant's suit against the Respondent is also unsustainable under the doctrine of equitable or promissory estoppel as aptly captured by Denning L.J. in the Court of Appeal decision in *Combe V Combe* (1951) 2 KB 215 as follows;
- “The principle, as I understand it, is that, where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word.”
167. See also the Court of Appeal decisions in *Century Automobiles Ltd V Hutchings Biemar Ltd* (1965) EA 305 and *Nurdin Bandari V Lombank Tanganyika Ltd* (1963) EA 304 on the essentials of promissory estoppel.
168. From the forgoing, it is the finding of the Court that the Claimant's case against the Respondent is unsustainable. Having executed a discharge voucher while aware of its import, the Claimant discharged the Respondent from all claims grounded on the contract of employment and its termination and having resigned voluntarily, he has no claim against the Respondent.
169. The totality of the foregoing is that the Claimant's suit against the Respondent is for dismissal and it is accordingly dismissed.
170. The Respondent shall, however, issue the Claimant with a certificate of service within 30 days as ordained by the provisions of Section 51 of the *Employment Act*.
171. Parties shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30TH DAY OF SEPTEMBER 2024

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They



have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

