

KENYA / JUDGMENT

Kinyanjui v Standard Chartered Bank Kenya Limited [2025] KEELRC 1661 (KLR)

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COURT

Employment and Labour Relations Court

BEFORE

B Ongaya

CASE / FILE NUMBER

Cause 639 of 2018

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Kinyanjui v Standard Chartered Bank Kenya Limited (Cause 639 of 2018) [2025] KEELRC 1661 (KLR) (5 June 2025) (Judgment)

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[2025] KEELRC 1661 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nairobi

Cause 639 of 2018

B Ongaya, J

June 5, 2025

Between

Peter Kinyanjui

Claimant

and

Standard Chartered Bank Kenya Limited

Respondent

Judgment

1. The claimant filed the amended statement of claim dated 14. 07. 2023 through J.M Kariuki & Company Advocates. He prayed for judgment against the respondent for:
a.A declaration that the claimant's dismissal from employment by the respondent was unlawful or wrongful.
b.A

declaration that the claimant's dismissal from employment by the respondent was unfair.c.A declaration that the claimant's dismissal from employment by the respondent was unlawful and unconstitutional for breaching Article 41(1) on the right to fair labour practices, Articles 50(2)(c) which requires a person to be granted adequate facilities to prepare defence, Article 50(2)(k) on the right to challenge evidence, and Article 47 on fair administrative action.d.Damages for unfair termination of Kshs. 6,600,000. 00 (12 months' salary)e.One month's salary in lieu of notice - Kshs. 550,000. 00f.Service pay for 2 years - Kshs. 636,615. 40g.Bonus as per employment contract for the year 2016 Kshs. 1,200,000. 00 or in the alternative, bonus until retirement age of 60 years Kshs. 22,800,000. 00h.Salary until retirement age of 60 years (with 5% increase per year) Kshs. 434,717,246. 15 or in the alternative, Kshs. 132,000,000. 00 being the contractual monthly salary until the retirement age of 60i.Pension contribution as per employment contract at 6% of the projected salary until retirement age - Kshs. 26,083,034. 77j.Exemplary damages for malicious termination from employment.k.An order for the respondent to issue to the claimant a certificate of service as required by the Employment Act.l.Costs and interest of the suit.m.Any other relief this Honourable Court may deem fit to grant.

2. The claimant's case was as follows:
 - a.The claimant had worked for the respondent bank as the Regional Head Client Relationships in charge of Nairobi East Area since December 2013.
 - b.The claimant has a wealth of experience and a record of accomplishment in the banking sector. Prior to joining the respondent, he had worked for CFC Stanbic Bank for four years as a Senior Branch Manager and as the Head of Sales - Kenya. Before joining CFC Stanbic, he worked at Kenya Commercial Bank for 10 years in different roles, as a Branch Manager in the last four years. The claimant had also worked for K-Rep Bank (now Sidian Bank) for two years as Head of Branch, Treasury and Operations.c.At the respondent, he was responsible for growing the bank's balance sheet within the branches that he directly managed. At the time of termination of his employment, he was responsible for a team of nearly 200 staff, including 12 Senior Branch Managers, 12 Priority Managers, and 3 Business Client Managers. His work, therefore, entailed building stronger business ties with existing customers and establishing new business relationships through targeting new customers.d.When he assumed employment at the respondent, he fully disclosed that he was a shareholder and director in Wayne Bells Group of Companies, under which Wayne Bells Development & Holdings Limited (Wayne Bells) is a subsidiary, and whose main object was dealing in real estate development. The respondent did not raise any issue and went on to employ him.e.Wayne Bells Development & Holding Ltd (hereinafter referred to as "the company") was planning to develop a mega real estate project on a 102-acre land in Muthaiga North, and thus sought a loan of Euro 65 million to actualise the first phase of the project.f.Accordingly, the company arranged for borrowing from Grand Impex Trading Company Ltd, a Dubai-based finance group, for leasing of a bank guarantee for the said amount for one year, at a 10% fee of Euro 6. 5 million. The company was to solicit the Euro 6. 5 million to facilitate the financing from Grand Impex Trading Company Ltd, which amount was to be fully secured by the land on which the project was to be developed, then valued at

Euro 70 million. On 06. 10. 2015, the claimant approached the respondent's Head of Corporate, in line with his role of growing the respondent's business, to inquire whether the bank could be willing and interested in processing the company's transaction. The respondent subsequently requested him to provide the company's information on shareholding and directorship, together with all the necessary documents pertinent to the project. The company was then required to open an account, and the respondent promised to provide the way forward within a week of presentation of the said information and documents. h. On the same 06. 10. 2015, the claimant wrote to the company's chairperson informing him of the respondent's interest in handling the transaction and further detailing the progress of the proposed transaction. The said letter was an acknowledgement of the company's request, as it was also intended to advise Grand Impex that the transaction was now being handled by the respondent and not KCB. i. Two days after the letter of request for the opening of the company account was delivered to the respondent on 08. 10. 2015, three account numbers were allocated and provided to the company, being KES, USD and EUR accounts respectively. The claimant also met the transaction banking team of the respondent, who advised the company through him to initiate the transaction through either the Business Clients (BC) Department or the Commercial Clients (CC) Department. j. However, upon approaching the BC team, they advised him that the deal was good but very big for the department in view of the business segmentation and approved limit. They further noted that they could not consider the vacant land as collateral in line with the respondent's policy. k. Following a suggestion that he seek an exceptional approval from the respondent's Chief Executive Officer (CEO), the claimant met and briefed the CEO on the transaction. The CEO supported the transaction and promised to support the adoption of land as the security, on condition that the same was to be the only obstacle to the loan approval. Consequently, the claimant proceeded to hold discussions with the CC department, which requested additional time to consult further. l. On or around 12. 10. 2015, the respondent's treasury department forwarded to the claimant an enquiry received from Eco-bank Ghana on the status of the transaction. In response, the claimant confirmed via email that the respondent was reviewing the deal and that a way forward would be communicated in a week. Notably, Eco-bank Ghana was Grand Impex's agent's bank. m. On or around 16. 10. 2015, the respondent advised the claimant that the company's loan request had been declined due to what the respondent considered to be financing a finance cost; as by doing so, the respondent would be supporting Citibank's course and not their own. n. The claimant subsequently emailed back the Eco-bank Ghana team, informing them of the decision and copying the relevant officials of the respondent. He also informed his fellow directors at the company of the respondent's decision, thus closing the transaction. o. On the same 16. 10. 2015, officials of the respondent summoned the claimant to record a statement despite him acting per the rules and Code of Conduct of the respondent. p. Later in December 2015, the claimant was on leave of absence from the office when he learnt from his junior colleagues that the respondent had suspended him from employment for allegedly issuing a guarantee to a company that he had an interest in. He also learnt that the respondent had circulated the letter he had written, thereby deliberately and negatively

influencing the thinking of the respondent's employees that his suspension was justified, and projecting him as a fraudulent, greedy and dishonest individual.q.The respondent's aforementioned acts were in bad faith, malicious and contrary to its own Code of Conduct on keeping such matters confidential. Further, the respondent had held him culpable before taking him through a disciplinary procedure and thus rendered him incapable of resuming employment under the circumstances.r.After the claimant resumed work on 05. 01. 2016 from his leave, he was informed that his line manager had blocked and restricted his system rights. That at the close of business the following day, on 06. 01. 2016, he was issued with two letters, one inviting him to a disciplinary hearing on 11. 01. 2016, and the other a suspension letter. He had been indicted for allegedly issuing an undertaking to the company contrary to the respondent's Code of Conduct.s.The claimant offered to resign from employment at the respondent, as its actions had created an environment that rendered him unable to continue working in its organization. Whereas he was requested to collect the resignation acceptance letter the following day on 15. 01. 2016, he arrived to find a whole team of the respondent's officers waiting for him to attend a disciplinary hearing session. He declined to attend but was coerced into sitting in for the hearing contrary to provisions of the employment contract on termination. The respondent then issued him a resignation-decline letter at the end of the hearing, which he declined to sign.t.The respondent terminated the claimant's services and subsequently upheld the decision on appeal. The reason for dismissal was issuing a letter to the company without authority, hence acting in conflict of interest since he was a director of the company.u.The termination of his employment was wrongful or unlawful, unfair and malicious as extensively particularised in the amended statement of claim.v.He was unfairly dismissed at the age of 40 years, at the height of his career, and could have earned a minimum of Kshs. 132 million as salary until retirement at the age of 60 years.

3. The respondent's statement of response is dated 09. 07. 2018 and filed through Obura Mbeche & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs to the respondent. Its case was as follows:i.The respondent employed the claimant with effect from 15. 11. 2013 as a Regional Branch Manager, Grade 5. The claimant was to conduct his promotion of the respondent's business within the confines of his specific responsibilities while observing strict ethical values expected of a bank employee, as set out in his letter of appointment and the respondent group's Code of Conduct.ii.Events leading to the termination of the claimant's employment began sometime in October 2015 when the respondent learnt that he could have acted against its policy by sending a signed letter dated 06. 10. 2015 to an entity that was yet to become a client of the bank, giving commitments on behalf of the bank.iii.Arising from the commitment the claimant made on 07. 10. 2015, United Bank of Africa Cameroon presented a copy of the letter the claimant issued to the respondent's sister Bank in Ghana, to ascertain its authenticity. In turn, the Ghanaian Bank forwarded a copy back to the respondent for verification.iv.Consequently, the respondent's management instructed its investigation department to look into the matter, as the said letter had been issued to a suspicious entity, it was not one of the duties of

the claimant to issue, and there was no such customer in the bank's records.v.The respondent's investigation department analysed the veracity of the issues raised in the claimant's statement recorded on 16. 10. 2015 by its officers and came up with a Report dated 22. 12. 2015. Their findings included that the claimant had breached the respondent group's Code of Conduct by failing to declare he was a director/shareholder in the subject company in his annual declaration on Other Business Interests (OBI), being the company in which he was allegedly a director and whose interests the bank was to service.vi.The claimant was suspended from employment on 06. 01. 2016 pending the finalization of the investigation process and conduct of the disciplinary process.vii.When the claimant failed to appear for the disciplinary hearing scheduled for 11. 01. 2016 and instead submitted a sick-off sheet granting him 3 days off duty, the hearing was rescheduled to 15. 01. 2016. He attempted to frustrate the disciplinary process by handing in a 30-day resignation notice on 14. 01. 2016, but the respondent advised him to attend the hearing.viii.On 15. 01. 2016, the claimant attended the disciplinary hearing and confirmed having opted not to be accompanied by anybody. He made several admissions at the hearing, including conceding that he should not have written the letter dated 06. 10. 2015, having been an interested party in the intended transaction. He also pleaded to be allowed to resign from employment.ix.The claimant's services were terminated by a letter dated 21. 01. 2016, and he was reminded of the right to appeal against the termination of his employment. His appeal dated 21. 01. 2016 was heard by another senior management team of the respondent, and rejection of the same was communicated to him.x.The termination of the claimant's services was justified and the respondent observed due process before effecting the termination. As such, the claimant is not entitled to the reliefs sought in the claim.

4. The parties tendered their evidence before the Court and thereafter filed their respective submissions. The Court has considered the material on record and returns as follows.
5. To answer the 1st issue for determination the Court returns that there is no dispute that parties were in a contract of service.
6. To answer the 2nd issue the Court returns that the contract of service was terminated by the respondent's letter of termination dated 21. 01. 2016 on account that the claimant wrote a letter to Wayne Bells Group of Companies indicating that the respondent would be processing its request for the of an arrangement fee of Euros 500,00 for a stand by a letter of credit (SBLC). Further that at the disciplinary hearing on 15. 01. 2016 it was established that the claimant had written the letter without proper authority in issuing the letter, there was conflict of interest as the claimant had interest in the Wayne Bells Group of Companies and the Claimant had also issued a letter to a non-customer of the Bank, all of which were against the respondent's Code of Conduct. Thus the contract of employment was terminated effective 21. 01. 2016, the date of the letter of termination. The claimant was to be paid one month in lieu of notice; salary up to 22. 01. 2016; and leave days earned but not taken. He could appeal in 7 days of receipt of the letter. He appealed by the letter dated 21. 01. 2016. The claimant wrote in the appeal letter, in part, thus, " I make reference to the above letter

(the termination letter of 21. 01. 2016) that was issued to me this evening being the culmination of investigations and subsequent disciplinary hearing, which indeed confirmed that I was culpable of impropriety having flouted business procedures. Accordingly, I take full responsibility and accountability of actions. Nevertheless, this is a position that I deeply and sincerely regret. Having had an industrious banking career spanning 20 years, the last 2 being at SCB, I find the decision to terminate my services quite harsh and therefore plead for its repealing and instead request for your acceptance of my resignation for the following reasons: 1. The omission that I made were not in any way deliberate and/or intended to injure the bank, but were business risks calculated at benefiting it. 2. My intentions as always, were noble, genuine and done in utmost good faith. 3. My character, integrity and my undertakings have always been beyond reproach for the entire banking career which can be corroborated by the volume of business that I have personally been able to bring onboard. I am optimistic that I shall receive a favourable response to this request." The respondent considered the appeal and by the letter dated 23. 02. 2016 conveyed that the Appeal Hearing Panel had reached the decision to uphold the decision to terminate the claimant from the bank services and upheld the reasons for the termination.

7. To answer the 3rd issue, the Court returns that the claimant was accorded due process of a notice and a hearing per section 41 of the Employment Act, 2007. The claimant has not established a procedural defect or irregularity in the procedure the respondent adopted to terminate the employment. He was informed particulars of the allegations as was levelled against him, he responded, he attended disciplinary hearing, he appealed and was informed all the outcomes and decisions made in the process. The submissions made for the respondent are upheld in that regard.
8. To answer the 4th issue the Court returns that the respondent has established that the reasons for termination were valid as genuine per section 43 of the Act and further that they were fair relating to the claimant's conduct and the respondent's operational requirements as provided for in section 45 of the Act. The claimant's letter of appeal confirms that the claimant admitted the culpability only that he thought the imposed termination was excessive. He did not dispute the reasons for termination but pleaded for lenience that the parties separate by the respondent accepting his request to resign but which was declined. It was submitted for the claimant that the allegations levelled changed at the hearing. But it appears to the Court that such line of submissions is purely an afterthought. Throughout the disciplinary hearing and process, the evidence is that the claimant knew the case that confronted him, he answered to it, and the respondent imposed a termination. In his appeal the claimant did not allege change in the allegations against him.
9. The the Court finds that the respondent had given the claimant a soft landing of termination with notice pay despite the established culpability. In that sense, it appears to the Court that measuring the imposed termination with the notice pay against the culpability, it cannot be found that that the termination was harsh or excessive punishment in the circumstances of the case. The respondent has passed the test against the principle of soft landing in Malachi

Ochieng Pire – Versus- Rift Valley Agencies, Industrial Cause No. 22 of 2013 at Nakuru [2013]eKLR where in the judgment it was stated thus, “The court has considered the submission and evidence of a soft landing to conceal the alleged poor performance and finds that it is not open for the employer to waive its authority to initiate disciplinary action in appropriate cases and in event of such waiver, nothing stops the employee from enforcing the entitlement to fair reason and fair procedure in removal or termination. The court holds that where the employer is desirous of waiving the disciplinary process or due process in event of poor performance, misconduct or ill health for whatever grounds, it is necessary to enter into an agreement such as a valid discharge from any future liability to the employee in view of the otherwise friendly or softer or lenient termination. Whereas, such soft landing is open to employer’s discretion, it is the court’s considered view that in an open and civilized society, employers hold integrity obligation to convey truthfully about the service record of their employees and swiftly swinging the allegations of poor performance or misconduct never raised at or before the termination largely serves to demonstrate that the employer has failed on the integrity test thereby tilting the benefit of doubt in favour of the employee in determining the genuine cause of the termination.”

10. Again, it is that in the instant case the respondent took the claimant through the disciplinary process then thereafter, in view of culpability, imposed the termination with notice pay. The respondent thereby defeated the employer’s failure as was found in Peter Kimanthi Mbuvi v Mombasa Water Supply and Sanitation Company Limited [2022] eKLR thus, “The Court returns that in the instant case it was not open for the respondent to conceal the alleged poor performance by invoking the cited termination clause 8 by paying in lieu of notice - but the respondent ought to have subjected the claimant upon a disciplinary process and in event of culpability, considered the soft landing as appropriate. Thus, the termination by payment in lieu of notice is found to have been improperly invoked on account of soft landing as was urged for the respondent.”
11. While making the findings, the Court has considered the claimant’s resignation notice which was lapsing on 13. 02. 2016. The Court returns that by subjecting himself to the disciplinary process all the way to the appeal stage, the claimant thereby effectively waived the decision to resign. The Court has found that termination was by the letter of termination.
12. The 5th issue is on remedies. The Court returns as follows:
 - a. Notice pay was premised on a finding of unfair termination. It appears in any event the termination as imposed was with notice pay. The claim and prayer will fail.
 - b. The unfair termination and attached claim for compensation are found unjustified in view that there was no unfair termination at all.
 - c. The claimant was a member of NSSF and the basis of service pay as claimed are not established at all.
 - d. As submitted for the respondent bonus was gratuitous and discretionary to the respondent. The same is not justified as claimed.
 - e. As submitted for the respondent, upon termination the payments and benefits under the contract of service lapsed. The claimant has not established the basis for claim for payments after termination and until age of 60 years, the presumed age the claimant would have retired. Similarly, no case was made out

for award of exemplary damages.f.The claimant is entitled to a certificate of service per section 51 of the Act and in that consideration, each party will bear own costs of the suit.In conclusion, judgment is hereby entered for parties and the suit determined with orders:a.The respondent to deliver the certificate of service by 01. 07. 2025. b.Each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 5TH JUNE, 2025. BYRAM ONGAYA, PRINCIPAL JUDGE

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