



**Ogolla v National Bank Ltd (Cause E020 of 2021)  
[2022] KEELRC 1502 (KLR) (15 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1502 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E020 OF 2021**

**S RADIDO, J  
JUNE 15, 2022**

**BETWEEN**

**TABITHA SARAH ATIENO OGOLLA ..... CLAIMANT**

**AND**

**NATIONAL BANK LTD ..... RESPONDENT**

**JUDGMENT**

1. This cause was heard on February 3, 2022 and March 28, 2022. Tabitha Sarah Atieno Ogolla (the claimant), a witness on her behalf and the Head of Employee Relations with the National bank Ltd (the respondent), testified.
2. The claimant filed her submissions on April 27, 2022, and the respondent on May 17, 2022.
3. The court has considered the pleadings, evidence, and submissions and identified the Issues for adjudication as examined hereunder.

**Unfair termination of employment**

**Procedural fairness**

4. Sections 35(1) and 41 of the *Employment Act*, 2007 underpin the fairness of a termination of employment.
5. The claimant was suspended through a letter dated December 1, 2020 to facilitate investigations into bribery allegations.
6. The suspension letter was followed by a show-cause notice dated December 3, 2020. It set out the allegations against the claimant as a conflict of interest in business dealings with a bank client and exposing the bank to reputational risk.



7. The show-cause requested the claimant to make a written response, and she responded on December 7, 2020.
8. On December 15, 2020, the respondent invited the claimant to attend an oral hearing on December 22, 2020. She was informed of the right to be accompanied.
9. The claimant attended the hearing, and on January 20, 2021, she was informed of the termination of her employment and the right of appeal.
10. The claimant appealed on January 26, 2021. The respondent notified her of the rejection of the appeal on January 29, 2021.
11. In challenging the fairness of the process, the claimant asserted that the respondent did not allow her to question her accuser and that she was not furnished with the Investigations Report.
12. On the other hand, the respondent justified the fairness of the process by contending that it received an anonymous report upon which it commenced investigations culminating in the disciplinary case against the claimant.
13. It further maintained that the claimant was supplied with all necessary information on the allegations.
14. The complaint against the claimant was made through an anonymous platform. The use of anonymous reports is a generally accepted practice to maintain the confidentiality and security of such anonymous reportees.
15. The respondent investigated the anonymous complaint and found some merit thereon. It then placed the claimant on a disciplinary process. The show-cause dated December 3, 2020 disclosed the entities the claimant had allegedly related with to form the basis of the conflict-of-interest allegations.
16. The claimant did not suggest that the particulars of the charges were vague or not clear to her. The particulars were based on the respondent's banking records and systems.
17. In the court's view, while anonymous reports on their own and without further investigations cannot be the basis for taking disciplinary action against an employee, such an avenue of reporting recognise the value of allowing one to raise their voice more openly without being the targets of retaliatory measures.
18. In the present case, the court is unable to find that the failure to call the anonymous whistle-blower for questioning by the claimant during the disciplinary hearing prejudiced the fairness of the process because she was confronted with the details of the customers she had engaged with (without making a disclosure of conflict-of-interest in the transactions).
19. With respect to giving the claimant information or report on the investigations, the court notes that the claimant did not request for a copy of the Investigation Report during the commencement of the disciplinary process when the show-cause was issued or after that despite knowing that investigations had been carried out.
20. In other words, the claimant did not demand for the report or any other information either in the response to the show-cause or during the oral hearing. The challenge based on the failure to supply the report was an afterthought.
21. The court finds that the respondent was in substantial compliance with the statutory elements of procedural fairness.



### **Substantive fairness**

22. Where the employer terminates an employment contract, the burden to prove the validity and fairness of the reasons is placed upon its shoulders by sections 43 and 45 of the *Employment Act*, 2007.
23. The ground for the termination of the claimant's contract was the failure to adhere to the respondent's Conflict of Interest policy.
24. The particulars were, in brief, receiving Kshs 1,300,000/- from a client without disclosing the transaction and direct involvement in loan appraisal for the said clients (Opet Enterprises and Malaba Securities (sister companies)).
25. Opet Enterprises applied for a loan from the respondent in August 2020. The loan was recommended by the claimant and was disbursed the same month through a named account. Cheques worth Kshs 1,200,000/- were made to the claimant from the account.
26. The claimant did not deny receiving the monies from Opet Enterprises, a client of the respondent. Her explanation and that of a director of Opet Enterprises was that the payment was in respect of car hire charges (and that her (claimant's husband) operated the business).
27. The claimant testified that the money was paid into her account because her husband was out of the country at the time.
28. The court finds the explanation lame, for the husband's physical presence was not necessary before monies could be deposited into his bank account.
29. It is not lost on the court that technology has made it easy and straightforward for one to operate or transact through a bank account from anywhere globally.
30. With respect to the explanation that the monies were payments for car hire charges, the claimant did not provide any evidence that her husband operated a car hire business. The husband was not called to testify on the nature of the business and his engagements with Opet Enterprises.
31. The monies paid to the claimant's account were loan disbursements for specific purposes. It is not every day that a person would apply for a loan and use it to hire a car.
32. The claimant had, in response to the show-cause dated December 7, 2020, indicated that her employment contract did not have a single clause on conflict of interest.
33. Despite the respondent not placing before the court a copy or extract of the policy on Conflict of Interest, the claimant acknowledged during cross-examination that there were annual declarations on conflict of interest.
34. The court will, therefore, find that the claimant was in breach of the Conflict-of-Interest Policy, and thus there were valid and fair reasons to terminate her contract.
35. With the conclusions, the remedies of compensation and pay in lieu of notice are not available to the claimant.

### **Service pay**

36. The respondent filed copies of the claimant's payslips showing she contributed to the National Social Security Fund. She is therefore not entitled to service pay.



## **Conclusion and Orders**

37. The court finds no merit in the Cause. It is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS  
15<sup>TH</sup> DAY OF JUNE 2022.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For claimant Bruce Odeny & Co Advocates

For respondent Ochieng & Ochieng Advocates

Court assistant Chrispo Aura

