



**Metet v Co-operative Bank of Kenya Limited (Cause E390 of 2022)
[2024] KEELRC 2675 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2675 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E390 OF 2022
BOM MANANI, J
OCTOBER 31, 2024**

BETWEEN

GEORGE METET CLAIMANT

AND

THE CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant has instituted these proceedings to challenge the Respondent’s decision to terminate his contract of service. According to him, the Respondent did not have valid reasons to terminate the contract.
2. On the other hand, the Respondent contends that the decision to sever the employment relation between them was informed by cogent reasons. It contends that the Claimant committed acts of gross misconduct which necessitated separation of the parties.
3. Further, the Respondent avers that it ensured that the separation was effected in accordance with fair procedure. As such, it contends that the instant suit is unmerited and ought to be dismissed.
4. The Respondent has also instituted a Counter Claim against the Claimant to recover money allegedly owed to it by the latter. It contends that the Claimant took financial facilities during the currency of his employment which remain unpaid to date. Hence, the action to recover them.

Claimant’s Case

5. The Claimant avers that he was employed by the Respondent in the position of clerical staff on 16th April 2018. He contends that he served the Respondent in this position for some time before he was elevated to the position of Customer Service Officer and Systems Administrator, Kimathi Branch.
6. The Claimant avers that throughout his service to the Respondent, he maintained a high degree of honesty and diligence. He attributes his rise in rank at the workplace to these attributes.



7. The Claimant contends that on 1st February 2021, his colleague by the name Linda Saleh requested him to print for her a mini statement in respect of a client's account to enable her confirm some transactions on the account. He contends that the said colleague sent a customer to pick the printout from him.
8. The Claimant avers that he printed the mini statement and gave it to the customer to transmit it to Linda. Meanwhile, he continued to serve other customers.
9. The Claimant contends that on 9th September 2021, he received a notice to show cause letter from the Respondent asking him to explain why he had issued the mini statement to a third party by the name of Eucabeth Nyambeki without the account holder's consent. He contends that it is at this time that he learned that the mini statement he had printed for his colleague had been put to the wrong use.
10. The Claimant avers that at the time of printing the statement, he believed that it was meant for internal use at the bank. As such, he did not seek to ascertain whether Eucabeth Nyambeki was authorized to request for the information. In any event, the Claimant asserts that since the said Eucabeth had been sent to him by his colleague, he believed that the said colleague had ascertained that she (Eucabeth) was authorized to transact in respect of the impugned account.
11. The Claimant avers that he responded to the show cause letter admitting that he had issued the mini statement to a third party. However, he believed that it was going to be used internally by his colleague. He contends that he apologized for the misstep.
12. The Claimant avers that despite the explanation, the Respondent invited him for a disciplinary hearing on 27th September 2021. He contends that he attended the hearing where he once again admitted the mistake and pleaded for leniency.
13. The Claimant contends that on 15th October 2021, he received a letter from the Respondent terminating his services. He avers that he immediately lodged an appeal against the decision.
14. According to him, the Respondent's decision to terminate his services was unwarranted since his decision to share the mini statement was not motivated by ulterior intent. On the contrary, he gave out the statement at the request of his colleague and believing that it was going to be used internally.
15. The Claimant further contends that the Respondent violated its own Human Resource Policy and the Collective Bargaining Agreement between it and his (the Claimant's) Trade Union when it terminated his services without regard for the fact that he had no previous warnings. He contends that the aforesaid instruments required that he be issued with at least two warning letters before his contract could be terminated.

Respondent's Case

16. On its part, the Respondent contends that the Claimant contravened its policies when he shared confidential information relating to a customer's account with a third party without the customer's or bank's authority. The Respondent avers that this misconduct exposed it to the risk of legal action both by the affected customer and the regulator of the banking industry.
17. The Respondent asserts that the Claimant was aware of its confidentiality policy which prohibited him from sharing confidential information with unauthorized persons. Further, he was aware of the stringent requirement by the Respondent that he ascertains the identity of anybody seeking confidential information from the bank before sharing the information in order to avoid the possibility of giving such information to unauthorized individuals.



18. The Respondent contends that when the Claimant committed this infraction, he was issued with a notice to show cause. In response, he admitted the mistake.
19. The Respondent avers that it subjected the Claimant to a disciplinary hearing during which he admitted the mistake. As a result, it terminated the contract between them.
20. The Respondent further contends that the Claimant lodged an appeal against the decision which was dismissed. As such, the contract between them was lawfully closed.
21. The Respondent denies that the offense which the Claimant was charged with required a warning before he could be dismissed from employment. In its view, the Claimant has chosen to selectively read the Collective Bargaining Agreement on the requirement for warnings to suit his case.
22. The Respondent further contends that during his employment, the Claimant took two facilities which were still running when his services were terminated. Consequently, he is obligated to pay to it the outstanding loan amounts in line with the facility letters which he signed.

Issues for Determination

23. After evaluating the pleadings and evidence on record, I am of the view that the following are the issues that require determination in the suit:-
 - a. Whether the contract between the parties was lawfully terminated.
 - b. Whether the Respondent's counter-claim is merited.
 - c. Whether the parties are entitled to the reliefs that they seek through these proceedings.

Analysis

24. The evidence on record shows that the Claimant shared details of transactions on account number 01136129215100 in the name of a limited liability company with one Eucabeth Nyambeki. It is not in dispute that the said account did not belong to Eucabeth Nyambeki.
25. The Claimant does not deny that the Respondent's regulations require that before information relating to a customer's account is shared with anyone, such person must be identified as one who is authorized to access the information. As a matter of fact, this requirement is incorporated in the Respondent's Code of Conduct on Restricted Information and Business Code of Conduct and Ethics which the Claimant does not deny that he was aware of.
26. The Claimant concedes that on the material day, he shared information relating to the aforesaid account with Elizabeth Nyambeki without confirming that she was authorized to access the information. He admits that this was a mistake on his part.
27. The Claimant has argued that he released the information to Elizabeth Nyambeki because she had been sent to collect it from him by a member of staff by the name Linda Saleh. He contends that he believed that the said Linda Saleh had done a background check on Elizabeth and ascertained that she was entitled to access the information. He further contends that he believed that the information was meant for internal consumption. And hence his failure to adhere to the verification procedures.
28. The Claimant's actions in this respect were reckless. The obligation to verify whether the person who collected the information was authorized to receive it lay with him. He cannot shift responsibility for this omission by asserting that he believed that his colleague had undertaken the exercise.



29. The minutes of the disciplinary session show that the Claimant admitted that his action was improper. As such, he asked for leniency from the Respondent.
30. The Claimant's witness, one Dennis Mulewa also admitted that the Claimant's action violated the Respondent's policy on confidentiality of information. The witness conceded that it was wrong for the Claimant to have shared a customer's bank details with a third party without the account holder's or bank's approval.
31. Clause A5 (a) (ii) of the Collective Bargaining Agreement between the Respondent's Employers' Association and the Claimant's Trade Union provides that an employee's contract of service may be terminated if he/she commits a breach of secrecy or security relating to any matter affecting the employer's business. The Claimant's action violated the Respondent's policy on confidentiality of its customers' information. Therefore, he breached the Respondent's secrecy policy and became amenable for dismissal under this clause.
32. This clause ties with section 44 (4) (c) and (e) of the *Employment Act* on gross misconduct by an employee. As such, I am satisfied on the basis of the evidence on record that the Respondent had a justifiable reason to consider terminating the Claimant's employment.
33. The record shows that after the Claimant committed the aforesaid infraction, the Respondent issued him with a notice to show cause letter to explain the incident. The record further shows that the Claimant wrote a response to the show cause admitting the infraction.
34. The evidence demonstrates that the Respondent convened a disciplinary hearing which the Claimant attended. It is also apparent from the record that the Claimant was permitted to call witnesses during the hearing.
35. During the disciplinary hearing, the Claimant admitted the offense. His witness also admitted the infraction. It is only after this process that the Respondent terminated the Claimant's services.
36. The record shows that the Claimant was allowed to lodge an appeal against the decision. However, he lost the appeal.
37. The foregoing speaks to the fact that the Respondent ensured fair procedure in terminating the Claimant's contract. As such, it upheld procedural fairness in the process.
38. The Claimant has suggested that the Respondent ought to have subjected him to the warning system in the Collective Bargaining Agreement before it terminated his contract. I have looked at Clause A5 (a) of the Agreement and it is clear to me that the warning procedure does not apply to offences under it. The procedure applies to offences under Clause A5 (b). As such, the Claimant's assertion that he was entitled to two warnings before his contract could be terminated for the offense in question is baseless.
39. In the ultimate, I am satisfied that the Respondent upheld both substantive and procedural fairness in the process that resulted in the separation of the parties. Therefore, the Claimant's employment was lawfully terminated. As such, his suit against the Respondent is unmerited.
40. The Respondent has claimed for Ksh. 1,789,092.13 from the Claimant on account of two facilities that the Claimant had at the time of termination of his contract. The Respondent produced evidence to demonstrate that indeed the Claimant applied for and was granted these facilities.
41. The letter of termination of the Claimant's contract shows that the Respondent demanded for the immediate settlement of the two accounts. In the Claimant's appeal, he conceded that this amount was owing to the Respondent.



42. Importantly, the Claimant did not file a defense to the Respondent’s Counter Claim to dispute the claim. As such, the claim is deemed as admitted. In the premises, I enter judgment for the Respondent against the Claimant for Ksh. 1,789,092.13 plus interest as claimed.

Determination

- 43. Having considered the evidence on record, I make the following findings and orders:-
 - a. The Claimant’s employment with the Respondent was lawfully terminated.
 - b. As such, his case against the Respondent is unmerited and is hereby dismissed with costs to the Respondent.
 - c. The Respondent’s Counter Claimant against the Claimant is merited.
 - d. As such, I enter judgement for the Respondent against the Claimant for Ksh. 1,789,092.13 plus interest as claimed.
 - e. Costs of both the primary suit and counterclaim are awarded to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF OCTOBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M Manani

