



**Syonthi v Equity Bank Limited (Cause 1918 of 2017)  
[2023] KEELRC 2600 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2600 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1918 OF 2017  
JK GAKERI, J  
OCTOBER 26, 2023**

**BETWEEN**

**DUNCAN MUSYOKA SYONTHI ..... CLAIMANT**

**AND**

**EQUITY BANK LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant initiated this suit by a Memorandum of Claim filed on 26<sup>th</sup> September, 2017 claiming that the Respondent had terminated his employment unfairly and had also discriminated him unfairly and unlawfully.
2. The Claimant prays for;
  - i. A declaration that the Respondent’s letter dated 10<sup>th</sup> January, 2017 terminating the Claimant’s employment was null and void.
  - ii. Reinstatement.
  - iii. Re-engagement in comparable work at the same wage.
 In the alternative;
  - i. Terminal dues as follows; Damages for discrimination Kshs.5,000,000.00 12 months compensation Kshs.1,038,240.00 Leave days Kshs.265,616.40 11 days off days Kshs.32,012.40 Pro rata leave 7 months Kshs.88,322.50 Leave allowance 3 years Kshs.18,000.00 Service pay 9 years Kshs.346,080.00  
Total Kshs.6,874,791.00
  - ii. Interest on (i) above at court rates.
  - iii. Certificate of service.



- iv. Costs of this suit.
- v. Any other relief the court may deem fit to grant in the circumstances.

### **Claimant's case**

3. It is the Claimant's case that he was employed by the Respondent on 8<sup>th</sup> April, 2008 as a Credit Officer-Micro-Daima at Kshs.86,520.00 per month as at the date of separation.
4. The Claimant avers that he served the Respondent dutifully and ardently and expected to retire at the age of 60.
5. That he was suspended on 20<sup>th</sup> March, 2016 and issued with a notice to show cause on 3<sup>rd</sup> August, 2016 and a further notice on 11<sup>th</sup> November, 2016 and responded to both.
6. It is the Claimant's case that no disciplinary proceedings were conducted and the allegations were never deliberated and was dismissed from employment on 10<sup>th</sup> January, 2017.
7. The circumstances leading to the summary dismissal of the Claimant related to the handing of Loan Application by Taita Taveta Development Company (herein after TTDC Ltd) having inherited the application from one Julius Musyoki King'waa.
8. That one Alex Otuke was the main director of the TTDC Ltd.
9. That he conducted a customer field investigation and prepared a report having visited the applicant's residence but did not visit the business location as it was inside Tsavo National Park with no practical access.
10. It is the Claimant's case that it was known that the applicant has or had trucks transporting building and construction material for the Standard Gauge Railway sites in Taita Taveta County and Mr. Alex Otuke provided a copy of the contract and had been funded to acquire a truck.
11. That the Credit Reference Board (CRB) indicated that the applicant had financial constraints after obtaining the asset finance facility as he hired extra trucks, leading to a 3 month delay in repayment, but arrears had been paid by the time the application was forwarded to the Branch Credit Committee (BCC) and recommended to the Head Office Credit Committee (HOCC).
12. That the valuation of vehicles was initiated by Mr. Julius Musyoka King'waa
13. The Claimant avers that since Mr. Alex Otuke's account was at the Community Branch, it was analysed and was used as the basis of the loan application and the Account was linked to T.T.D.C Ltd. That the Finacle System linked customers accounts.
14. The Claimant indicated that the customer's account remittances were not reflective of the alleged transport business and vehicle sales and he requested for M-Pesa Statements of Mr. Alex Otuke.
15. That Mr. Julius Musyoki collected the customer's Bank account and had been certified and signed as true copies of the original and was cleared by the Anti Banking Fraud Unit.
16. The Claimant avers that Mr. Julius Musyoki provided the background information of Mr. Alex Otuke and gave positive attributes of the applicant's ability to repay the loan and the information did not appear suspicious.



17. That the application was weak with scattered information and had little chance of approval by the BCC and the HOCC but the Claimant was incessant and was invited for a meeting and appeared to be in need of trucks and had new contracts.
18. That one Mary Njenga of HOCC appeared to be guiding the applicant on opening of bank account and loan application process as the applicant appeared illiterate.
19. That the request to transfer the file to Mary Njenga for analysis was declined.
20. The Claimant avers that his handling of the loan application and documentation was objective, acted professionally and was not compromised.
21. That the Security Department did not take his statement.
22. According to the Claimant, the Respondent did not conduct credible investigations or a disciplinary hearing and the staff of BCC were not punished for having approved the application and the Claimant was thus discriminated.
23. That since the loan was not disbursed, no loss occurred.

### **Respondent's case**

24. By its response to the Memorandum of Claim filed on 14<sup>th</sup> June, 2018, the Respondent avers that the Claimant's employment was effective 21<sup>st</sup> April, 2008 and his employment was terminated for gross misconduct.
25. It is the Respondent's case that the Claimant was suspended to facilitate investigations of his involvement in a fraudulent asset finance loan by irregularly and unprocedurally appraising and recommending approval of a loan application to TTDC Ltd.
26. That the notices to show cause were issued in good faith as the Claimant's handling of the loan application was in contravention of the Respondent's lending policies, procedures and code of conduct.
27. It is the Respondent's case that the application had numerous anomalies such as absence of a mandatory customer visit report, remittances by the Claimant not reflective of the alleged business, unverified customer's bank statements, CRB report for one director disregarded in the approval report, the director's account at Community branch not attached for approval and the Claimant did not make a written request for valuation from the branch.
28. That the Claimant was invited and attended a disciplinary hearing on 22<sup>nd</sup> November, 2016 at the Respondent's head office and the committee found that the Claimant was well versed with Loan Application Procedures but neither visited the customer's business nor analysed and documented the CRB Report, the credit status of one director was not documented, customer bank statements were not sufficient, Claimant did not apply for valuation and blamed other persons.
29. It is the Respondent's case that the loan to TTDC Ltd would have exposed the Respondent to risk of loss of Kshs.15,000,000/=.
30. That the Respondent paid the Claimant terminal dues and he acknowledged the same as full and final settlement on 27<sup>th</sup> April, 2017.
31. The Respondent denies that it treated the Claimant in a discriminatory manner and the CBA could not apply since the Claimant was not declared redundant but summarily dismissed.



32. The Respondent avers that the Claimant's termination was effected in accordance with the prescribed procedure as he was granted the right to fair hearing and he not only attended but participated and his dues were settled and the compensation sought had no basis.
33. It is the Respondent's case that termination of the Claimant's employment was fair and the suit ought to be dismissed with costs.

#### **Claimant's evidence**

34. On cross-examination, the Claimant testified that he was a Relationship Officer – SME and his duties included loan application and procedures, including; origination, documents, disbursement, monitoring and relationship.
35. He admitted that the Know Your Customer (KYC) mantra was critical in loan applications.
36. It was his testimony that TTDC Ltd applied for a loan of Kshs.15,000,000/= and its directors had a loan facility with the same branch and the company had two directors but he visited the residence of one of them only in Ngara. The other director was at Kisii and the physical address of the company was Nakuru.
37. That he did not visit any other place.
38. That he indicated that the director of TTDC Ltd had another facility.
39. The witness confirmed that the valuation report was initiated by another person and it met the parameters.
40. It was his testimony that the customer remittances were not reflective of the alleged transport business but added that he requested for the director's MPESA Statement, which he admitted was not an income statement.
41. The witness confirmed that during the hearing, he admitted that the application was weak in that the company was yet to open an account.
42. He admitted that there was a disciplinary hearing and a dismissal from employment thereafter and final dues were paid.
43. On re-examination, the witness testified that the Respondent's investigation was shallow and the police did a serious investigation and he was set free.
44. It was his testimony that because other officers were not interrogated, he was discriminated.
45. That he was not paid interest on the unpaid salary.

#### **Respondent's evidence**

46. Mr. Wycliffe Otumbi, RWI confirmed on cross-examination that an investigation was done but the report was not filed in court.
47. That each individual employee has a role to play and there were things attributable to the Claimant which he did not do.
48. The witness testified that the Claimant was expected to do the things himself and not rely on his predecessor.
49. That the bank processes necessitated more than a notice to show cause.



50. He confirmed that all loan applications were appraised by a committee before approval and disbursement of funds.
51. The witness confirmed that he was not aware of what happened to other officers who had recommended the application for approval as disciplinary matters were handled individually.
52. That the witness confirmed that the Claimant was found culpable for the potential loss was Kshs.15,000,000/= and the bank lost confidence in him as the one who brought the client to the bank.
53. The witness confirmed that the director's account was in distress.
54. On re-examination, the witness stated that the investigation document was not sharable as an internal document.
55. That the disciplinary committee found the Claimant negligent.

### **Claimant's submissions**

56. Counsel isolated four issues for determination, on whether there was a termination or summary dismissal, whether termination was unfair, whether the Claimant was discriminated and reliefs.
57. On the 1<sup>st</sup> issue, counsel submitted that the Claimant was summarily dismissed.
58. As to whether the termination was unlawful, counsel relied on the provisions of Sections 41, 43, 45 and 47(5) of the *Employment Act* to urge that since the investigation report was not availed, the charges were derived from an unknown source and the process was thus unfair. That the report could have countered the Claimant's evidence which according to counsel was uncontroverted.
59. According to counsel, since the charge was "appraising a fraudulent loan application by TTDC Ltd" and the termination letter states that the reason was "irregular and unprocedural loan appraisal for a customer", the goal posts had changed hence the Respondent had no valid reason to terminate the Claimant's employment.
60. That the Bank Credit Committee Report was not filed in court.
61. On discrimination, counsel submitted that as no disciplinary action was taken against other members of the Bank Credit Committee, the Claimant was discriminated. Counsel tendered no evidence of the allegation that no action was taken.
62. Counsel urged that the Respondent's actions offended the International Labour Organization Convention (ILO) No. 158 and the provisions of the *Employment Act*, 2007.
63. On the reliefs sought, counsel submitted that although the Claimant was paid terminal dues, he was entitled to damages for compensation, for discrimination and 12 months compensation for unfair termination and certificate of service.
64. Reliance was made on the provisions of Section 5(2) and (3) of the *Employment Act*, 2007 and Article 27(2), (4) of *the Constitution* of Kenya, 2010 as were the decisions in *OI Pejeta Ranching Ltd V David Wanjau Muhoro* (2017) eKLR *VMK V Catholic University of Eastern Africa* (2013) eKLR and *Koki Muia V Samsung Electronics East Africa Ltd* (2015) eKLR to reinforce the submission on compensation for discrimination.



## **Respondent's submissions**

65. Counsel identified two issues for determination, on whether the Claimant's suspension and dismissal from employment was unfair and entitlement to the reliefs sought.
66. On suspension and dismissal, counsel submitted that the Claimant was taken through a typical process as he was suspended in May 2016, issued with notices to show cause, responded, invited for a hearing, attended and was dismissed thereafter, appealed and the appeal was dismissed.
67. That the Claimant was unable to evidentiary fault the disciplinary process having admitted that his conduct in the loan appraisal process fell short of expectations.
68. Counsel urged that the suspension was justified and due process was followed and the dismissal was justified on gross misconduct.
69. It was further submitted that the provisions of Section 41 of the *Employment Act* were complied with.
70. The decisions in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR and *Philemon Atik V Nandi City Water and Sewerage Co. Ltd* (2019) eKLR were relied upon to buttress the submission.
71. As regards the reliefs sought, counsel urged that the Claimant's prayer for Kshs.6,874,791.00 had no basis as his dues were paid and the compensation sought was unwarranted.
72. On reinstatement, counsel relied on the sentiments of *Maureen Onyango J. in Kenya Union of Commercial Food & Allied Workers Union V Kapa Oil Refineries Ltd* (2018) eKLR to submit that the remedy was impracticable.
73. Counsel urged the court to dismiss the suit.

## **Determination**

74. The issues for determination are;
  - i. Whether termination of the Claimant's employment was unfair and unlawful.
  - ii. Whether the Claimant was discriminated.
  - iii. Whether the Claimant is entitled to the reliefs sought.
  - iv. Whether the Claimant waived his right to pursue other claims against the Respondent.
75. As regards termination of employment, counsel for the parties adopted opposing positions. While the Claimant's counsel submitted that the Respondent had no valid reason to terminate the Claimant's employment and used a flawed procedure, counsel for the Respondent maintained that the Respondent had justifiable grounds to do so and adopted a fair procedure.
76. The entire gamut of the law on termination of employment is clearly spelt out by the provisions of the *Employment Act*, 2007. The statute addresses the substantive and procedural precepts of termination of employment.
77. It makes provision for notice (Section 35), reason(s) for termination and prove thereof (Section 43 and 45), grounds for summary dismissal (Section 44), procedural tenets (Section 41) and justification of the termination (Section 47(5)). (See the sentiments of the Court of Appeal in *Pius Machafu Isindu V Lavington Security Guards Ltd* (2017) eKLR.)



78. Significantly, the foregoing provisions of the Act lay it bare as aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission (Supra)* cited by the Claimant's counsel, that;
- “ . . . For a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness . . . ”
79. The learned judge explained that whereas substantive justification was the reason(s) relied upon, procedural fairness was decipherable from the procedure adopted by the employer.
80. The heavy task before the court is to determine whether the Respondent has evidentially demonstrated that it had a valid and fair reason to terminate the Claimant's employment and did so in accordance with a fair procedure.

### **Reason(s) for termination**

81. It is common ground that the Respondent issued two notices to show cause to the Claimant dated 3<sup>rd</sup> August, 2016 and a further notice dated 11<sup>th</sup> November, 2016.
82. While the 1<sup>st</sup> notice accused the Claimant for appraising a fraudulent loan application by Taita Taveta Development Co. Ltd without conducting a proper Know Your Customer (KYC) to detect that the Bank Statements were not genuine, the second accused him of the irregular and unprocedural processing of the loan application by the same company and recommending its approval while it had numerous anomalies which the letter itemises.
83. According to the Respondent in either case, the Claimant acted in contravention of the Respondent's policies, procedures and code of conduct and demanded an explanation which the Claimant gave. While the response to the first letter is undated, the 2<sup>nd</sup> response is dated 14<sup>th</sup> November, 2016.
84. In his response, the Claimant explained that a director of the TTDC Ltd had an account with the Respondent at the Community Branch, and needed funds to finance his business and the bank statements were printed on the Letter Head of Diamond Trust Bank, certified and signed and looked genuine.
85. In the second letter, the Claimant responded to each of the 7 alleged anomalies such as absence of customer visit report which was mandatory. The Claimant admitted that he did not visit the company's business site as it was in the wilderness within the Tsavo National Park with no practical access. He thus relied on the contracts presented by Mr. Alex Otuke.
86. On ignoring the CRB Report, the Claimant stated that it was clear that the director of TTDC Ltd was financially strained and the loan was in arrears. He however, mentioned that by the time the file went to the Bank Credit Committee (BCC), the arrears had been paid.
87. On failure to request for valuation from the Bank, the Claimant's defence was principally that he had inherited the application from a colleague and thus did not pursue valuation after all, it was not a requirement at the branch at the time.
88. That he provided the director's account details at the Community Branch.
89. The Claimant admitted that the directors account remittances were not reflective of the alleged transport business but relied on Mpesa statements.
90. The Claimant had no explanation as to why he failed to escalate a colleague's undue influence in the loan processing and documentation.



91. That Mr. Julius Musyoki King'waa provided the background of the director of the company and the application was very weak.
92. The Claimant stated that he had acted professionally in his dealings with the application and colleagues.
93. The termination letter dated 10<sup>th</sup> January, 2017 stated that the termination of the Claimant's employment was "for irregular and unprocedural loan appraisal for a customer exposing the bank to a potential loss of Kshs.15,000,000/= contrary to the bank's lending policies and procedures."
94. In the court's view, although the notices to show cause dated 3<sup>rd</sup> August, 2016 and 11<sup>th</sup> November, 2016 were worded differently, both relate to a particular loan application which the Claimant processed and recommended for approval.
95. The second letter was more specific but did not deviate from the tenor of the 1<sup>st</sup> and confirmed by RWI, bank processes permitted the issuance of more than one notice to show cause and no law prevents an employer from doing so so long as it does not prejudice the employee at any stage in the process.
96. Evidently, the Respondent's decision to terminate the Claimant's employment was informed by the charge made in the notice to show cause dated 11<sup>th</sup> November, 2016 which the Claimant had responded to in great detail.
97. Contrary to the Claimant's written statement that there was no disciplinary hearing, a statement he contradicted during cross-examination, the Respondent invited the Claimant for a hearing vide letter dated 19<sup>th</sup> November, 2016 and was informed of the right to be accompanied by an employee of his choice and appeared on 22<sup>nd</sup> November, 2016. The Claimant was evidently untruthful in his statement.
98. The minutes show that he was aware of the meeting's agenda but appeared alone.
99. He admitted that he relied more on oral information than the documents.
100. Asked why he did not visit the company's premises, the Claimant stated that he relied on what Julius had told him that it was a yard and did not visit the applicant's office or the Taita Taveta site.
101. He admitted that Mr. Otuke, the director of the company had a loan that he was unable to pay and his write up to the BCC did not highlight the customer's negative history
102. The committee observed that the Claimant had confirmed that he had not analysed and documented the CRB Report, did not visit the customer's business or home, failed to document the credit/geared status of one of the directors of the company, the customer's bank statements provided in support of the business operations were insufficient, did not play a role in the valuation, the application was weak but forwarded the file to the Branch Committee and blamed another staff
103. The committee recommended summary dismissal.
104. In the courts view, the appraisal of the customer's loan application was indeed characterised by several anomalies which the Claimant attempted to explain but admitted most of them as the disciplinary committee found.
105. Although it is common ground that the Claimant inherited the application from one Julius Musyoki King'waa, the latter could not shoulder the burden since the customer became the Claimant's customer for the remaining part of the appraisal process. Similarly, the Claimant had liberty to undo what the



- colleague had done and re-start the process had he sought the supervisor's intervention in dealing with the customer.
106. Evidently, there were several red flags which the Claimant appear to have ignored. For instance, the applicant was the company yet it had no bank account and therefore had no running business. Did it have any assets? Were they valued? Where were they?
107. More fundamentally, did the company exist?
108. The Claimant admitted that he did not state anywhere that the application was weak.
109. Asked whether he was the competent person to handle the job, the Claimant responded in the negative.
110. Based on the Claimant's own admissions in the response to the notice to show cause, written statement, disciplinary hearing and on cross-examination, the court is satisfied and finds that the Respondent has on a balance of probabilities demonstrated that it had a valid and fair reason to dismiss the Claimant summarily, the absence of an investigation report notwithstanding.
111. The foregoing analysis finds support in the provisions of Section 43(2) of the *Employment Act*, 2007 that;
- “The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.”
112. This provision would appear to suggest that as long as the employer had a reasonable ground to genuinely believe that a particular state of affairs existed, the termination will be deemed fair.
113. The foregoing is fortified by the sentiments of the Court of Appeal in *Kenya Revenue Authority V Reuvel Withaka Gitahi & 2 others* (2019) eKLR as follows;
- “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 employees services. That is a partly subjective test.”
114. Finally, the foregoing also comports with the so called “band of reasonableness test” as alluded to by Kiage JA in *Judicial Service Commission V Gladys Boss Shollei & another* (2014) eKLR were the learned judge stated as follows;
- “. . . the decision of *British Leyland UK Ltd V Swift* (1981) ILRI 91 at 93 on the approach that a court should take in assessing the reasonableness of the action taken by an employer suggestive that there is quite a wide spectrum of actions that would nonetheless qualify as reasonable and there is a huge element of subjectivity and I agree.
- “There is a band of reasonableness within which one employer may reasonably take one view; another quite reasonably take a different view. One would reasonably dismiss the man. The other would quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair; even though some other employers may not have dismissed him.”
115. In the instant suit, evidence on record reveals that the manner in which the Claimant appraised the Loan application and communicated his findings showed want of care and attention to the



fundamentals and having lost confidence in their employee, the Respondent could not retain him in employment.

116. For the foregoing reasons, the court is persuaded that the Respondent had a valid and fair reason to terminate the Claimant's employment as demanded by Section 45(2) of the *Employment Act*, 2007.

### **Procedure**

117. Having testified that the Respondent did not conduct and at the same conducted a disciplinary hearing, the Claimant adduced no evidence to fault or puncture the Respondent's disciplinary process, perhaps on account of the contradictory evidential posture on the issue.
118. There was no specific submission on the disciplinary process itself or its findings or recommendation.
119. It requires no belabouring that the provisions of Section 41 of the *Employment Act*, 2007 prescribe the procedural precepts to be complied with by an employer for a termination of employment to pass as having been fair.
120. As held by courts in legions of decisions, the provisions of Section 41 are expressed in mandatory tone. (See Pius Machafu Isindu V Lavington Security Guards Ltd (Supra) among others.)
121. Additionally, courts have severally itemised the particular procedural steps to be taken to ensure compliance with the provisions of Section 41 of the Act as highlighted by the Court of Appeal in Postal Corporation of Kenya V Andrew K. Tanui (2019) eKLR.
122. In the instant suit, the Claimant was served with, received and responded to two notices to show cause and was subsequently invited to a disciplinary hearing, attended unaccompanied by a colleague and was heard.
123. The Claimant had been notified of his right to be accompanied by a colleague but not a lawyer or advocate.
124. The Claimant tendered no iota of evidence of having faulted the disciplinary process in any manner from notice of the meeting, composition of the committee, right to be heard at the hearing, report or information needed or witnesses required.
125. Similarly, the Claimant appealed the Respondent's decision and the appeal as not successful and he was notified as much.
126. It is by this letter that the Respondent notified the Claimant that it had discretionarily reviewed the summary dismissal to a normal termination. An employer may do so on appeal request or on its own motion.
127. In a nutshell, the court is satisfied that the Respondent has demonstrated that it conducted the termination of the Claimant's employment in consonance with the procedural tenets of Section 41 of the *Employment Act*, 2007.
128. In sum, the court is satisfied and finds that termination of the Claimant's employment by the Respondent on 10<sup>th</sup> July, 2017 was not unfair.
129. As to whether the Respondent treated the Claimant in a discriminatory manner, the Claimant testified that the backdating of the termination letter after appeal and substituting the summary dismissal to a termination was confirmation that the allegations were baseless, malicious and discriminatory.



130. The written statement makes no specific allegation of the alleged discrimination and no evidence was adduced in court.
131. Equally, the memorandum of claim has no particulars of the alleged discriminatory conduct.
132. In his submissions, counsel for the Claimant submitted that since the Branch Manager, Operations Manager and others who sat in the Branch Credit Committee were not affected, that was a clear case that the Claimant was discriminated.
133. The court finds it difficult to follow the argument as no evidence was adduced by the Claimant to show what happened to the other officers who were members of the Credit Committee.
134. Even assuming no action was taken against them, would the inaction by the Respondent create an inference that the Claimant was being treated in a discriminatory manner?
135. The court is no so persuaded.
136. As explained by RWI, each employee has a particular role to play in a transaction.
137. The customer herein was the Claimant's applicant as he is the one who had the background information and documents and the committee was guided by the information he had laid before it and the committee was bound to act on it. Clearly, the role of the Claimant and the Committee were distinguishable.
138. In the absence of particulars of the alleged discrimination and supporting evidence, it is the finding of the court that the allegation is not sustainable.
139. As regards the reliefs sought, having found that the Claimant had failed to demonstrate that termination of his employment by the Respondent was unfair as required by the provisions of Section 47(5) of the *Employment Act*, 2007, and bearing in mind that the Claimant admitted having been paid all his terminal dues but for the certificate of service and having further found that the Claimant has failed to substantiate the allegation of discrimination, the court is satisfied and finds that the Claimant is not entitled to any of the reliefs sought other than a certificate of service.
140. As to whether the Claimant waived his right to pursue further claims and thus discharged the Respondent, the court proceeds as follows;
141. This issue determines in totality whether the Claimant would have succeeded if the court had found and held that termination of his employment was unfair and unlawful.
142. It is not in contest that the Claimant signed the final dues letter addressed to him on 27<sup>th</sup> April, 2017. The salient question is whether by signing the letter the Claimant absolved the Respondent from any other claim arising from the employment relationship and the termination.
143. Essentially, the employer/employee relationship is a contractual relationship governed by the principles of common law and equity, the provisions of the *Employment Act*, 2007 and other statutes. (See *Krystalline Salt Ltd V Kwekwe Mwakele & 67 others* (2017) eKLR).
144. The principles governing the effect of a discharge voucher or settlement agreement are well settled by decisions of the Court of Appeal.
145. In *Thomas De La Rue (K) Ltd V David Opondo Omutelema* (2013) eKLR the court stated as follows;  

“We would agree with the trial court that a discharge voucher perse cannot absolve an employer from statutory obligation and that it cannot preclude the Industrial Court from



enquiring into the fairness of a termination. That is however, as far as we are prepared to go. The court has, in each and every 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.”

146. Similarly, in *Costal Bottlers Ltd V Kimathi Mithika* (2018) eKLR, the court stated;

“Whether or not a settlement voucher 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.”

147. In the instant case, the Respondent provided a document signed by the Respondent’s Compensation and Benefits Manager, one Elizabeth Gicharu and the Claimant showing that the Claimant was paid and admitted having received his final dues amounting to Kshs.944,656.38, less statutory deductions comprising; days worked and not paid May 2016 – January 2017, pending leave days, leave allowance for 2013, 2016 and 2017 and notice pay. The net was Kshs.665,487.00.

148. The letter stated as follows;

Duncan Musyoka Syonthi

Box 53625-00600

NAIROBI

Dear Duncan,

Re: Final Dues

Below is a calculation of your final dues:

.....

.....

Kindly acknowledge at the earliest opportunity to facilitate payment to your Equity Bank Account.

Yours faithfully,

Equity Bank (k) Ltd

Signed

Elizabeth Gicharu

Compensation and Benefits Manager

Acknowledgement

I Duncan Musyoka Syonthi hereby acknowledge receipt of Kes 665,487.38 (Kes Six hundred and sixty five thousand, four hundred and eighty seven shillings cents thirty eight only from M/S Equity Bank Limited. I confirm that this is full and final settlement of my terminal dues. I further confirm that I have no further claim against the bank.

Signature: Signed Date: 27/04/2017



149. In the court’s view, the Claimant and the Respondent had agreed that payment of the sum of Kshs.665,487.38 would effectively discharge the Respondent from liability under the contract of employment and the termination of employment.
150. The Claimant admitted that he signed the document and received payment and did not contest its authenticity or enforceability.
151. In *Coastal Bottlers Ltd V Kimathi Mithika* (Supra), the Court of Appeal stated;
- “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 did not matter that the amount there under would be deemed inadequate. As it stood, the agreement was a binding contract between the parties.”
152. The court expressed similar sentiments in *Trinity Prime Investments Ltd V Lion of Kenya Insurance Co. Ltd* (2015) eKLR emphasizing that even if the amount paid is less than the loss as long as the same was executed and the transaction was free from misrepresentation, fraud or other vitiating element, the employer is fully discharged from liability.
153. The foregoing applies on all fours to the facts of the instant suit.
154. For the foregoing reasons, the court is satisfied and finds that the Claimant waived his right to pursue further claims against the Respondent and absolved it from further liability.
155. In the upshot, having found that termination of the Claimant’s employment was not unfair and having further found that the Claimant absolved the Respondent from further liability with respect to the employment relationship and termination of employment, it is evident that the Claimant’s suit against the Respondent is unsustainable, is for dismissal and it is accordingly dismissed.
156. In the circumstances of this case, it is only fair that parties bear own costs.
157. Respondent to issue a certificate of service by dint of Section 51 of the *Employment Act*, 2007.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF OCTOBER 2023**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

