



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lalang v Transnational Bank Ltd (Cause 331 of 2017)  
[2022] KEELRC 13456 (KLR) (7 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13456 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 331 OF 2017  
NJ ABUODHA, J  
DECEMBER 7, 2022**

**BETWEEN**

**ARNOLD KOECH LALANG ..... CLAIMANT**

**AND**

**TRANSNATIONAL BANK LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant herein filed a statement of claim on November 3, 2017 against the respondent seeking for the following reliefs;
  - a. A declaration that the action of termination of the claimant was malicious, unsubstantiated, unlawful and unprocedural.
  - b. The claimant be reinstated to his position or an equally suitable position with all his back salary, allowances benefits and any other dues
  - c. In the alternative and without prejudice to (b) above, general damages (*sic*) for lost income
  - d. Special and general damages for malicious prosecution(*sic*)
  - e. Costs of the suit and interest
  - f. Any other relief the court deems fit to grant.
2. In that statement of claim, the claimant avers that at all material times, he was an employee of the respondent and served as such until March 20, 2013 when he was unfairly, illegally, unprocedural, wrongful and without any valid reasons terminated from employment
3. The claimant contended that due to malice, the respondent fabricated trumped up accusations as a result of which the claimant was charged with conspiracy to defraud contrary to section 317 of the [Penal Code](#) in Eldoret Criminal Case No 1903 of 2013 which charge was dismissed for lack of evidence.



4. According to the claimant, the defendant breached the provisions of the [Employment Act](#) and the Regulations of Wages and Conditions of Employment Act
5. The respondent filed a statement of defence on December 14, 2017 and denied that the claimant was unfairly, illegally, unprocedurally and wrongfully terminated from employment.
6. The respondent stated that the claimant was summarily dismissed after he was found guilty of gross misconduct.
7. According to the respondent, the claimant fraudulently opened account number 66298 in the name of Midcom Ltd and irregularly released the mailer PIN to the customer resulting in fraudulent transactions conducted through ATM card and aiding in the making of a false statement by an intern regarding handling of the PIN mailer and copy of cheque deposit and colluded with fraudsters to defraud the bank resulting in Kshs 2,260,000 being withdrawn through the ATM.
8. The respondent maintained that the claimant's conduct amounted to a criminal offence for which he was charged which charge was eventually withdrawn by the state under section 87A of the [Criminal Procedure Code](#) due to failure by the police to bond the respondents' witnesses.
9. The respondent averred that it adhered to the provisions of the [Employment Act](#) in terminating the services of the claimant.
10. The matter was then set down for hearing on various dates.
11. The claimant testified on February 23, 2021 as CW1. He adopted his witness statement recorded on October 31, 2017 as his evidence in chief.
12. It was his testimony that he was employed by the respondent and that he was charged with a criminal offence in Eldoret Criminal Case No 1903 of 2013 at the instance of the respondent.
13. He stated that although the criminal charges were terminated, he never resumed work as he was terminated from employment.
14. He sought to be compensated for wrongful termination and defamation(sic).
15. On cross examination, he conceded that he was the person who handled account opening documents for Midcom Limited and did the entire transaction until it's conclusion.
16. He further stated that he later learnt that the said account was used to defraud the respondent of Kshs 2,260,000.
17. The claimant called Mercyline Chepkorir Kosgey in furtherance of his case who testified as CW2 on May 31, 2022. She introduced herself as the claimant's wife and adopted her witness statement dated October 15, 2020 as her evidence in chief.
18. In summary, CW2 in her statement stated that she was cohabiting with CW1 and as a result of his subsequent arrest on March 2013 on the charges of conspiracy to defraud levelled against him, she left him because she was embarrassed to be associated with him and only came back after the said charges were dropped.
19. On July 6, 2022, the respondent's witness, Lilian Obiero testified as RW1. She introduced herself as the respondent's Zonal Manager and adopted her witness statement recorded on June 16, 2022 as her evidence in chief.



20. According to RW1, the claimant was summarily dismissed from employment because of fraudulent activities he actively engaged in.
21. RW1 stated that the claimant opened a fraudulent current account and obtained a check book account and an ATM. She explained that current accounts are not issued with ATM cards.
22. She maintained that the claimant applied for ATM and cheque book for the account and that the claimant was not authorised to open the account as it was the sole duty of the customer care office.
23. It was RW1's evidence that the claimant facilitated the fraudsters and that the respondent lost over Kshs 2.6M which loss was through cheque deposits and ATM withdrawals.
24. While being cross examined, RW1 maintained that the pin mailer is a coded number that is sent to the customer and that the card is sent to the bank branch.
25. With that evidence, the respondent closed its case and the court directed parties to file written submissions.
26. The respondent filed its submissions on August 19, 2022 whereas the claimant filed his submissions September 29, 2022.
27. I must mention that the claimant's submissions referred to a different party, Access Bank(PLC) Kenya as the respondent which is the respondent's successor in title.

### **Determination**

28. From the pleadings on record, the evidence of the parties and the submissions, the issues that arise for determination in this case are as follows:-
  - i. Whether the claimant's employment was terminated fairly, legally and procedurally
  - ii. Whether the procedure followed was in accordance with section 40 of the [Employment Act](#).
  - iii. Whether the reliefs sought are merited
29. The claimant asserts that he was employed by the respondent and that on March 20, 2013, he was unfairly, illegally, unprocedurally and wrongfully terminated from employment without any valid reasons.
30. The respondent on its part has maintained that the claimant was summarily dismissed from employment after it was established that he was actively engaged in fraudulent activities that led to the loss of over Kshs 2.6 Million.
31. It is trite law that before an employer terminates an employee's employment, the employer must not only prove that it had valid reasons for the said termination but must also ensure that the laid down procedure has been followed.
32. Section 45(2) of the [Employment Act](#) is to the effect that an employer should not terminate contract of employment of an employee except where there are valid and fair reasons.
33. The burden of proof in employment related claims as stipulated by section 43 of the [Employment Act](#) is on the employer to prove the reason for the termination as valid in any legal proceedings.
34. Section 43(2) of the [Employment Act](#) defines reasons for termination to be matters the employer at the time of termination genuinely believed to exist, and which caused the employer to terminate the employee.



35. The respondent maintained that the claimant was terminated from employment after it was established that he opened a fraudulent current account for a customer and applied for ATM and cheque book for the account yet the claimant was not authorised to open the account as it was the sole duty of the customer care office.
36. It was averred that as a result the respondent lost money to the tune of Kshs 2.6 Million and that the issue was reported to the police where the claimant was charged with the offence of conspiracy to defraud contrary to section 317 of the *Penal Code* in Eldoret Criminal case No 1903 of 2013.
37. In the case of *British Leyland UK Ltd v Swift* (1981) IRLR 91 Lord Denning observed;
- “The correct test is; was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps 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.”
38. In the circumstances I find that the respondent had valid, fair and justifiable reasons to terminate the claimant.
39. On the issue of whether the respondent followed substantive procedure before terminating the claimant employment, it was only established that the claimant was issued with a termination letter with reasons for his termination.
40. Section 41 of the *Employment Act* provides as follows in regard to procedures for termination:
- “(1) Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”
41. In the instant case, the claimant in his pleadings did not plead that due process was not followed hence the court will presume he was accorded procedural fairness prior to the termination of his service.
42. In conclusion the court find the claim to be without merit and is hereby dismissed with costs.
43. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF DECEMBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

