

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 205 OF 2016

BETWEEN

ANNE SARAH ADHIAMBO
CLAIMANT

VERSUS

BANK OF AFRICA KENYA LIMITED
RESPONDENT

Rika J
Court Assistant: Emmanuel Kiprorno

Claimant in person.

Iseme, Kamau & Maema Advocates for the Respondent

JUDGMENT

1. Hearing closed in this Claim, on 17th July 2024, after the witness for the Respondent, Head of Human Resources testified.
2. Thereafter, Parties filed their closing submissions, but also indicated to the Court, that they were negotiating an out-of-court settlement.

3. It was not until 6th October 2025 that they informed the Court that negotiation had collapsed, leaving it to the Court to determine the Claim.
4. The Claim was mentioned at Nairobi E&LRC before Hon. Justice Christine Baari, who directed that the Claim was heard and closed before the undersigned Judge, who has since been transferred to E&LRC Nakuru.
5. The file was forwarded to the E&LRC Nakuru on 3rd November 2025. It was last mentioned before the undersigned Judge, on 6th November 2025, when it was reserved for Judgment today.

The Claim.

6. The initial Statement of Claim is dated 5th February 2016. It was amended severally. It was last amended through the Further Amended Statement of Claim, dated 3rd November 2022.
7. The Claimant states that she was employed by the Respondent on 7th January 2013.
8. Her contract was terminated unfairly and unlawfully by the Respondent, on 2nd July 2015. At the time of termination, she was the Branch Service Manager, earning a monthly gross salary of Kshs. 162,750.
9. She was not given any reason justifying termination. Her contract was terminated orally, on 2nd July 2015. She was informed that she would be called later in the week, and issued a letter of termination.

10. It was only upon her demand, that she was called by the Respondent around 9th July 2015, and issued a termination letter.
11. The letter dated 9th July 2015 did not give reasons for the decision. Termination was contrary to Sections 43, 45 and 46 of the Employment Act.
12. The letter alleged that the Claimant was engaged in gross misconduct, yet she had worked diligently, and was instrumental in achieving an increase in the Respondent's revenues.
13. She was not accorded a hearing on 2nd July 2015 or 9th July 2015, contrary to Sections 43, 45 and 46 of the Employment Act and Article 50 of the Constitution, and contrary to the principles of natural justice.
14. She states that the decision by the Respondent, was malicious and unjustified. Her image was damaged. She was unable to secure alternative employment. She suffered mental anguish. She is unable to provide for herself and family.
15. The Claimant states that she had an outstanding loan at the time of termination. She fell into arrears, and was listed with Credit Reference Bureau [CRB]. She has been subjected to a lower quality of life.
16. She prays for: -

a. Equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 1,953, 000.

b. Equivalent of 7 years' salary for loss of career and unfair labour practices at Kshs. 13,671,000.

Total...Kshs. 15,624,000.

c. Damages for refusal by the Respondent to issue the Claimant with a Certificate of Service.

d. General damages for mental anguish, suffering, and distress and violation of the Claimant's constitutional rights under Articles 28 and 47.

e. The Respondent is compelled to withdraw the CRB listing against the Claimant, on the basis of its unfair and unlawful termination.

f. The Respondent is compelled to issue the Claimant an apology letter and a recommendation letter.

g. Costs.

h. Interest.

i. Any other suitable relief.

17. The Respondent filed a Statement of Response and Counterclaim, on 5th June 2018.
18. It is conceded that the Respondent employed the Claimant as Branch Manager, Ongata Rongai, on 13th January 2013.
19. Her employment was regulated under the contract of employment, job description, compliance manual and the Respondent's code of conduct and ethics.
20. It is denied that the Respondent orally terminated the Claimant's contract. Following routine inspection and verification of staff records, discrepancies were discovered with regard to the Claimant's certificate of service from her previous Employer, Consolidated Bank Limited. Her curriculum vitae [CV] had discrepancies. The discrepancies were: -
 - a. The CV submitted before employment in November 2012, stated that the Claimant's last position at Consolidated Bank, as at November 2012, was Branch Operations Manager. This is different from her CV exhibited in Court.
 - b. The certificate of service issued by Consolidated Bank to the Claimant, indicated her last position was Operations Officer.

- c. Whereas the Claimant acted as an Operations Manager, she misrepresented to the Respondent during her interview, that she was a substantive Branch Operations Manager.
- 21. She was invited for disciplinary hearing, which was held on 7th May 2015. The minutes of the disciplinary hearing are exhibited. The Claimant conceded that she had been acting as an Operations Manager at her previous Employer.
- 22. There was a follow-up disciplinary hearing on 12th June 2015, the Claimant having lied to the disciplinary panel about her CV, in the meeting of 7th May 2015.
- 23. Her integrity as a Bank Employee, was put into question. She procured employment and a substantive position with the Respondent, irregularly.
- 24. An Operations Officer reports to a Manager and supervises staff at entry level.
- 25. An Operations Manager reports to the Head of Department, leads and supervises Officers, and other staff at entry levels.
- 26. The positions are different.
- 27. A decision was reached to summarily dismiss the Claimant, on 8th July 2015, and communicated in the letter dated 9th July 2015. She was not orally dismissed.

28. She was paid notice and accrued leave, in accordance with the letter of summary dismissal.
29. Her prayers are not merited.
30. The Respondent states that the Claimant was advanced a mortgage facility of Kshs. 2,850,000; personal loan of Kshs. 1,098,597; and personal loan of Kshs. 400,000.
31. The loan balance stood at Kshs. 1,921,279 as at 2nd August 2017.
32. With the accrued interest, the loan balance was reworked in the Respondent's amended Counterclaim, to a staggering Kshs. 6,359,813.
33. The Respondent counterclaims the sum of Kshs. 6,359,813.
34. The Respondent urges the Court to dismiss the Claim and allow the Counterclaim, with costs.
35. The Claimant filed a Reply to the Statement of Response, Response to the Counterclaim, dated 12th November 2021.
36. She states that the CV she presented to the Respondent indicated that she was Acting Operations Manager, and not the substantive Operations Manager at Consolidated Bank.

37. Upon employment, she supplied the Respondent a certificate of service issued by Consolidated Bank, showing that she was employed as an Operations Officer.
38. The Respondent employed the Claimant not because of the previous job titles, but because she was competent.
39. The Claimant states that if the Respondent conducted a hearing, it was not conducted in accordance with the rules of natural justice.
40. While she denies each and every allegation in the Counterclaim, she pleads that she faced financial challenges in paying her loan after termination. She concedes that the only balance at the time of termination was Kshs. 2,532,042. The Respondent auctioned her property for a sum of Kshs 2,200,000.
41. Alternatively, she pleads that her outstanding loan as at 2nd August 2017 was Kshs. 1,921,279, which was a nonperforming loan, and the Respondent cannot claim the staggering loan balance at Kshs. 6,359,813, under the *in duplum* rule.
42. The Claimant urges the Court to allow the Claim, and dismiss the Counterclaim with costs.
43. The Claimant gave evidence, and rested her case on 9th November 2023. The Respondent's Human Resource Manager Agnes Mwanzau, as stated

at the outset, gave evidence for the Respondent on 17th July 2024, closing the hearing.

44. The Claimant restated her employment history with the Respondent, relying on her witness statement and documents on record [1-15] in her evidence-in -chief.
45. She applied for the job with the Respondent twice, on both occasions through e-mail. She was after being employed, told that her documents had discrepancies. She was taken through a disciplinary hearing on 6th May 2015. Certificate of Service issued by her former Employer, was said to have discrepancies with her other documents. She explained the discrepancies at the hearing.
46. She explained that she was Branch Operations Officer, at the time she made her application. She was Acting Branch Operations Manager, for 5 months.
47. She was interviewed in October 2012 and informed by the Respondent, that she had passed the interview, in November 2012. She reported on 7th January 2013. The disciplinary committee concluded that she had lied on recruitment, and would not have secured the position. She signed the minutes of the disciplinary committee on 8th June 2016. She was at the time on sick leave, suffering high blood pressure. She was pressurised to sign the minutes, while sick.

48. She was called again on 12th June 2016. She was told that the Respondent had followed up her issue with her former Employer, and confirmed that she had lied. She was informed that her contract was being terminated.
49. He received termination letter dated 9th July 2015.
50. She lost her career. She was not able to secure alternative employment after dismissal. She was prejudiced by the allegation that she doctored her papers. She was unable to meet her loan obligation. She was listed at the CRB.
51. Cross-examined, she stated that she worked in the banking industry for 10 years. Integrity is crucial in the industry. Honesty is critical.
52. She was Branch Operations Officer at Consolidated Bank. She ceased acting as Branch Operations Manager, in February 2012. She interviewed for the job at the Respondent, in October 2012. She had ceased acting as Branch Operations Manager, at the time of her interview.
53. Her resume, stated that she was Branch Operations Manager in October 2012. She presented the resume to the Respondent on 3rd December 2012, when she secured the job.
54. A Manager is senior to an Officer. She was being recruited to the position of Customer Service Manager. She did not deliberately lie to the Respondent, that she was a Manager, as at December 2012.

55. She shared her resume with the Respondent on 13th December 2012. She said she was acting Operations Manager. She had reverted to Operations Officer, in February 2012. She did not clarify to the Respondent, that she was no longer acting as Operations Manager when interviewed.
56. The Respondent issued her a contract of employment on 6th November 2012, which she executed, on 3rd December 2012. The offer was based on the documents she submitted in her application.
57. She signed a declaration form the same date. She declared that the information supplied was correct, and that if the information was found to be false, action could be taken against her under the Penal Code , the Employment Act, the Human Resource Manual, and the Contract.
58. The Claimant told the Court that she failed to disclose that there was discrepancy in her certificate of service from her former Employer, through error.
59. She confirmed that she was issued notice for disciplinary hearing. She was presented the charges. She was advised on her right to be accompanied at the hearing. She did not request for more time to prepare for the hearing. She explained to the disciplinary committee, that discrepancy was as a result of a genuine error.

60. She signed the last minutes of the disciplinary hearing. She conceded that she misrepresented her documents out of ignorance.
61. She was paid notice, annual leave and salary for 9 days worked.
62. She seeks compensation for loss of career. She was not aware of adverse reports made about her by the Respondent, to potential Employers. She was issued her certificate of service by the Respondent. It does not contain adverse information. She changed her career from banking, to life coaching.
63. She conceded that she had taken various loans with the Respondent, none of which she had cleared, by the time she was dismissed. Banks ordinarily list loan defaulters with CRB.
64. She is aware that the Respondent is counterclaiming about 6 million in unrepaid loan. She acknowledges she owed about Kshs. 1 million. The Respondent sold her property to recover the loan. She does not know if the amount recovered after sale, was deducted from her loan balance. She knows that the loan is attracting interest.
65. Redirected, she reiterated that she acted as Branch Operations Manager for months. She was ill at the time she signed the minutes, and felt under pressure. She did not lie, but made a genuine mistake. Her position as a life coach, does not earn her consistent income, as earned at the Respondent.

66. Head of Human Resource, Agnes Mwanzau relied on her witness statement, original and supplementary documents filed by the Respondent [1-10], in her evidence-in-chief.
67. There were discrepancies in the Claimant's job application. She told the Respondent that she held the position of Branch Operations Manager at her previous Employer. She was a Branch Operations Officer. The Respondent was looking for a Manager. Banking sector operates on trust and integrity. It involves clients' funds. Managers and Officers are different roles.
68. The Claimant had secured mortgage and loan facilities with the Respondent. She had not cleared her loan obligations at the time of dismissal. The mortgage was secured through her property at Thika. The personal loans were not secured. The counterclaim in the sum of approximately Kshs. 6.3 million, takes into account what was recovered after sale of her property.
69. Cross-examined, Agnes told the Court that the Claimant was employed before her. She completed probation successfully. Agnes did not know if the Respondent verified her documents, on employment. She was posted to Respondent's Rongai Branch, and worked from 2013 to 2015. Agnes did not have any warnings, or evidence of poor performance, against the Claimant, while she worked as Operations Manager at Rongai.

70. Agnes did not have a letter to show cause, issued to the Claimant before the disciplinary hearing. The hearing notice did not specify discrepancies.
71. Hearing took place on 6th May 2015, the same date notice of the hearing issued. Notice was not sufficient. She presented medical records to show that she was unwell, at the time she signed the minutes on 8th June 2015. She was recalled and heard. She signed the second minutes on 12th June 2015. She was unwell. There were no other integrity issues raised by the Respondent.
72. The Respondent sold her property in 2020, and recovered about Kshs. 2.2 million. It is accounted for in the counterclaim. Agnes did not have the valuation report on the Claimant's property. She was not aware that it was valued at about Kshs. 4.4 million. The Respondent counterclaims principal sum and interest.
73. Redirected, Agnes told the Court that the Claimant signed a declaration form, indicating that all the information she supplied to the Respondent was correct, and that if found out to be incorrect, legal action could be taken against her. Hearing was conducted twice, over a month apart. She had adequate notice of the hearing. Performance was not the issue. In issue was trust and integrity. Her loan balance on termination was Kshs. 3.9 million. Her terminal dues at Kshs. 238,000, was not enough to offset the loan. She did not challenge sale of her property.
74. The issues are: whether the Claimant's contract was terminated by the Respondent following a fair procedure; whether termination was based

on valid reason; whether she merits the prayers sought; whether the Counterclaim has been established; and who should meet the costs of the Claim and the Counterclaim.

The Court Finds: -

75. The Claimant was employed by the Respondent as Branch Customer Service Manager, on 7th January 2013. She earned a gross monthly salary of Kshs. 162,750.
76. Her contract was terminated by the Respondent with effect from 8th July 2015.
77. She was advised by the Respondent that following review of staff documentation, there was discrepancy in the information obtained in her resume and certificate of service. The documents indicated that she served her previous Employer, Consolidated Bank Limited, as Bank Operations Manager, while she worked as Branch Operations Officer.
78. She was applying to the Respondent for the position of Branch Customer Service Manager.
79. **Procedure.** Although she was not issued a letter to show cause, and although she was given a very short notice to the disciplinary hearing held on 7th May 2015, the Claimant was granted a second hearing on 12th June 2015.

80. The Court does not think that she was therefore prejudiced for lack of a letter to show cause, or the 1-day notice issued to her on 6th May 2015, to attend hearing on 7th May 2015.
81. Any mischief occasioned on 6th May 2015 and 7th May 2015, was cured by the second round of disciplinary hearing. No adverse decision was taken against the Claimant, until the second hearing.
82. She was aware of the allegations against her, from 6th May 2015, right through to 12th June 2015, when she was heard a second time.
83. She confirmed to the Court under cross-examination that she was notified of the disciplinary hearings. She was advised on her right to be accompanied to the hearing. She did not request for additional time or details, to prepare for the hearings. She signed the minutes, and although she stated before the Court that she was unwell when she signed, there was no evidence that she did not sign voluntarily. She did not dispute any content in the minutes of the 2 meetings.
84. She was issued the letter of termination dated 9th July 2015, communicating the decision to terminate her contract. The reasons were stated in detail.
85. She was offered 1 month salary in lieu of notice at Kshs. 162,750; 6 days of annual leave at Kshs. 27,667; and 9 days' salary for the month of July 2015 at Kshs. 48,156- total Kshs. 238,574.

86. She was advised that as of 30th July 2015, she owed the Respondent a personal loan [1] at Kshs. 890,977.53; personal loan [2] at Kshs. 377,731; and house loan at Kshs. 2,706,820 – total Kshs. 3,975, 529. 47.
87. Procedure does not seem to the Court, to have been in fundamental departure, from the standards of fairness imposed by Sections 41 and 45 of the Employment Act. The Claimant was granted a fair hearing, in conformance to the minimum statutory standards of procedural fairness.
88. **Reason.** From the evidence adduced by both Parties, it is clear that the Respondent Bank, had valid reason to terminate the Claimant's contract.
89. The Claimant confirmed that she was employed by the Respondent as Branch Customer Service Manager, Ongata Rongai Branch, on 7th January 2013.
90. It is the circumstances leading to her employment, that resulted in termination of her contract.
91. The Respondent was looking for a Manager. The Claimant was an Operations Officer, working for Consolidated Bank, at the time she applied for the job._
92. She had been an acting Operations Manager, a role which she ceased to exercise, on 15th February 2012.

93. At the time she was interviewed, 6 months later, in October 2012, she had reverted to her role as Operations Officer at Consolidated Bank.
94. But she presented herself to the Respondent as having been Branch Operations Manager at Consolidated Bank, at the time of the interview.
95. Her resume supplied to the Respondent, indicated that her last position with the previous Employer, was Branch Operations Manager.
96. She conceded that a Manager is a senior role, and that the Respondent was looking for a Customer Service Manager. She stated that she did not clarify in her interview, that she had ceased to act as Branch Operations Manager at her previous workplace. She told the Court that she made a genuine error, which the Court does not think, is a persuasive explanation.
97. To compound her offence, the Claimant signed a declaration form after she secured a contract of employment, declaring the documents and information supplied to the Respondent, to be correct.
98. She declared that false information, such as she supplied to the Respondent, could lead to actions against her, primarily under the Employment Act, but also under the Penal Code, the Human Resource Manual and under her contract. Her explanation that she did not lie, but that she made a genuine mistake, is unacceptable, in light of this voluntarily executed declaration.

99. She signed a code of conduct and ethics on 3rd December 2012, committing to uphold honesty and professionalism, in her dealings

100. The Claimant was clearly in breach of her obligation of trust and confidence, in an industry where these values are the cornerstones of an employer-employee relationship. She procured a managerial position with the Respondent, by false pretences.

101. There was valid reason, justifying termination of the Claimant's contract, under Section 43 and 45 of the Employment Act.

102. The Claimant told the Court that she was issued her certificate of service. Employers have no obligation to issue former Employees letters of recommendation or apology. There were no adverse reports communicated by the Respondent to potential Employers, to adversely affect the Claimant's employability. She told the Court that she is employed in life coaching. Her prayers for general damages under various heads, are declined.

103. The Claim has no foundation and is declined in its entirety.

104. **Counterclaim.** The Claimant conceded that she had taken various loans with the Respondent, and that none had been fully repaid by the time of termination. She conceded that Banks normally list defaulters with the CRB.

105. The amount counterclaimed by the Respondent, as of August 2017, through the Statement of Response and Counterclaim, was Kshs. 1,921,279.
106. The same pleadings state that the mortgage of Kshs. 2,850,000 was secured by a charge over the Claimant's property in Thika, Thika Municipality Block 20/33. Contrary to the Respondent's assertion that the personal loans were unsecured, the Respondent pleads at paragraph 23 of the Counterclaim, that these personal loans were secured through the Claimant's salary and terminal benefits.
107. The total outstanding amount was counterclaimed at Kshs. 1,921, 279 as at 2nd August 2017.
108. The Respondent subsequently issued the Claimant a notification of sale 8 months later, dated 12th April 2018.
109. The notification indicates that amount claimed by the Respondent, from a counterclaim of Kshs. 1,921,279 as of August 2017, was now Kshs. 5,964, 057, barely 6 months later as of 27th February 2018.
110. In preparation of the sale, the Respondent carried out valuation of the Claimant's property. The property was given an open market value of Kshs. 4,500,000, and forced sale value of Kshs. 3,375,000.

111. Through a consent recorded between the Parties dated 30th September 2019, it was agreed that the Claimant would herself identify a purchaser within 90 days, in default, the Respondent to proceed with the auction.
112. The Claimant did not get a purchaser, and the Respondent proceeded to sell her property through action, at Kshs. 2.2 million, a pittance, and way below the valuation stated by the Valuer appointed by the Respondent.
113. One would have expected the loan obligation to have significantly reduced upon recovery of Kshs. 2.2 million through auction, from the amount counterclaimed as at August 2017, at Kshs. 1,921,279. The deficiency balance after the auction, cannot have resulted in the amount counterclaimed, even taking into account accrued interest, at the punitive commercial rates.
114. How is it that 3 years later, and after recovery of Kshs. 2.2 million, the outstanding loan was Kshs. 6,359,813, as of 17th September 2020, more than triple the sum counterclaimed, of Kshs.1,921, 279, in August 2017?
115. The Claimant lost her job, her salary and terminal dues, as well as her property. What more must she lose, to be deemed to have satisfied her obligation to the Respondent?
116. The sum counterclaimed has not been specifically proved, and appears in violation of the *in duplum* rule under Section 44A [1] and [2] of the Banking Act Cap 488 the Laws of Kenya, as submitted by the Claimant. At

worst, it is usurious. A line must be drawn between legitimate banking, and loan sharking.

117. The sum was Kshs. 2,532,042 initially. As of August 2017, it was down to Kshs. 1,921,279. There was recovery of Kshs. 2.2 million subsequently. The Counterclaim at the staggering amount of Kshs. 6,359, 813 is a specific prayer, which needed to be specifically established, through clear loan records, and oral evidence adduced by Respondent's Head of Human Resources, Agnes Mwanzau. The Respondent needed to show to the Court that its Counterclaim, is consistent with banking law. It has not been shown

118. The Counterclaim is rejected.

IN SUM, IT IS ORDERED: -

- a. *The Claim is rejected.***
- b. *The Counterclaim is rejected.***
- c. *No order on the costs.***

Dated, signed and delivered electronically at Nairobi, pursuant to Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 19th day of December 2025.

James Rika
Judge

A handwritten signature in blue ink, appearing to read "James Rika", is enclosed in a blue oval.