



**Saleh v Cooperative Bank of Kenya Limited (Employment and Labour Relations Cause E926 of 2021) [2023] KEELRC 3396 (KLR) (21 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3396 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E926 OF 2021  
AN MWAURE, J  
DECEMBER 21, 2023**

**BETWEEN**

**LINDA ANYONA SALEH ..... CLAIMANT**

**AND**

**COOPERATIVE BANK OF KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed a Memorandum of Claim dated 9<sup>th</sup> November 2021.

**Claimant's Case**

2. The Claimant avers that she was employed by the Respondent on 30<sup>th</sup> January 2017 as an Agent Banker on a contract basis until 22<sup>nd</sup> May 2019 when she was promoted and moved to a permanent and pensionable basis.
3. The Claimant avers that she was issued with a Show Cause Letter dated 9<sup>th</sup> September 2021 accompanied with evidence substantiating the Respondent's allegations. She denied the allegations vide her response on 13<sup>th</sup> September 2021.
4. The Claimant avers that on 22<sup>nd</sup> September 2021, she received a letter from the Respondent inviting her to a staff disciplinary hearing panel slated for 27<sup>th</sup> September 2021 giving her a short time to prepare her defence.
5. The Claimant avers that she attended the disciplinary hearing on 27<sup>th</sup> September 2021 but was not satisfied with the procedure and outcome of the hearing as she was not issued with evidence or statements of her alleged accusers relied upon by the Respondent.



6. The Claimant avers that she lodged an appeal against the panel's decision to summarily dismiss her employment via a letter dated 15<sup>th</sup> October 2021. However, she was never notified of receipt of the appeal or invited for a hearing.
7. The Claimant avers that on 3<sup>rd</sup> November 2021, she visited the Respondent's office to inquire on the status of her appeal and was given a letter dated 22<sup>nd</sup> October 2021 stating that her appeal had been dismissed contrary to the provisions of the law.
8. The Claimant avers that the Respondent dismissed her appeal without hearing despite complaining she was not given enough time and evidence to prepare her defence nor given time to examine her accusers which amounted to wrongful and unfair termination.

### **Respondent's Case**

9. In opposition to the Claim, the Respondent filed its memorandum of response dated 15<sup>th</sup> April 2022.
10. The Respondent avers that the Claimant was employed as a commission based Agent Banker on 27<sup>th</sup> January 2017 and posted to its Tom Mboya Branch upon completion of her induction training on 7<sup>th</sup> February 2017.
11. The Respondent avers that the Claimant's employment was confirmed on 28<sup>th</sup> January 2019 for a contractual period of 2 years.
12. The Respondent avers that on 4<sup>th</sup> April 2019, the Claimant signed a declaration of secrecy pursuant to which she undertook not to: disclose confidential information that she would have access to by virtue of her employment; and use confidential information for her own benefit or the benefit of a third party in a manner which could be detrimental to the Respondent.
13. The Respondent avers that the Claimant also signed the Respondent's Business Code of Conduct which she undertook to protect the confidential and proprietary information of the Bank.
14. The Respondent avers that on 19<sup>th</sup> May 2019, the Claimant's employment tenure was changed to permanent and pensionable terms with effect from 22<sup>nd</sup> May 2021. She was confirmed into the Respondent's contract terms of employment upon completion of probation on 22<sup>nd</sup> November 2019.
15. The Respondent avers that investigations conducted by its Security Department revealed that the Claimant committed a breach of security and confidentiality, on 1<sup>st</sup> February 2021, by unlawfully disclosing the account information for account no. 01136129215100 held by Mbweli Holdings Limited ("the Mbweli Account"), to a third party
16. The Respondent avers that a review of CCTV footage and its Core Banking System commonly known as BFUB (Bank Fusion Universal Banking) logs established that the following transpired on 1<sup>st</sup> February 2021:
  - a. at 12.14 p.m., a lady suspected to be Eucabeth Nyambeki approached the Claimant at her workstation;
  - b. after some dialogue with the lady, the Claimant got up and moved to her colleague Louice Omondi's workstation, where she viewed the details of the Mbweli Account;
  - c. the BFUB logs established that the Mbweli Account was accessed using Louice Omondi's user "lomondi" at around 12.14 p.m.;



- d. the CCTV footage established that Louice Omondi was not present at his workstation when the Mbweli Account was accessed;
  - e. after viewing the Mbweli Account, the Claimant called and instructed her colleague, one George Metet, a Teller, to issue an account mini statement for the Mbweli Account to Eucabeth Nyambeki;
  - f. at all material times neither the Customer nor the authorized signatories of Mbweli Holdings Ltd were present in the Banking Hall to warrant access to their account or issuance of a Mini statement.
17. The Respondent avers that the holders of the Mbweli Account later complained that information wrongfully obtained from the Bank had been used in a dispute between them and the Eucabeth Nyambeki, which information Eucabeth Nyambeki would not have been in possession of, if it had not been illegally obtained from the Bank.
18. The Respondent avers that the Claimant's conduct contravened the provisions of the Respondent's Staff Manual, Declaration of Secrecy, Code of Conduct & Ethics which precluded the Claimant from disclosing confidential and proprietary information.
19. The Respondent avers that on 9<sup>th</sup> September 2021, the Claimant was issued with a Show Cause Letter requiring her to explain why disciplinary action should not be taken against her for contravening the aforesaid provisions.
20. The Respondent avers that the Claimant responded to the show cause letter denying the allegations on 13<sup>th</sup> September 2021.
21. The Respondent avers that it invited the Claimant to a disciplinary hearing vide a letter dated 22<sup>nd</sup> September 2021 which informed the Claimant to tender documentary evidence in support of her case; and of her right to be accompanied by a member of staff or a central staff union official to the disciplinary hearing.
22. The Respondent avers the Claimant appeared before the disciplinary panel on 27<sup>th</sup> September 2021, accompanied by Dennis Mulewa.
23. The Respondent avers that during the hearing, the Claimant admitted to asking her colleague, George Metet, to print a mini statement for Eucabeth; she acknowledged that it was wrong to share customer information with third parties; the Claimant stated that she was not in the right state of mind when she committed the breach of security; and the Claimant apologized for what transpired and acknowledged that she should have done better due diligence before acting as she did.
24. The Respondent avers that it terminated the Claimant's employment on 15<sup>th</sup> October 2021 on account of breach of security and issued a formal letter of termination which also informed the Claimant to collect her certificate of service.
25. The Respondent avers that on 21<sup>st</sup> October 2021, the Claimant lodged an appeal against its decision to terminate her employment. Vide a letter dated 22<sup>nd</sup> October 2021, the Respondent informed the Claimant of its decision to decline the appeal as it failed to raise any new evidence that would warrant a review of its decision.
26. The Respondent avers that besides contravening the duty of confidentiality implicit in the banker-customer relationship between the Respondent and Mbweli Holdings as well as its internal policies, the Claimant's actions unreasonably exposed the Respondent to: an action for breach of contract and/



or negligence by Mbweli Holdings for breach of a banker's contractual duty of non-disclosure as the mini statement printed under the Claimant's instructions was tendered in legal proceedings against Mbweli Holdings; and sanctions by the data commissioner for breach of the applicable data protection laws and regulations.

## **Evidence in Court**

### **Claimant's Case**

27. The Claimant (CW1) produced her witness statement and list of documents dated 25<sup>th</sup> November 2022 and 9<sup>th</sup> November 2021 respectively as her evidence in chief.
28. CW1 testified that she did not issue a mini statement to a customer. She used to sit at the door and a client came in with a faded receipt wanting to confirm if the transaction had gone through, as her landlord was alleging she had not paid rent.
29. CW1 testified that she checked the system to check if the transaction had gone through which was within her mandate. She tried to use her machine but it hanged so she used her colleague's, Louice, to check and confirmed the transaction went through and informed the client.
30. CW1 testified that the client wanted a printout but she did not have the mandate to do so. She asked one, Kiarie, manning the service desk to assist the customer, and they both consulted, George, a teller to assist as it was within his mandate to print a retrieval voucher. The customer was served by George and did not come back to her. It was within her mandate to inquire from George
31. CW1 testified that there was no breach of confidentiality between the customer and the bank and she was not aware the customer used the information to the detriment of the bank.
32. CW1 testified that she was not George's supervisor and he should have checked with his supervisor. Further, she did not access Louise Omondi's desk without her consent as she did not have her credentials.
33. CW1 testified that in response to the Show Cause Letter she was clear that a retrieval voucher was to be issued.
34. CW1 testified that before the disciplinary hearing, she was not availed statement from George and Louice or given the CCTV footage hence could not verify the allegations. George and Louise are still the Respondent's employees yet she was terminated which amounts to discrimination.
35. During cross examination, CW1 testified that her computer had a technical hitch and she accessed Louice Omondi's computer to verify the money had been deposited in Mbweli Holdings Limited's account. The customer insisted on further proof and was issued a retrieval voucher. She did not know it will be used in court.
36. CW1 testified that she received the letter dated 22<sup>nd</sup> September 2021 inviting her for the disciplinary hearing on 27<sup>th</sup> September 2021. She requested for more time orally to her branch manager hence the same has not been produced before this court.
37. CW1 testified that she was informed she was entitled to be accompanied by a colleague and she was accompanied to the hearing with Dennis.
38. CW1 testified that she was coerced to sign the minutes and that she signed them without reading the same, however, she was not produced any evidence before this court to prove the coercion. She further testified that she was shown the CCTV footage during the hearing.



39. CW1 testified that she did not ask George to issue a mini statement but the minutes provide as much. She testified that she acknowledged the minutes and did not state she was not in her right mind.
40. CW1 testified that she requested for her accusers during the disciplinary hearing but they were not provided but she saw the complaint letter from Mbweli Holdings Limited. She also saw the sworn affidavit by Eucabeth and a mini statement annexed thereto.

### **Respondent's Case**

41. The Respondent's witness (RW1) Beatrice Kathure, she has been the Respondent's employee for the past 6 years.
42. RW1 adopted her witness statement dated 15<sup>th</sup> April 2022 as her evidence in chief and list of documents and supplementary documents dated 15<sup>th</sup> April 2021 and 28<sup>th</sup> March 2023 as her exhibits in this case.
43. RW1 testified that the Claimant's employment was terminated for breach of security as she issued a customer's statement to a third party.
44. RW1 testified that the Claimant could not issue a retrieval voucher from the branch since vouchers are taken for checking in the head office at Industrial Area. If a customer requires a copy of a previously issued voucher, she must fulfil a request from the bank and pay Kshs 300 and it takes about 48 hours. Therefore, the Claimant's claim that Eucabeth was issued with a retrieval voucher is not true.
45. RW1 testified that there was security breach giving unauthorised information which the customer could sue the bank. The customer wrote to the bank demanding an explanation why its documents were shared with a third party.
46. RW1 testified that the mini statement was used in court in a case between the customer and the third party.
47. RW1 testified that the Claimant was paid her dues and salary in lieu of notice and the documents have been produced in court.
48. During cross examination, RW1 testified that during the disciplinary hearing, the Claimant admitted she issued instructions to a teller to issue the mini statement to the third party and that she was present when the Claimant made that admission and the minutes are in court.
49. RW1 testified that the CCTV footage was a recording of the events and the same were authentic. It formed part of the Show Cause Letter.
50. RW1 testified that the Claimant was the supervisor to the person she instructed and that they were both trained to perform the same role. The statement of the said person was produced at the hearing but not in this court.
51. RW1 testified that the minutes were signed by Dennis who accompanied the Claimant.
52. RW1 testified that the CCTV footage was played at the disciplinary hearing and not produced in court hence there is no electronic certificate.
53. RW1 testified that the employee who printed the mini statement was also terminated.

### **Claimant's Submissions**

54. The Claimant submitted that the Respondent is clear and each employee knows his immediate supervisor and protocols to be followed in any enquiry. According to this structure, George Metet



- receives information and reports directly to the service manager whereas she reports to the bank manager, it was therefore impossible for her to issue George Metet with any instructions.
55. The Claimant submitted that she did not issue the client with a retrieval voucher, a mini statement or any document and there is no evidence of the same.
56. The Claimant submitted that the Respondent relied on the CCTV photograph which evidence cannot be admissible as it is contrary to Section 106B of the Evidence Act. The Respondent did not produce a certificate of electronic evidence before this court or call an expert witness to verify its authenticity.
57. The Claimant submitted that this court cannot verify whether the recording was tampered with or the device had a technical malfunction as the time stamps on the CCTV photographs provided do not match the story narration.
58. The Claimant submitted that she did not issue the alleged mini statement and should not be crucified for another person's negligence. The Respondent has failed to establish the causal link between her actions and the incident.
59. The Claimant submitted that prior to her termination, the Claimant was a diligent and outstanding performer as seen from the various commendation letters. She had no disciplinary issues as captured in the letters.
60. The Claimant submitted that the Respondent failed to produce evidence to prove the allegations against her. No witness or witness statements were produced at the disciplinary hearing or availed for this court.
61. The Claimant further submitted that the Respondent relied on CCTV photographs which evidence was not verified and did not match the story line. She relied in the case of Gibson D Mwanjala Vs KRA [2015] eKLR.
62. The Claimant submitted that the Respondent relied on the undated letter from Mbweni Holdings Limited purporting to have exposed the Respondent to litigation risks. Further, Eucabeth's supporting affidavit dated 8<sup>th</sup> February 2021 does not mention any mini statement or connection to the case herein. Therefore, it is evident there are no valid reasons given by the employer for termination.
63. The Claimant submitted that she did not have any representative during the disciplinary hearing as required under Section 41 of the Employment Act. From the minutes of the disciplinary hearing, there is no composition of the panel or the signature of her supposed representative Dennis.
64. The Claimant submitted that during the hearing, she was not furnished with the witness statements of Kevin Kiarie, Louice Omondi and George Metet and reference in the minutes hence denied her a chance to view the evidence against her which was unfair and condemned her unheard.

### **Respondent's Submissions**

65. The Respondent submitted that the test for substantive fairness under section 43 (2) of the Employment Act provides that the reasons for termination are matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee. The court's task is to interrogate whether the Respondent had valid and fair reasons, which it genuinely believed to exist, for terminating the Claimant's services as it did.



66. The Respondent submitted that the letter of termination lists the reasons of termination being the Claimant's failure to exonerate herself from the charges of breach of security and unauthorised disclosure of banking information levelled against her in the show cause letter.
67. The Respondent submitted that the Claimant's attempts during cross examination to refute the contents of the disciplinary hearing minutes are futile as both the Claimant and her witness signed the minutes; the Claimant confirmed the signature belonged to her and the Claimant and the witness acknowledged to have read; understood the contents therein and confirmed that they reflected the deliberations of the disciplinary panels and the Claimant admitted in her own appeal to having issued the instructions to print the impugned mini statement.
68. The Respondent submitted that the documentary and testimonial evidence on record establishes on a balance of probabilities that the reasons in the show cause and termination letter existed at the time of Claimant's dismissal. It has demonstrated sufficient, valid and justifiable reasons for terminating the Claimant's services.
69. The Respondent submitted that it followed the laid down procedure under Section 41 of the [Employment Act](#) in effecting the termination as set out in its pleadings.
70. The Respondent submitted that with regard to communication of the outcome of the appeal, it relies on the testimony of Beatrice Kathure that since the Claimant was no longer in the employ of the Respondent, the letter was dispatched to her registered postal address as indicated in her letter of appeal. The failure to physically deliver the notification of outcome of the appeal cannot taint the procedural fairness of the Claimant's dismissal.
71. The Respondent submitted that the Claimant challenging the admissibility of the CCTV footage adduced by the Respondent for omitting to include a Certificate of Electronic Evidence which is unfounded as:
- a. the Respondent did not adduce any CCTV footage or electronic evidence in this cause, it adduced the Show Cause Letter which contains still photographs from the CCTV footage to the extent that. they form part of the Show Cause Letter and the minutes of the disciplinary hearing which cannot be isolated and expunged/ignored in the manner suggested by the Claimant.
  - b. the Claimant and her witness admitted, during the disciplinary hearing, to the facts depicted in the impugned images. And the Claimant's response to the Show Cause Letter contains a narrative that is supported by the CCTV still images.
  - c. the images impugned by the Claimant were properly produced at the disciplinary panel without any objection from the Claimant or her witness. The disciplinary panel, not being a court of law, was not bound by the structures of the [Evidence Act](#) regarding production of electronic evidence.
  - d. the Claimant did not raise any objection as the admissibility of the impugned images in her pleadings, at the pre-trial stage or the document production stage. The record reflects that the Claimant's counsel, upon being asked whether she had any objection to the production of any of the Respondent's documents, responded in the negative.
  - e. by her failure to object to the production and admission of the still images forming part of the Show Cause Letter and minutes, the Claimant led the Respondent to act on the assumption that the admissibility of the still images was not in question. As such, she is estopped from challenging their admissibility through written submissions.





72. The Claimant relied on the *Trust Bank Limited v Paramount Universal Bank Limited & 2 others* [2009] eKLR in which the court stated: - “in my view, it is rather late in the day for the Defendants to challenge the documents already admitted in evidence during proceedings they fully participated in.”
73. The Respondent submitted that nothing turns on its failure to produce the call log between the Claimant and George Metet as the Claimant already admitted in her response to the Show Cause Letter and during the disciplinary hearing to having called George Metet on 1<sup>st</sup> February 2021.
74. The Respondent submitted that the Claimant was best placed to produce the call logs, further, she failed to get George Metet to issue evidence that she instructed him to issue a retrieval voucher as opposed to a mini statement. The Respondent was only required to prove it acted reasonably given the prevailing circumstances.

### **Analysis and Determination**

75. For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Therefore the issues for this court’s determination are:
- a. Whether the termination of the Claimant’s employment was substantially justified.
  - b. Whether the termination was procedurally fair.
  - c. Whether the Claimant is entitled to the reliefs sought.

### **Whether the termination of the Claimant’s employment was substantially justified.**

76. Section 43 of the [Employment Act](#), 2007 provides that:

- “(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.
- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

77. Further, Section 45 (2) of the Act provides that:

- “A termination of employment by an employer is unfair if the employer fails to prove-
- a. that the reason for the termination is valid;
  - b. that the reason for the termination is a fair reason
    - i. related to the employee’s conduct, capacity or compatibility; or
    - ii. based on the operational requirements of the employer; and
  - c. that the employment was terminated in accordance with fair procedure.”

78. In *Court of Appeal observed in Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR that:

“The onus was really on the appellant to show that the dismissal was justifiable after the response made by the respondent both in his documentary and oral evidence. In the case of





Pius Machafu Isindu vs Lavington Security Guards Limited [2017] eKLR this Court had the following to say on the burden of proof:-

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the Evidence Act and the Civil Procedure Act/Rules. Finally, the remedies for breach set out under section 49 are also fairly onerous to the employer and generous to the employee. But all that accords with the main object of the Act as appears in the preamble:

“..to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees..”

Those provisions are a mirror image of their constitutional underpinning in Article 41 which governs rights and fairness in labour relations.

14. Section 47 (5) of the Act provides for the procedure to be followed in matters of complaints of unfair termination as follows:

“(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds of the termination of employment or wrongful dismissal shall rest on the employer.” [Emphasis added].

So that, the appellant in this case had the burden to prove, not only that his services were terminated, but also that the termination was unfair or wrongful. Only when this foundation has been laid will the employer be called upon under section 43 (1): “to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.” [Emphasis added].”

79. In the instant case, the Respondent has proved that the Claimant indeed breached its security and confidentiality protocols by issuing the Mbweli Account mini statement to a third party which was used in court to the detriment of its client and could expose the bank to suits.
80. Respondent Witness 1 clearly testified against the Claimant’s averment that the third party, Eucabeth, was issued with a retrieval voucher. The witness testified a retrieval voucher is processed 48 hours from the time of the application and the same emanates from its head office and not the branch. Further, the applicant must pay the issuance fee of Kshs 300. This may not have been possible according to narrative given by the claimant during the hearing. The Claimant gave out confidential details of a client’s account to a third party contrary to the duty of confidentiality expected from the bank by its customers.



81. Further, the Claimant's submission that the Respondent has failed to prove it had valid reason to terminate her on grounds that it failed to file a certificate of electronic evidence in respect to the still CCTV footage lacks merit. This court observes the Respondent relied on the content of the Show Cause Letter and minutes of the disciplinary hearing in which the Claimant admitted to the facts depicted in the CCTV footage in which the Claimant clearly testified that it was shown to her during the hearing. Accordingly, the certificate of electronic evidence is not necessary in this cause.
82. The afore referred case of Trust Bank Limited – Vs – Paramount Universal Bank & 7 Others (supra). A defendant ought not to challenge production of documents already admitted in evidence during proceedings they fully participated in.
83. Having considered, the Claimant's own admission that she attended the disciplinary hearing and together with her accompanying witness signed the minutes and acknowledged the contents of the said minutes would be a contradictory to her allegation that she did not sign the minutes voluntarily.
84. The Claimant testified that she was coerced to sign the minutes of the disciplinary hearing but that allegation does not hold water as she did not produce any evidence to prove the alleged coercion neither did she procure a sworn affidavit from her witness, Dennis to substantiate this allegation. She signed the minutes and as well her witness Dennis Mulewa also signed and confirmed they were true.
85. In view of the foregoing, the Respondent has proved that it had valid reasons to dismiss the Claimant's employment on account of the Claimant's conduct. Therefore, the dismissal was substantially justified.

**Whether the termination was procedurally fair.**

86. Section 41 of the [Employment Act](#) provides for the proper procedure to followed by an employer before dismissing an employee as follows:
  - “(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.
  - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”
87. The Claimant was invited for a disciplinary hearing slated for 27<sup>th</sup> September 2021 vide a letter dated 22<sup>nd</sup> September 2021 which informed the Claimant to tender documentary evidence in support of her case; and of her right to be accompanied by a member of staff or a central staff union official to the disciplinary hearing.
88. She was accompanied by one Dennis Mulewa who confirmed he understood the minutes and he appended his signature.
89. Further to the above, the invitation letter was accompanied by evidence relied on by the Respondent in support of the allegations levelled against her.



90. The Claimant testified that she attended the disciplinary hearing accompanied by a union official, Dennis Mulewa. The Claimant did not object to any of the proceedings during the hearing.
91. The other issue raised by the Claimant was pertaining to her appeal. In her termination letter dated 15/10/2021 she was informed of the right to appeal. She lodged her appeal on 21<sup>st</sup> October 2021 and was informed via the respondent's letter dated 22<sup>nd</sup> October 2021 that since there were no new grounds raised her appeal was not considered.
92. The court finds there is nothing to find fault with the way the Respondent conducted the termination of the Claimant as he satisfied the fairness test which is both substantially and procedurally fair as well articulated in the case of Walter Onuro Ogal -vs- Teachers Service Commission (2013) eKLR.
93. Against this backdrop the court is satisfied the Claimant did not prove a case of unfair and unprocedural termination. The Claimant's suit is therefore dismissed accordingly.
94. Each party will meet their respective costs at least considering the Claimant served the Respondent for several years.
95. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 21<sup>ST</sup> DAY OF DECEMBER, 2023.**

.....

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of [the Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of [the Constitution](#) and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

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**ANNA NGIBUINI MWAURE**

**JUDGE**

