



**Kutang'u v National Bank of Kenya (Cause 26 of 2020)
[2023] KEELRC 1363 (KLR) (8 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1363 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 26 OF 2020
S RADIDO, J
MARCH 8, 2023**

**BETWEEN
SULEIMAN INGANGA KUTANG'U CLAIMANT
AND
NATIONAL BANK OF KENYA RESPONDENT**

JUDGMENT

1. The court is confronted with the questions:
 - i. Whether the termination of the employment of the claimant was unfair.
 - ii. Whether the respondent was in breach of contract.
2. The Cause was heard on 26 January 2023. Suleiman Inganga Kutangu (the claimant), and the Head of Employee Relations with the National Bank of Kenya (the Respondent) testified.
3. The claimant filed his submissions on 13 February 2023, and the respondent on 21 February 2023.
4. The court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

5. The claimant challenged the fairness of the termination of his employment on the grounds that the respondent had suspended him before the conclusion of investigations, the respondent caused his arrest by the Police before conclusion of investigations, the respondent initiated disciplinary action while criminal proceedings were still ongoing and that there were no valid grounds for the decision.
6. The claimant was suspended from work through a letter dated 31 January 2017 to facilitate investigations.



7. Clause A5(c)(i) of the collective bargaining agreement between the Kenya Bankers Association and the Banking, Insurance and Finance Union (Kenya) of which the respondent was a member empowered the respondent to suspend an employee in order to conduct investigations.
8. The claimant's assertions, therefore, that he was suspended before conclusion of investigations has no merit.
9. With respect to the allegations of arrest by the Police before conclusion of investigations, the court cannot fault the respondent. Once a party makes a report to the Police, they conduct independent investigations and with the directions of the Director of Public Prosecutions decide to charge the suspect.
10. The claimant also challenged the fairness of the disciplinary process because at the time, the criminal charges he was facing were still pending before the Magistrates Court.
11. Criminal charges, even if based on the same facts as a disciplinary action have distinct objectives and purposes and the same can run concurrently. Even the acquittal of an employee would not translate into a similar decision being taken by the employer.
12. The court finds that the respondent's actions met the threshold of procedural fairness.

Substantive fairness

13. The reason which prompted the respondent to dismiss the claimant was fraud and theft of Kshs 1,389,138/60 (from treasury, ATM and teller account).
14. The investigations conducted by the respondent established that the claimant had stashed Kshs 500/- notes with bundles of Kshs 1,000/- notes in the treasury vault. The investigations also established that the claimant and a colleague had been tasked with servicing/feeding the ATM machine with cash during the relevant period a physical count revealed a discrepancy of Kshs 299,700/-.
15. During the disciplinary hearing the claimant admitted to breaching the respondent's policies and even suggested that he could refund part of the unaccounted funds.
16. In the court's view, the respondent had and has proved that it had valid and fair reasons to dismiss the claimant.

Breach of contract

Leave

17. The claimant prayed to be awarded outstanding leave days.
18. However, the claimant did not lay an evidential foundation to this head of the claim. He did not disclose the year(s) the leave was accumulated or the number of leave days.
19. Relief is therefore declined.

Certificate of Service

20. A certificate of service is a statutory entitlement of every employee and if the respondent did not issue one to the claimant, it should issue it.



Conclusion and Orders

21. From the foregoing, the court finds no merit in the Cause and it is dismissed.
22. The respondent is directed to issue a Certificate of Service within 21 days if it did not issue one to the claimant.
23. No order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF MARCH 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant K.N. Wesutsa & Co. Advocates

For Respondent Ochieng' Ochieng' Advocates

Court Assistant Chrispo Aura

