



REPUBLIC OF KENYA



KENYA LAW
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**Lagat v Springboard Capital Limited (Cause E579 of 2023)
[2024] KEELRC 2005 (KLR) (1 August 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2005 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E579 OF 2023
NZIOKI WA MAKAU, J
AUGUST 1, 2024**

BETWEEN

VINCENT KIPCHIRCHIR LAGAT CLAIMANT

AND

SPRINGBOARD CAPITAL LIMITED RESPONDENT

JUDGMENT

1. In the Memorandum of Claim dated 14th July 2023, the Claimant prays for judgment against the Respondent for:
 - a. A declaration that the Claimant's termination from employment by the Respondent was unlawful and unfair.
 - b. An order for payment of:
 - i. Kshs. 92,700/- being one month's salary in lieu of notice.
 - ii. Kshs. 1,112,400/- being twelve (12) months' salary for compensation for unfair and unlawful termination.
 - iii. Kshs. 135,000/- being payment for service pay for the three years.
 - iv. Cost of this Claim and Interest on all monetary awards at court rates.
2. The Claimant averred that the Respondent employed him in April 2019 as a Branch Manager and later promoted him to a Business Development Manager earning a basic salary of Kshs. 90,000/-. He recounted that on 16th June 2021, he was placed on compulsory leave for a period of 14 days to facilitate a comprehensive audit on customer files, with a view of reviewing his work over alleged omissions and mistakes in the processes. That later on 1st July 2021, he was issued with a Notice to Show Cause letter and invited to a hearing slated on 8th July 2021. He contended that he was only given two (2) days to



prepare for the disciplinary hearing and was not allowed to bring a witness during the hearing. Further, that he was not given the audit report to enable him prepare adequately for the disciplinary hearing and the hearing process was focused on him answering the same questions he had already responded to in his Response to the notice to show cause. He also noted that he was not given an opportunity to cross-examine the person who did the audit and the disciplinary hearing was conducted for 30 minutes only.

3. The Claimant's case is that on 9th July 2021, he was issued with a termination letter from the Respondent's Chief Executive Officer (CEO) on claims that he had been involved in unprocedural authorization of agent payments, missing agent records, precluding agent payments and causing financial losses, and post entry of agent forms on files, all which amount to non-compliance and breach of agency management procedure. He denies the said allegations and asserts that the termination of his employment is unlawful because there was no evidence to prove the same. The Claimant noted that there were previously no complaints on his performance during the period of his employment at the Respondent Company and he therefore seeks compensation for the unfair and unlawful termination of his employment. Moreover, he stated that the Respondent neither issued him any termination notice nor paid him in lieu of notice and that he was only given terminal dues for untaken annual leave days up to 9th July 2021 and for salary up to 9th July 2021.
4. In response, the Respondent filed a Memorandum of Response dated 26th September 2023, wherein it averred that upon employment, the Claimant earned a monthly gross salary of Kshs. 78,000/- and that as at termination of his employment, he was earning a gross monthly salary- of Kshs. 92,700/-. It admitted that the Claimant was then appointed to the position of Business Development Manager Agents and Products effective 1st November 2020 and confirmed to the said position by a letter dated 16th April 2021. The Respondent's case is that on or about June 2021, an incident occurred that raised suspicion of proxy funding by an imposter customer, leading to the Respondent taking the decision to carry out an audit on the Claimant's customer files. It averred that the audit unveiled various anomalies that revolved around substantive and procedural lapses, omissions, non-compliance and breach of agency management procedures. According to the Respondent, the Claimant was afforded the opportunity to respond to each claim raised against him and informed of his right to be accompanied to the disciplinary hearing by a fellow employee. It contended that it was not mandated to provide the Claimant with an audit report, if any, and asserted that it adhered to company practice and the law in the conduct of the Claimant's disciplinary process. The Respondent further averred that it considered the Claimant's written and oral representations and the evidence before concluding he was culpable for the allegations of misconduct. The Respondent thus denied that the termination of the Claimant's employment was unfair or unlawful as alleged and stated that the Claimant is not entitled to any of the prayers sought.

Claimant's Submissions

5. The Claimant submitted that the contract between him and the Respondent met the requirements of section 9 and 10 of the *Employment Act* and a look at the said agreement confirms that it is a valid and enforceable by parties. That Article 41 of *the Constitution* of Kenya guarantees him the right to fair labour practices, including the right to fair remuneration, the right to reasonable working conditions and the right to join and participate in the activities of a trade union. He argued that his unlawful termination of employment by the Respondent constitutes unfair labour practice, which entitles him to damages for contravention of that right. He fronted that he had proved he has a reasonable cause against the Respondent and in effect, he should not for instance have been blamed for an agent transaction that happened on the day he was terminated from employment. It was the Claimant's submission that the termination was also unlawful as he was not afforded a fair hearing contrary to section 45 of the *Employment Act*.



6. It was submitted by the Claimant that termination of employment is justified if there is substantive justification and procedural fairness in the termination process as affirmed in the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR. He asked the Court to subsequently award him the reliefs sought in the Statement of Claim as he had discharged his burden of proof. The Claimant urged the Court to also consider the conduct of the parties and the circumstances that led to the institution of the proceedings, in making its determination on costs.

Respondent's Submissions

7. While relying on section 45 of the *Employment Act*, the Respondent submitted that it had sufficiently demonstrated the Claimant's repeated lapses in company procedures and consequently, his neglect to fulfil his duties to the required standard. That negligence in performing one's contractual duties as an employee warrants summary dismissal as under section 44(4) of the Act and affirmed by the Court in *Agnes Kavata Mbiti v Housing Finance Company Limited* [2017] eKLR. The Respondent fronted that the Claimant on the other hand has not proven otherwise as required of him under section 47 of the Act and has therefore not met the burden of proof. That it therefore ends that it had valid reasons for terminating the Claimant's employment. Further, the Respondent submitted that as required under section 41 of the *Employment Act*, due procedure was followed before dismissing the Claimant. The Respondent further submitted that the Claimant is therefore not entitled to the reliefs sought and that this Court should find and declare that the termination of the Claimant's employment was substantively and procedurally fair.
8. The Claimant was accused of malfeasance and was subject of an audit. The case against him was that he had been involved in unprocedural authorization of agent payments, there were missing agent records, precluding agent payments and causing financial losses, and post entry of agent forms on files, all which amount to non-compliance and breach of agency management procedure. He did not have any answer to these accusations as he conceded that the work was not done as required in the Respondent's policy guidelines. He however maintained that the misdeeds were the work of agents who worked under him. The Claimant was dismissed for cause and the Respondent cannot be faulted for the action it took. It was systematic in the process leading to termination and the Claimant was not subjected to any unfair process or unlawful procedure. As such this claim is only fit for dismissal as I hereby do. Suit dismissed albeit with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 1ST DAY OF AUGUST 2024.

NZIOKI WA MAKAU

JUDGE

