



**Miano v Stanbic Bank Kenya Limited (Cause E437 of 2022)  
[2024] KEELRC 13487 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13487 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E437 OF 2022  
B ONGAYA, J  
DECEMBER 19, 2024**

**BETWEEN**

**EDWIN MAINA MIANO ..... CLAIMANT**

**AND**

**STANBIC BANK KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the amended memorandum of claim dated 02.05.2024 through Jane Kagu & Company Advocates. He prayed for judgment against the respondent for the following reliefs:
  - a. A declaration that the claimant's dismissal was unlawful and unfair.
  - b. An order directing the respondent to pay the claimant compensatory damages as claimed in paragraph 12, totalling Kshs. 7,065,924/=.
  - c. Interest on (b) above from date of filing.
  - d. Costs of this suit.
  - e. Any other relief that this Court shall deem fit to grant.
2. The claimant's case was as follows:
  - a. He was employed by the respondent as a Business Development Manager on 01.09.2010 and was earning Kshs. 588,827/= per month at the time of termination of his employment.
  - b. On 14.07.2021, he had a joint meeting attended by his line manager and the HC Business Partner to review his performance on a month-to-month basis and a similar meeting was held on 11.08.2021. On 26.08.2021, he was invited to make written representations (poor performance review) by 31.08.2021, regarding issues on his performance improvement and was reminded of his entitlement to attend with a fellow employee or union representative. In



the afternoon of 31.08.2021, he was notified to attend a disciplinary hearing on 01.09.2021 at 10:00am and again reminded that he could attend with a fellow employee.

- c. The respondent thereafter terminated his services on 05.10.2021 through a letter that indicated that the termination was due to ‘consistent poor performance’ and as per Section 43(1) & (2) of the *Employment Act*, 2007. The letter further alleged that there had been a disciplinary inquiry held on 01.09.2021 whereat he was afforded an opportunity to make representations regarding performance improvement process (PIP).
  - d. He appealed against the termination on 12.10.2021 but on 15.10.2021, the respondent upheld its decision to terminate his services.
  - e. The termination of his services was unlawful and unfair because he had not done anything to warrant the dismissal and in such manner. That he had been in the respondent’s employment for 11 years under permanent and pensionable terms and had never had any performance issues in those years. That his contract of employment was silent on his achievable targets so as to warrant dismissal on grounds of non-performance. That the respondent failed to adhere to its own Human Capital Policy and he was never accorded a proper and fair disciplinary hearing.
  - f. Consequently, he pleads for payment of compensatory damages because of unlawful, illegal, unfair and inhuman termination of his employment leading to loss of earning and breach of his terms of employment and his legitimate expectation to work and earn a living. He was left unemployed and servicing his bank facilities at market rates, and was only able to secure comparable employment over one (1) year after the unfair termination of his employment.
3. The respondent filed amended response to memorandum of claim dated 05.07.2024 through Igeria & Ngugi Advocates. The respondent prayed for dismissal of the claimant’s claim with costs. The respondent’s case was as follows:
- i. The claimant had only achieved 4% of his targets for the year towards the end of 2020, resulting in him being rated “Time to Step Up”, which according to the respondent’s Human Capital Manual Policy, 2017, was an indication he was not meeting most of his goals.
  - ii. Through a letter dated 16.02.2021, the respondent informed the claimant that he would be put through a PIP to assist him improve, and further invited him to an online meeting on 19.02.2021 to identify the gaps, hear his views, and, agree on a strategy on how to assist him improve.
  - iii. On 19.02.2021, the respondent held a meeting with the claimant through his line manager on his work performance and in line with the performance to grow principle as captured in the policy. A timeline of up to 01.07.2021, being approximately five (5) months, was set for him to improve his performance.
  - iv. In the course of the PIP, it held regular check-in sessions with the claimant on 20.05.2021, 08.06.2021, 14.07.2021 and 11.08.2021 to assess the progress made and address any support he would require. In the meeting held on 14.07.2021, it was noted that there was no improvement in the claimant’s performance as the year-to-date drawdowns were still at 0%. However, the respondent agreed to accommodate his request to extend the PIP to end of July 2021 to allow him bridge the gaps in his pipeline. When the meeting of 11.08.2021 also noted 0% year-to-date drawdowns, he was informed that the PIP process would move to the final stage but he was at liberty to state any improvement he had made prior to the final phase of the PIP process.



- v. Consequently, on 26.08.2021, it issued the claimant with a poor performance review letter and invited him to make written submissions, inter alia, on why the respondent should not consider terminating his employment. It thereafter considered his written submissions, invited him to a disciplinary enquiry and after much deliberation, informed him of the decision to terminate his employment. It also considered and disallowed his subsequent appeal, as he had not raised any new issues to vary its decision to terminate his services.
  - vi. The claimant's contract of employment stipulated at clause 2.2 that a performance agreement shall be provided by his manager on which his achievable targets would be measured. Furthermore, he was accorded a fair hearing process as per the Bank's employment regulations and the law, was at no point harassed, and intimidated. He is therefore not entitled to any compensation whatsoever.
4. The claimant testified to support his case and the respondent's witness (RW) was Sylvester Odhiambo, the People & Culture Business Partner for the respondent.
  5. First, there is no dispute that the parties were in a contract of service. The petitioner was employed as the respondent's Business Development Manager on 01.09.2021 and worked until 06.10.2021.
  6. Second, there is no dispute that the employment was terminated by the letter dated 05.10.2021. The reason for termination was consistent poor performance.
  7. Third, the Court returns that the reasons for termination were genuine and valid as per section 43 of the *Employment Act* and were fair per section 45 of the Act as relating to the claimant's performance and the respondent's operational requirements. The Court further finds that the respondent complied with section 41 of the Act on notice and hearing and indeed adopted a fair procedure as envisaged in section 45 of the Act. The Court particularly finds as follows:
    - a. The claimant testified that he was given time to try to step up his performance. By that testimony, the submissions given for him that there were no agreed targets collapses. He knew that his performance was wanting by his own testimony. He stated that prior to July 2021, there had been weekly or monthly performance conversations and as per documents, he exhibited duly signed confirming he attended the conversations.
    - b. He referred to the letter of disciplinary inquiry dated 01.09.2021 and confirmed in his testimony that there had been six meetings about his performance that were held prior to the disciplinary inquiry.
    - c. He confirmed in his testimony that the performance meetings had been held from February to August 2021 and he had been put on Performance Improvement Program (PIP). In the testimony, the claimant confirmed a performance of 0% as at 11.08.2021.
    - d. The claimant confirmed he was invited to a hearing on 27.08.2021 per letter of 26.08.2021 and he made written response. He also testified thus, "...Fact of meeting and issues was not new. 30.08.2021 I submitted response. On 31.08.2021 invited for the 01.09.2021 hearing. I confirmed I had been given enough time. The process of fairness not raised. I see R44 to 49. It is record of disciplinary hearing. I see R48 second last sentence. It states I agreed it was a fair process." His further testimony was that his appeal was dated 12.10.2021 and at appeal he did not state that he had not been given sufficient time. Further, he did not mention that he had been denied a chance to bring a representative or he had been discriminated. He testified, "I did not ask for my representative to be present. I never asked to adjourn to bring representative. I



was paid final dues and given certificate of service.” In view of that claimant’s own testimony, the Court returns that the termination was upon a fair procedure and reason.

- e. The testimony by RW also confirmed that the termination upon consistent poor performance had been established and the procedure had been fair, giving the claimant an opportunity to explain himself.
- f. Parties spent considerable time on whether COVID-19 situation may have affected the claimant’s performance but all evidence show that the poor performance was attributable to the claimant and not the COVID -19 situation. Nevertheless, in consideration of the COVID-19 situation, each party to bear own costs.

In conclusion, the suit is dismissed and each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19<sup>TH</sup> DECEMBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

