



**Onyimbo v Co-operative Bank of Kenya Ltd (Cause 305 of 2017)
[2022] KEELRC 12927 (KLR) (19 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12927 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 305 OF 2017
S RADIDO, J
OCTOBER 19, 2022**

BETWEEN

WYCLIFFE WAFULA ONYIMBO CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LTD RESPONDENT

JUDGMENT

1. The Cause was heard on 15 January 2019, 21 January 2020, and 7 June 2022. Wycliffe Wafula Onyimbo (the Claimant) and the Head of Employee Relations with the Co-operative Bank of Kenya Ltd (the Respondent) testified.
2. The Claimant's submissions were not on record by the agreed timeline of 7 July 2022. The Respondent filed its submissions on 10 August 2022.
3. The Court has considered the pleadings, evidence, and submissions.

Unfair termination of employment

Procedural fairness

4. For termination of employment to pass the procedural fairness test, an employer should show compliance with sections 35(1) and 41 of the *Employment Act*, 2007 (written notice of termination and a hearing).
5. The Respondent issued the Claimant a show-cause letter dated 16 February 2016.
6. The letter set out the allegation against the Claimant (irregular claim for transport of household chattels contrary to the Respondent's Business Code of Conduct and Ethics and the Operating Manual).
7. The Claimant was requested to make a written response before 22 February 2016.



8. The Claimant responded on 22 February 2016, and on 2 March 2016, he was invited to a disciplinary hearing to be held on 7 March 2016.
9. The Claimant appeared before the Disciplinary Committee and made representations.
10. On 12 April 2016, the Respondent wrote to the Claimant, notifying him of the termination of his employment.
11. The Claimant appealed on 19 April 2016, and on 4 May 2016, he was informed that the appeal was unsuccessful.
12. Considering the above, the Court is satisfied that the Respondent complied with the statutory procedural fairness standard in terminating the Claimant's contract.

Substantive fairness

13. By dint of sections 43 and 45 of the *Employment Act*, 2007, the Respondent had the burden of not only proving but proving the validity and fairness of the reasons for the termination of the Claimant's employment.
14. The allegation against the Claimant was irregular claims for transporting household chattels in contravention of the Respondent's Business Code of Conduct and Ethics and the Operating Manual.
15. The particulars of the allegation were that the Claimant had, through a business enterprise where he was a director together with his wife, colluded with 3 other employees and quoted to transport the household effects of the 3 staff who were on transfer without declaring that he had an interest in the business enterprise.
16. In response to the show cause, the Claimant admitted that he was a director of the enterprise and that it was true the enterprise had bid to transport the household effects of fellow staff on transfer.
17. However, he explained that he was unaware of the Respondent's Operating Manual on conflict of interest or that the bid was contrary to the Respondent's Business Code of Conduct and Ethics. He further explained that the enterprise had employed a manager who handled the day-to-day operations without his involvement.
18. The Respondent produced a copy of the Code in Court, and clause 3 thereof addressed the question of conflict of interest. The Code required an employee to declare any potential conflict of interest (including that of spouse).
19. The Code outlined examples of conflict of interest to include:
 - an employee engages in any personal business transaction involving the bank for profit or gain;
 - an employee engages in outside employment or serves as an officer, director, partner, or consultant of another organisation.
20. The Claimant admitted to signing the Code in 2009.
21. The Claimant was, therefore, obliged to declare the directorship to the Respondent. He did not.
22. The enterprise made a bid to the Respondent after the Claimant had made a referral despite not declaring a conflict of interest. It is of no concern that the enterprise would probably not have been awarded the transportation tender.



23. The Court is satisfied that the Respondent had and proved valid and fair reasons to terminate the Claimant's employment.

Conclusion and Orders

24. From the foregoing, the Court finds no merit in the Cause, and it is dismissed. Each party is to bear own costs.

DELIVERED VIRTUALLY FROM KWALE, DATED AND SIGNED ON THIS 19TH DAY OF OCTOBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mr Omondi instructed by Omondi, Abande & Co. Advocates

For Respondent Mr Ouma Dickens instructed by the Federation of Kenya Employers

Court Assistant Chrispo Aura

