



REPUBLIC OF KENYA



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**Kibet v Family Bank Limited (Cause 486 of 2017)
[2023] KEELRC 2537 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2537 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 486 OF 2017
DN NDERITU, J
OCTOBER 19, 2023**

BETWEEN

MAUREEN J. KIBET CLAIMANT

AND

FAMILY BANK LIMITED RESPONDENT

JUDGMENT

I. Introduction

1. In a memorandum of claim dated 8th December, 2017 filed through Ochieng’ Gai & Co Advocates the claimant prays for: -
 - a. A declaration that the claimant’s termination of employment by the respondent was wrongful, unfair, illegal and contrary to the Provisions Act 2007(sic).
 - b. An order that the respondent compensate the claimant as decreed by the court.
 - c. Costs of the claim to be borne by the respondent.
2. Together with the statement of claim was filed a verifying affidavit, a statement by the claimant, and a list and bundle of the listed documents in support of the claim. The claimant filed a further list of two documents and copies thereof on 26th July, 2019.
3. On 16th January, 2018 the respondent entered appearance through Murimi, Ndumia, Mbago & Muchela Advocates and filed a statement of response to the claim on 30th January, 2018. In the said response the respondent prays that the claimant’s cause be dismissed with costs for want of merits.
4. In addition to the response to the claim the respondent filed a list and bundle of documents and a list of four witnesses. However, only one witness, STEPHEN KIMANI NGARU, filed a witness statement and subsequently testified as respondent’s only witness (RW1).



5. This cause came up for hearing in open court on 25th May, 2022 when the Claimant (CW1) testified and closed her case. The defence was heard on 25th October, 2022 with RW1 testifying and the respondent's case was closed.
6. Counsel for the both parties addressed and summed up their respective client's case by way of written submissions. Counsel for the claimant, Mr. Gai, filed his written submissions on 23rd December, 2022, while counsel for the respondent, Mr. Murimi, filed on 20th December, 2022.

II. The Claimant's Case

7. The claimant's case is expressed in the statement of claim, the oral and documentary evidence of the Claimant (CW1), and the written submissions by his Counsel, and the same is summarized as hereunder.
8. In her memorandum of claim, the claimant pleaded that she was engaged by the respondent, a bank and a limited liability company, as a sales representative on 1st February, 2016. Subsequently, vide a letter dated 24th August, 2016, the claimant was confirmed in the position of operations officer at an agreed consolidated gross salary of Kshs.55,100/= per month and posted to the respondent's Kitale branch.
9. It is pleaded that for no fair, just, and or lawful cause the claimant was on 27th February, 2017 suspended from duty and later on terminated on 15th September, 2017. The claimant pleads that the respondent falsely made baseless and unfounded allegations to the effect that she had shared her passwords and or access credentials with co-worker(s) and or other person(s) who used the same in accessing the banking system thereby posting and effecting fraudulent transactions. The claimant denies sharing her passwords or system access credentials as alleged or being negligent or careless in performance of her duties or engaging in any form of misconduct.
10. The claimant pleads that she was neither given a hearing nor subjected to due process of the law rendering the entire process of her termination unfair, unjust, and unlawful.
11. Her testimony in court was based on her filed statement and the pleading in the memorandum of claim as summarized above. She is an accountant by profession and a holder of a degree in finance from Kabarak University and a certificate in public accountancy.
12. Concerning the events that culminated in her termination, the claimant stated that on 27th July, 2017 she reported to work and to her dismay and consternation when she used her domain password to log into the computer she discovered that her flex account (the system used by the bank to access the platform to post and effect transactions) was already open and in use. She stated that she immediately alerted her supervisor one IRENE NJERI who advised her to serve a customer who was waiting and she proceeded to serve two or three customers using the same computer and system that she had found open and accessed by someone unknown to her. She continued to serve customers for the entire day until after 1600hrs when the open banking hall doors closed and thereafter a "call-over" (jargon for daily reconciliation) was conducted. It is at that point of surrender of the cash that she discovered that while she was in fact holding only Kshs.30,000/= the system indicated that she was supposed to be holding over Kshs.4,000,000/=. It is at this point that she went through the system generated records and found out that someone somewhere had transacted using her credentials.
13. The claimant produced as an exhibit a printout of her system generated transactions for 24th July, 2017 which shows that she allegedly received in cash seven deposits of Kshs.499,000/= each. The claimant was categorical that she neither performed, initiated, nor effected those particular transactions and that



upon that discovery she alerted her supervisor Irene Njeri, the branch assistant manager, Rose Mburu, and the manager, Geoffrey Ng'etich.

14. The claimant testified that her upper limit on cash deposits was Kshs.499,999/= and anything above that amount had to be authorized by her supervisor. She stated that seven deposits of Kshs.499,000/= on a single day was indeed a curious occurrence. Further, she stated that the said suspicious deposits were made one after the other, in minutes, which in reality was practically impossible considering time needed for authentication of accounts and counting of the physical cash. Further, she stated that the deposits and the transactions were perfected in Thika Branch, hundreds of miles from the Kitale branch where she was based.
15. By the close of business on 24th July, 2017 the claimant was instructed by her supervisor, after consulting the security and IT departments, to change her passwords both for the domain (used to open the computer) and the flex (used to access the banking flex system to transact) and she accordingly changed the two passwords. She was thereafter instructed by her supervisor to report to work the day that followed, 25th July, 2017.
16. When the claimant reported to work on 25th July, 2017 she, before performing any task, was called on phone by the operations manager from headquarters (HQ) of the respondent at Nairobi and directed not to transact any business. The security team from the HQ, led by KOECH KOSKEY, arrived and interviewed the claimant. From that point onwards, the claimant neither accessed nor transacted any business for the respondent.
17. The claimant reported to work on 26th July, 2017 and hanged around the office as she could not transact any business for the respondent in accordance with the directions from the operations manager as indicated above. However, she was called on phone and summoned to appear at the HQ on 27th July, 2017 at 0900hrs. The claimant obliged and when she reported to the HQ she met ELIJAH KARIUKI, the director of human resources (HR) who served her with a suspension letter of even date.
18. It is claimant's testimony that on 29th August, 2017 she was called from the HQ and told to report thereat the following day, 30th August, 2017, at 0900hrs. The claimant proceeded as directed and at about 1400hrs the claimant was called into the boardroom and, according to her testimony, it is then that realized that she was in for a disciplinary hearing.
19. The claimant stated that during the disciplinary hearing, for which she had not been notified, she was accused of initiating and effecting fraudulent transactions wherein well over Kshs.13 million was allegedly deposited in cash and withdrawn immediately through ATMs and agents. She stated that some of the alleged transactions were effected on 27th July, 2017 by which time she had changed her log-in credentials and in any event she was no longer transacting as directed by the operations manager. She stated that as a matter of fact on 27th July, 2017 she spent the entire day at the HQ wherein she was handed a letter of suspension. In this regard, the claimant made reference to the printout of the alleged transactions which she produced as an exhibit showing that 20 transactions of cash deposits of Kshs.499,000/= each were indeed effected on 27th July, 2017 by someone using her credentials, notwithstanding that she was no longer serving and she had already changed her passwords as directed by her supervisor on 25th July, 2017.
20. It is the claimant's evidence that she was neither informed of the charges that she was facing nor invited for the disciplinary hearing nor supplied with the evidence that she was facing including the investigations report nor given an opportunity to defend herself.
21. On 16th September, 2017 the claimant was called to pick a letter of termination dated 14th September, 2017 which she picked from the respondent's Nakuru branch.



22. It is the claimant's case that she was denied both substantive and procedural fairness and as such she instructed her counsel on record to take legal action.
23. The claimant produced all the documents in the two lists and bundles as exhibits 1 to 12. She vehemently denied engaging in the alleged fraudulent transactions or any misconduct and she is categorical that she did not share her passwords and or other credentials with any co-worker and or any other person. She insisted that the alleged fraudulent transactions, if any or at all, were carried out by persons within the respondent who had access to the system and who had the capacity, opportunity, and knowledge to infiltrate and manipulate the same. She pointed an accusing finger at the ICT department.
24. On cross-examination and re-examination, the claimant maintained the foregoing position and clarified that upon discovering that her system had been accessed and or hacked on 24th July, 2017 she proceeded to serve customers using the same platform on the instructions from her supervisor, IRENE NJERI.
25. The court has deliberately, patiently, and in detail laid out the above background of the evidence by the claimant as the same shall be of great use and relevance in tackling and determining the issues in contest. The submissions by her counsel shall be considered in the succeeding parts of this judgment alongside those by counsel for the respondent.

III. The Respondent's Case

26. The respondent's case is expressed in the response to the claim, the oral and documentary evidence adduced through RW1, and the written submissions filed by its counsel. The respondent's case is summarized as hereunder.
27. In the filed response to the claim the respondent denies all the allegations levelled against it by the claimant and more so that it is liable for unfair and unlawful termination or wrongful dismissal of the claimant from employment. It is pleaded that the claimant was regularly, fairly, and lawfully terminated and afforded due process both in substance and procedure. It is categorically denied that the claimant is entitled to the reliefs sought and it is urged that this claim be dismissed with costs.
28. In his testimony in court, RW1, the HR manager, relied on the filed response to the claim as summarized above and on his filed statement. He also produced as exhibits 1 to 6 the listed documents in the respondent's bundle.
29. He stated that the accounts wherein the fictitious transactions were posted were opened in several branches of the respondent spread across the country. He stated that the claimant must have given out her passwords to a third party for the transactions to be posted and perfected using her credentials and passwords as no one else should have had knowledge of the same. He stated that a fictitious sum of Kshs.3.4 Million was fed into the various accounts. He explained that the accounts were manipulated to reflect cash deposits yet no such deposits had actually been made and then the money was withdrawn immediately. This caused the bank to incur losses in respect of those fictitious deposits as no deposits were in fact made and hence the subsequent withdrawals were direct siphoning out of respondent's financial resources.
30. He stated that the claimant was invited for a disciplinary hearing vide a letter dated 25th August, 2017 and that she was heard in the meeting of 30th August, 2017. Further, he testified that the claimant was terminated for her negligence in handling of her credentials which caused and or allowed other persons to access the system using the same. He stated that the claimant was terminated vide a letter dated 14th September, 2017 but her terminal dues were not paid as she did not clear with the respondent.



31. He explained that there are two crucial steps before any person can access the platform and post transactions. He clarified that a domain-password is used to start up the machine (computer) but for a person to access the flex cube, the banking system used by the respondent in transacting its business, another password known as flex-password must be in-put for any person to transact any business. He was categorical that both the domain and flex passwords are a top secret and only known to the banker/employee who is authorized to transact. He stated that it is curious and concerning that after the claimant allegedly discovered that her account was already open and in use on 24th July, 2017 she allegedly continued to serve and transact business using the same credentials before contacting the supervisor. He stated that this conduct was careless, negligent, and suspicious.
32. According to RW1, it is the alleged negligence on the part of the claimant as stated above that led to the respondent having no confidence and trust in her culminating in the disciplinary process and the ultimate termination of the claimant. RW1 took the position that the claimant was afforded and accorded both substantive and procedural fairness. He stated that the bank lost over Kshs.13.473 Million in the fictitious transactions.
33. In cross-examination RW1 admitted that his statement reads that Kshs.2,119,621.06 was lost but that was wrong as the correct amount lost is Kshs.13.473m as stated above. He also admitted that the allegation in the response to the claim to the effect that Kshs.2,119,621.06 was lost is also erroneous.
34. He informed the court that Elijah Kamau Kariuki, the director of human resources, who handled the entire disciplinary process against the claimant is still in employment of the respondent.
35. He informed the court that for a person to open and operate a bank account, specific documents must be supplied including a national identity card, PIN as supplied by Kenya Revenue Authority (KRA), among others, and a certain form must be dully filled, completed, and signed by an applicant. He conceded that with the foregoing details and with due diligence the respondent should have been able to trace the beneficiaries of the fictitious accounts through which the money was lost. He further admitted that there is no evidence that the claimant shared her flex-cube password with the any person.
36. While he alleged that an investigation report was prepared he admitted that he did not know why the same was not filed in court and or availed to the claimant before, during, or after the disciplinary process or upon the cause being filed in court.
37. However, he admitted that there was no evidence that the claimant was a beneficiary of the lost funds. He also stated that the fraud was reported to the Banking Fraud Investigations Police Unit but no person, including the claimant, was arrested or charged with any criminal conduct. He stated that he did not know the status of that investigation.
38. He readily admitted that it is not practically and humanly possible that all the 30 transactions of Kshs.499,000/= of 24th and 27th July, 2017 were performed within the indicated timelines and that it was not possible for the flex-cube account assigned to a particular banker to be operated by more than one person at any given time.
39. The submissions by counsel for the respondent shall be considered in the succeeding parts of this judgment alongside those by counsel for the claimant.



IV. Issues For Determination

40. Upon thorough and careful examination and consideration of the pleadings filed, the oral and documentary evidence tendered from the Claimant and RW1, and the submissions by counsel for both parties the court identifies the following issues for determination –
- a. Was the claimant unfairly and unlawfully terminated by the respondent?
 - b. If (a) above is in the affirmative, is the claimant entitled to the reliefs sought in the claim?
 - c. Who meets the costs in this cause?

V. Termination

41. The terms of engagement of the claimant by the respondent as an operations officer based at Kitale branch of the respondent are not in dispute as contained in the letter of confirmation in employment dated 24th August, 2016. The Claimant was on a gross monthly consolidated salary of Kshs.55,100/= . Prior to this confirmation the claimant was on probation for six months from 1st February, 2016.
42. It is common ground that on 24th July, 2017 some ten transactions of cash deposits of Kshs.499,000/= each were posted on various accounts within the bank by someone using the claimant's access credentials or passwords which passwords were supposedly created and only known to the claimant. Consequently, the claimant was suspended from duty vide a letter dated 27th July, 2017 pending investigation. It is not disputed that on 25th July, 2017 the claimant was directed to change the said credentials and she acted accordingly. From that point onwards, the claimant did not resume her duties as a teller and did not have access to her computer.
43. For ease of reference, the said letter of suspension stated as follows –

27th July, 2017

Maureen Jerono Kibet

Thru' Branch Manager

Family Bank Limited

Kitale Branch

Dear Maureen,

Ref: Suspension

We refer to a fraudulent activity in which your role has been mentioned and which is under investigation.

In the circumstances, you are now suspended from employment of the bank with effect from 27th July, 2017 to allow for further investigations. During the period of suspension, you will receive salary at half basic pay. You are also entitled to your normal contractual benefits.

The Bank reserves the right to change or add to these allegations as appropriate in the light of the investigation. Your suspension does not constitute disciplinary action and does not imply any assumption that you are guilty of any misconduct. The Bank will keep the matter under review and will aim to make the period



of suspension no longer than necessary. You will continue to be employed by the Bank throughout your suspension and you remain bound by our terms and conditions of employment. You are required to be available to answer any work related queries.

The Bank will write to inform you whether it intends to hold a disciplinary hearing. If it considers that there are grounds for disciplinary action it will inform you of those grounds in writing and you will have the opportunity to state your case at a disciplinary meeting.

You are required to read, sign and return to us a copy of this letter as an indication that you have read and understood the contents.

Yours faithfully

For: Family Bank Ltd

Elijah Kariuki,

Senior Human Resource Business Partner

C.c.

Personal file

Payroll file

Signed by:Signed.....

Date: 27/07/2017

44. From the above letter it is clear that the claimant was suspended pending investigation into fraudulent activity for which she had been mentioned or suspected. It is the claimant's evidence that she did not thereafter receive any other communication from the respondent until she was summoned on 29th August, 2017 via a phone call to appear at the HQ on 30th August, 2017 only to be subjected to an abrupt disciplinary hearing without notice. This aspect of procedural fairness shall be covered in a subsequent part of this judgment.
45. The claimant was terminated vide a letter dated 14th September, 2017 which the claimant admitted that she received from the respondent's Nakuru branch on the 16th September, 2017. For ease of reference the said letter of termination states –

14th September, 2017

Maureen Jerono Kibet

Box 3050-20100

Nakuru

Dear Maureen,

Re: Termination Of Employment Contract

This is to inform you that you have been terminated from the bank effective 15th September, 2017.

There has been necessitated by your actions where you were grossly violated the bank's policies and procedures by sharing your password with your fellow



colleague. Your user name was also used to post fictitious cash deposits amounting to Kes.13,473,000 and which you were unable to explain how this happened.

During the Bank's disciplinary committee hearing held on 30th August, 2017 you were unable to show cause as to why disciplinary action should not be taken against you. The Bank has put it to question your integrity and credibility and has therefore lost confidence in you.

Payment of your final dues which will include one month's salary in lieu of notice will be processed on completion of the clearance form with all the departments and hand over of the duly completed clearance form to the Human Resource Department.

Pension dues will be paid as per the rules of the Scheme. In this regard, you are required to fill the Pension withdrawal form (available at Human Resources Office) to facilitate payment.

Please organize to hand over any company property in your possession to the Line Manager and ensure that you have cleared with all the departments and hand over the duly completed clearance form to Human Resources Department. Successful completion of this process will be critical to your formal departure from the Company.

We take this opportunity to wish you the best in all your future endeavours.

Yours Sincerely,

For: Family Bank Ltd

Signed

Elijah Kariuki

Senior Human Resource Business Partner

C.c. Personal File

46. The letter of dismissal alleges that the claimant had shared her passwords with a fellow colleague as a result of which her credentials were used to post fictitious cash deposits amounting to Kshs.13,473,000/=. According to the respondent therein then lies the reason why the respondent terminated the claimant. On a balance of probability, the respondent was under obligation to prove that indeed it had a justified reason to terminate the claimant in accordance with Sections 43 and 45 of the Employment Act (the Act).
47. The court has thrashed through the evidence that was presented in court by both sides and there is nothing to prove that indeed the claimant shared her passwords with a co-worker, a colleague, or indeed any other person. In any event, there is no evidence to prove that indeed any fictitious and or fraudulent transactions were carried out by the claimant or any other person in the alleged sum of Kshs.13,473,000/= or any other sum or at all or indeed that the bank lost any money or at all.
48. Bizarrely, the respondent did not avail the investigation report that was prepared by its security department which should have informed the court as to what evidence was collected and what role the claimant played in the alleged fraud. The following questions then find no answer – With who did the claimant share her passwords, both domain and flex-cube, which were essential for any transactions to be posted? What transactions were actually posted and where? How much money was actually lost by



- the respondent and how? Who were the beneficiaries of the monies allegedly posted fraudulently and what action was taken against them? How come some fraudulent transactions were posted on 27th July, 2017 by which time the claimant had been advised to change and indeed had changed her passwords?
49. While the respondent had a reason for suspending the claimant from duty to enable comprehensive investigation, it is the finding of this court that the respondent had no reason(s) whatsoever for subjecting the claimant to disciplinary process that culminated in her dismissal. This court has severally stated and I hereby do it for the umpteenth time that it is not every situation or investigation of misconduct that must lead to disciplinary process let alone dismissal or termination. In this cause, the claimant produced a system generated print-out which was not objected to and or dislodged by the respondent indicating that even after she was advised to change her passwords and indeed after doing so transactions continued to be posted by someone allegedly using her credentials.
50. In the foregoing circumstances, the respondent ought to have moved quickly to establish the source and the person(s) responsible for those postings. The details of the holders and owners of the accounts used to allegedly siphon the monies fraudulently deposited and immediately withdrawn were indeed within reach and possession of the respondent yet no action was taken going by the evidence on record. There can only be two plausible explanations for this deplorable and indolent conduct on the part of the respondent. One, it could be that the fraudsters were known to the respondent yet the respondent did not desire to act against them. Two, it could be that the respondent was so ill equipped and or hopeless in dealing with the fraud that it decided to use the claimant as a cover and scapegoat to safe face and be seen to act no matter how ill advised the disciplinary process.
51. It is for the foregoing reasons and circumstances that this court disagrees with the submission by counsel for the respondent that the claimant was negligent and or careless in performance of her duties. In fact, it is the respondent that was casual and escapist in the manner it approached the investigation of the alleged fraud to the extent that no investigation report was prepared and if one was prepared the respondent did not deem it fit to avail the same in evidence. Counsel for the respondent is completely wrong in applying and or implying Section 44(4)(c) of the Act in the circumstances of this cause.
52. The conduct of the respondent culminating in the termination of the claimant does not find refuge in Section 43(2) of the Act. There are no reasons and or grounds established by the respondent that should have made it to genuinely believe that the claimant had misconducted herself in the manner alleged or indeed in any other manner as to call for disciplinary action culminating in the termination. It is for the foregoing reasons that this court holds that there was no substance in the termination of the claimant.
53. In terms of the procedure adopted by the respondent the same has to be scaled and weighted against the provisions of Sections 35, 41, and 45 of the Act amongst other provisions of the law. Procedural fairness is further amplified and illuminated under Article 47 of *the Constitution* and the various provisions of the Fair Administration Action Act. Those provisions encompass what is known as natural justice, fair hearing, or due process.
54. The suspension letter reproduced in a preceding part of this judgement indicates that the claimant was suspected of involvement in fraudulent activity. There is no evidence that the claimant was supplied and or served with specific charges. There is no evidence that the claimant was served with a show-cause letter and she stated as much in her testimony in court. The show-cause letter availed in court by the respondent which was allegedly served upon the claimant is dated 19th June, 2017. The contents of the said letter clearly show that the same related to a completely different issue. Clearly and evidently, by 19th June, 2017 the alleged fictitious and fraudulent transactions had not been posted and there is



no way the claimant would have been under investigation for something that had not occurred. The alleged transactions were posted from 24th July, 2017.

55. The claimant is categorical in her testimony that she was not served with the invitation to attend disciplinary hearing dated 25th August, 2017 which refers to a non-existent show-cause letter or one that was not served upon her. It is therefore evident that at no point was the claimant served with specific charges to enable her defend herself and she was not informed of her rights before, during, and after the disciplinary hearing.
56. The minutes of the disciplinary hearing meeting of 30th August, 2017 availed by the respondent indicate that the claimant was charged with “misuse of password”. No witnesses were called to testify including one NATHAN who was alleged to have had access to the claimant’s password. It is not indicated which password the said NATHAN had access to considering that two passwords were required for a person to transact and post any transactions. Nothing is disclosed in the minutes about the other transactions that were posted after the claimant had changed her original passwords and she no longer had access to the computer and the respondent’s premises.
57. The foregoing casual and pedestrian approach by the respondent to otherwise very serious career threatening issues to the claimant, and a matter in which the respondent had allegedly lost millions of shillings is not only unprofessional but also worrying. While the claimant explained in court that she had allowed a co-worker to use her computer after she had only started the same using her secret domain password, without disclosing or showing the same to the said co-worker, there is no evidence provided that indeed the claimant disclosed and or supplied her passwords to the said co-worker or indeed any other person. It was therefore incumbent upon the respondent to avail an investigation report and or a witness to establish prima facie that the claimant was negligent and or careless in handling her passwords. The respondent flatly failed in this task. There is no evidence that the claimant was given a chance to ask any questions and in any event no witnesses or evidence was presented to her in order to defend herself.
58. It must be emphasized that disciplinary hearing should not be a formality to rubber-stamp an already taken position. While this court is aware and cognizant of the nature of the banking industry and the need for utmost good faith, honesty, and integrity for all those engaged by banks to work therein, it is equally important that it is not fair, just, and lawful that every suspected misconduct shall lead to disciplinary action let alone dismissal or termination, like it happened in this cause. The respondent and other banking or financial institutions should realize and recognize that behind the faces of the workers are real human beings, most of them young, working to build careers with responsibilities, personal and otherwise, on their shoulders. It is paramount that each case of real or perceived indiscipline or misconduct be treated with utmost care and fairness and in accordance with the law affording the subject both substantive and procedural fairness as provided for in the afore-cited law.
59. The manner in which the respondent conducted the disciplinary process against the claimant culminating in her termination fails to meet the well-established twin and cumulative tests of substantive and procedural fairness as held in various decisions of this court – see *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR, *Jane Nyandiko V Kenya Commercial Bank* (2017) eKLR, and *Pamela Nelima Lutta V Mumias Sugar Co. Ltd* (2017) eKLR.
60. This court comes to the logical and reasonable conclusion and holds that the Respondent unfairly and unlawfully dismissed the Claimant without notice and without affording her both substantive and procedural fairness as envisaged by the law under Sections 41, 43, 45, and 47 of the Act.



61. The court has said enough in demonstrating that the claimant's termination was unfair and unlawful and it is so held and declared.

VI. Reliefs

62. Having held that the Claimant was unfairly and unlawfully terminated for lack of both substantive and procedural fairness the court shall now consider each of the reliefs sought as hereunder.

63. Prayer (a) is for a declaration that the termination of the claimant by the respondent was unfair and unlawful. The court has found and held as much in the foregoing paragraphs and the court has no difficulties in making this declaration as prayed.

64. Prayer (b) is for "An order that the respondent compensate the claimant as decreed by the court". This form of pleading is not the most specific that this court should ordinarily expect or is accustomed to. However, what this court understands the claimant to be seeking is compensation under Section 49 of the Act. The remedies available are under sub section (1)(a), (b), and (c) while the factors that this court should consider in awarding the remedies are provided for in subsection (4).

65. The contract of employment provided for one month's notice or payment of one month's salary in lieu thereof. In the letter of termination, the respondent acknowledged and admitted its obligation to pay for the same. The claimant is awarded Kshs.55,100/= in lieu of notice of termination.

66. The other award for consideration under the above cited law is compensation which is capped at 12 months salary under Section 49(1)(c) of the Act. The parties have not indicated their willingness to re-engage and an order for reinstatement is time barred under Section 12(3)(vii) of the *Employment and Labour Relations Court Act*. The respondent has not paid to the claimant any terminal dues. The court has not established any misconduct on the part of the claimant that warranted disciplinary action and the respondent denied to her both substantive and procedural fairness. At the time of dismissal, the claimant had served the respondent for about two years and three months. It is no secret and is in public domain that once terminated by one bank it becomes very difficult or impossible for the terminated employee to get employment within that closely-knit sector.

67. The respondent by its unfair and unlawful conduct cut short career progression and professional development of the claimant. She testified that since the dismissal she has not landed another job. There is no doubt that the dismissal had life-long detrimental effects on the professional and career development of the claimant.

68. While am in full knowledge and cognizant of the fact that the claimant had not worked for too long for the respondent, a period of two years and three months, my opinion is that the conduct of the respondent in this matter was way off the standards expected of a responsible employer. Notwithstanding that no investigation was carried out and or no report was prepared and availed in court, the respondent's casual and pedestrian approach to the matter exposed and prejudiced the claimant condemning her to oblivion in the desperate world of unemployment probably for life.

69. It is for the foregoing reasons that I consider this case an appropriate one for the award of the maximum compensation of 12 months gross salary calculated as Kshs.55,100/= * 12= Kshs.661,200/=.

70. It is over five years since the claimant left employment of the respondent and as such there is practically nothing pending clearance. The respondent is ordered to unconditionally issue and deliver to the claimant a certificate of service, which is a right under Section 51 of the Act, within 30 days of this judgment.



71. Counsel for the claimant has submitted that she be awarded general damages in the sum of Kshs.3,000,000/= without any elaboration or authentication other than alleging “peculiar facts and circumstances in this matter”. No authorities or law has been cited in support of this type of an award and the same is hereby denied. The damage that an unfairly and unlawfully terminated employee suffers, unless otherwise pleaded and proved, is in the loss of wages and salaries that the employee should have earned bar the termination. The compensation awarded to the claimant above in my view takes care of the damage caused in the circumstances.

VII. Costs

72. Costs follow the event and the Claimant is awarded costs of this cause. There is no reason for this court to depart from this established principle in this cause.

VIII. Disposal

73. In disposal of this cause, the court issues the following orders: -

- a) A declaration be and is hereby issued that the dismissal of the claimant by the respondent was wrongful, unfair, and unlawful.
- b) The claimant is awarded a total of Kshs.716,300/= made up as follows –
 - i. One month’s salary in lieu of notice.. Kshs.55,100/=
 - ii. Compensation for unfair and unlawful dismissalKshs.661,200/=TotalKshs.716,300/=
- c) The respondent is hereby ordered to issue and deliver a certificate of service to the claimant within 30 days of this judgment.
- d) Costs of the cause to the claimant.

DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 19TH DAY OF OCTOBER, 2023.

.....

DAVID NDERITU

JUDGE

