



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 208 OF 2001

ANNE WANGUI GIKONYO.....PLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA.....DEFENDANT

J U D G M E N T

1. Anne Wangui Gikonyo, the Plaintiff herein, sued Co-operative Bank of Kenya, the Defendant herein, vide the plaint dated 8th February, 2001 in which she sought for judgment as follows: -

a) General damages for unlawful termination.

b) Value of the House – Kshs.4,347,082.80 plus any interest on the same.

c) Interest on (a) and (b) above at court rates.

d) Costs of this suit.

e) Interest on a, b and c herein above.

2. The Defendant filed an amended defence to deny the Plaintiff's claim. The Defendant further filed a counter-claim in which it sought for payment of Ksh.2,112,121/70 plus interest from the Plaintiff.

3. When this suit came up for hearing, the Plaintiff was permitted to prosecute her case ex parte when the defendant and its counsel failed to turn up. Consequently, the defence was closed and the counter-claim was dismissed for want of attendance.

4. Anne Wangui Gikonyo (PW 1) testified in support of her case. PW 1 adopted the contents of her witness statement as her evidence in chief and also produced the documents attached to her list of documents dated 8th July, 2010 as exhibits in evidence.

5. She told this court that in May, 1997, she was appointed by the Defendant as the Acting-in-Charge of the Customer Service Department which position she held until February, 1999 when she was promoted and confirmed in the same position reporting to the Manager Sales and Customer Service.

6. PW 1 also stated that in the months of May and June, 1999, the Defendant received complaints from various card holders alleging that there were entries in their statements of withdrawals in accounts which they were not familiar with and investigations commenced.

7. PW 1 named Grace Maina holder of Card No. 4407 8111 0000 2014, Jane Waweru Card Holder No. 4797 4040 0100 4830 and Mary Gatehi Card Holder No. 4797 4040 0100 0804 as some of the Defendant's customers who had raised complaints.

8. The Plaintiff further stated that on 1st July, 1999 the Card Centre Chief Manager wrote a letter suspending her from duty as the Customer Service in Charge at Card Centre. She produced the letter as an exhibit in evidence.

9. PW 1 also stated that the complaint was thereafter referred to the Banking Fraud Unit at Central Bank for further investigations and that the Defendant handed her over to the Banking Fraud Officers. The Plaintiff alleged that the Banking Fraud Officers commenced their investigations by searching her office and house for any possible evidence.

10. It is the evidence of PW 1 that the Banking Fraud Investigations revealed that at the Card Centre, both the PIN Mailer and Card were stored together and therefore, anybody with access to the safe whether authorized or not, could have taken the cards and used them legally or

illegally and that the goldfish cards she handled were also stored in the same safe.

11. The Plaintiff further told this court that after three weeks of investigations by Banking Fraud Officers, no wrongdoing was established against her and she was advised to go back to her employer and resume duty.
12. She said that when she reported back on duty on 22nd July, 1999 the Defendant served her with a letter to show cause why disciplinary action should not be taken against her contrary to the recommendations made to the Defendant by the Banking Fraud Investigation Unit.
13. PW 1 stated that on 27th July, 1999 she made a response to the letter but she was surprised to receive a letter dated 13th August, 1999 summarily dismissing her on the grounds that she had purportedly misappropriated certain card holders funds.
14. The Plaintiff tendered as an exhibit in evidence the letter dismissing her. In the aforesaid letter the Defendant asked the Plaintiff to repay in full the outstanding house loan in the sum of Ksh.3,461,252/- plus interest.
15. The Plaintiff further stated that the outstanding house loan would attract interest at the prevailing commercial rates which rate was not specified.
16. In the letter of dismissal the Defendant further informed the plaintiff that she would be responsible for the payment of the misappropriated monies without specifying the exact amount.
17. PW 1 told this court that the allegations made by the Defendant in the letter of dismissal were mere and baseless allegations which could not form a basis for her dismissal from the Defendant's employment. The Plaintiff urged this court to hold that the Defendant's actions were biased against her and that the Defendant was actuated by malice in dismissing her.
18. The Plaintiff told this court that she exhausted all the internal appeal mechanisms but the Defendant did not deem it fit to respond to her appeals but instead continued to issue threats stating that the outstanding amounts would continue to attract interest at the prevailing commercial rates.
19. PW 1 further averred that on 20th April, 2000, the Defendant demanded payment of Ksh.3,834,366/45 incorrectly stating that the said facilities were secured by a first legal charge over L.R. No. Nairobi/Block 93/26 without offering her any evidence of that liability or at all.
20. PW 1 tendered documentary evidence showing that the Defendant granted her a house loan facility of Ksh.3,500,000/- and that the repayment was a sum of Ksh.12,916/- per month with a rate of interest of 6.5% per annum and the security was a legal charge over L.R. No. Nairobi/Block 93/26.
21. PW 1 also tendered evidence showing that on 25th April, 1999 the Defendant informed her that the interest had been revised downwards from 6.5 % to 2.5% per annum.
22. It is the evidence of PW 1 that by the time of her dismissal she had made some repayments leaving a balance of Ksh.3,461,252 but the Plaintiff was not given statements showing how the repayments were made, the interest charged and the basis on which the balances were calculated.
23. The Plaintiff further stated that she was surprised when she received a notice from Garam Investments asking her to repay Ksh.4,397,082/80 plus interest failure to which the property would be sold by public auction.
24. PW 1 said that the Defendant failed to give her a proper and correct breakdown on how Ksh.4,347,082/80 was arrived at and despite making a request to be given such information, the Defendant ignored to do so.
25. PW 1 further stated that she made efforts to have the dispute negotiated out of court but the Defendant through its agent Garam Investments advertised the Plaintiff's property for sale and eventually sold the Plaintiff's house on 16th January, 2001 to one Caleb Orenje for Ksh.3,050,000/-.
26. The Plaintiff further stated that even after the purported sale of her house and the sale proceeds having been deposited into her account, the loan remained unchanged and it never reduced as would be expected.
27. The Plaintiff urged this court to find that the Defendant acted in bad faith and with malice against her and, therefore, she should be awarded compensation.
28. PW 1 further stated that on 17th October, 2001 she did a search of L.R. No. Nairobi/Block 93/26 and found that the property had not been transferred and that the legal charge of Ksh.3,500,000/- to the Defendant had not been discharged.
29. Having considered the evidence and the written submissions, the following issues commend themselves for determination.

i) Whether the plaintiff was unlawfully dismissed by the Defendant.

ii) Whether the Plaintiff is entitled to general damages for unlawful termination.

iii) Whether the Defendant is liable to the Plaintiff for the value of the Plaintiff's house which was sold and other benefits she was entitled.

iv) Whether the Plaintiff is entitled to costs.

30. On the first issue as to whether the Plaintiff was unlawfully dismissed, it is apparent from the evidence tendered that the Defendant's act of summarily dismissing the Plaintiff was unwarranted. The Plaintiff was interrogated by the Banking Fraud Officers and found innocent. The Defendant proceeded to dismiss the Plaintiff on the basis that she was responsible for payment of the misappropriated monies belonging to the Defendant's customers. I am convinced that the Defendant was actuated by malice in dismissing the Plaintiff.

31. The second issue is whether the Plaintiff is entitled to general damages for unlawful termination. The Plaintiff has at great length shown the damage she suffered upon being summarily dismissed. I am satisfied that she is entitled to damages equivalent to three months salary in lieu of notice.

32. The third issue is whether the Plaintiff is entitled to claim the value of her house which was sold. It is clear in my mind that the Plaintiff has shown that she was prevented from enjoying the comfort of the house whose mortgage she was repaying by virtue of the breach. This includes loss of income and hence the disability to service the mortgage leading to the unlawful sale of the Plaintiff's house. I am therefore, convinced that the Plaintiff ought to be compensated for an equivalent of the value of the house.

33. The final issue is whether the Plaintiff is entitled to costs. The Plaintiff is a successful party and since costs follows the event, the Plaintiff is entitled to costs.

34. In the end, judgment is entered in favour of the Plaintiff and against the Defendant as follows: -

i) A sum of Ksh.4,347,082/80 being the value of the house unlawfully sold at the time of her dismissal.

ii) Damages for unlawful dismissal for a sum equivalent of three months' salary as of the time of the Plaintiff's dismissal.

iii) Interest at court rates of (i) and (ii) above from the date of judgment until full settlement.

iv) Costs of the suit.

v) The counter-claim is dismissed with costs to the Plaintiff.

Dated, signed and delivered at Nairobi this 16th day of August, 2018.

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J K SERGON

JUDGE

In the presence of

..... for the Plaintiff

..... for the Defendant.